Regular Meeting
Tuesday, February 6, 2024 6:00 PM

Dr. Matthew Prophet Education Center - Board Auditorium
501 N. Dixon St
Portland, OR 97227

Agenda

1. **6:00 pm - Opening**
2. **6:05 pm - Head Start Visual Arts**
3. **6:10 pm - Black History Month (Resolution 6833)** Vote - Public comment accepted
4. **6:15 pm - Update on Superintendent Search**
5. **6:20 pm - Superintendent's Report**
6. **6:25 pm - Student Representative's Report**
7. **6:30 pm - Student Comment**
8. **6:45 pm - 2023-2026 Agreement between Service Employees International Union and School District No. 1J, Multnomah County, Oregon (Resolution 6841)** Vote - Public comment accepted
9. **6:50 pm - Early Literacy Grant Application (Resolution 6836)** Vote - Public comment accepted>
10. **6:55 pm - 2024 Portland Public Schools Legislative Agenda (Resolution 6844) Vote - Public comment accepted**
11. **7:00 pm - Second Reading of Policies - Resolutions 6834 and 6835** Vote - Public comment accepted for each policy
    - 11.(a) Resolution to Adopt Ethics and Conflict of Interest Policy x.xx.xxx-P (Resolution 6834)
    - 11.(b) Adoption of revised Public Contracting Rules (Resolution 6835)
12. **7:05 pm - Public Comment**
13. **7:20 pm - Implementation of Reading Curriculum**
14. **8:00 pm - Levy Referral Discussion**
15. **8:30 pm - Consent Agenda: Resolutions 6837 through 6840 and 6843** Vote- Public Comment Accepted
    - 15.(a) Resolution 6837 - Adoption of the Index to the Minutes
    - 15.(b) Resolution 6838 - Expenditure Contracts
    - 15.(c) Resolution 6839 - Revenue Contracts that Exceed Delegation of Authority
    - 15.(d) Resolution 6840 - Approving 3 Capital Projects for Contracted Alternative Schools using ESSER III funds
    - 15.(e) Resolution 6843 - Authorizing off Campus Activities
16. **8:40 pm - Other Business / Committee Referrals**
17. **8:45 pm - Comments from our Union Partners**
18. **9:00 pm - Adjourn**

RESOLUTION No. 6833

Proclamation and Recognition of February as Black History Month

RECITALS

A. Portland Public Schools celebrates Black excellence to elevate the success of Black students, and acknowledge their histories, and futures, in a way that affirms and allows Black students in our care to achieve their fullest potential and thrive into adulthood.

B. Black History Month began in 1915 by historian Carter G. Woodson and other prominent leaders, as a way to formally observe the visionary contributions of Black people, and now is a time for recognizing the central role and contributions of members of the African Diaspora in U.S. history.

C. The contributions of members of the African Diaspora and their endeavors to learn and thrive throughout history and make unforgettable marks in our Nation as artists, scientists, educators, business people, influential thinkers, members of faith communities, athletes, and political and governmental leaders, reflects the greatness of the people of the African diaspora within the United States.

D. Black history reflects a people with a determined spirit of perseverance and cultural pride in its struggle to equitably share in the opportunities and burdens of a nation founded upon the principles of freedom and liberty for all people.

E. The local community has enriched the diversity of perspective and experience in our District; and the Board of Education desires to recognize and honor the achievements and contributions of members of the African Diaspora.

F. All students need an opportunity to understand their rich history and common humanity underlying all people, to develop pride in their own identity and heritage, and to respect, know, and accept the identity and heritage of others.

G. In service of the Portland Public Schools strategic framework of targeted universalism, shaped from the community-driven vision, we recognize our commitment to center the realities of Black students, and liberate them from the oppression embedded in our systems that they experience.

H. Through leadership and practice, Portland Public Schools is dedicated to goals that advance racial justice, and demonstrate anti-racist values especially for Black communities in the Portland Metro area.

RESOLVED

The Board of Education of the Portland Public Schools hereby recognizes the month of February 2024 as Black History Month and encourages all educators to commemorate this occasion with appropriate ceremonies, instructional activities, and programs. The struggles and achievements of Black people and their role in America's history profoundly influences and enriches the culture of the United States. Portland Public Schools acknowledges these contributions and reaffirms its ongoing commitment to building awareness and an inclusive society.

RESOLUTION No. 6841

2023-2026 Agreement between Service Employees International Union and School District No. 1J, Multnomah County, Oregon

RECITALS

The Collective Bargaining Agreement between Portland Public Schools and the Service Employees International Union (SEIU) expired on June 30, 2023.

RESOLUTION

The Superintendent is authorized and directed to execute the 2023-2026 Collective Bargaining Agreement between the Service Employees International Union (SEIU), representing nutritional services and facilities, and School District No. 1J, Multnomah County, Oregon, as provided to the Board of Education and filed in the record of this meeting.

AGREEMENT

BETWEEN SCHOOL DISTRICT NO. 1
MULTNOMAH COUNTY, OREGON AND
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503,
SCHOOL EMPLOYEES UNION LOCAL 140

2022~~3~~ - 2023~~6~~

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[TOC WILL BE UPDATED UPON FINALIZING]

AGREEMENT BETWEEN
SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 503 OPEU, School Employees Union Local 140 AND

SCHOOL DISTRICT NO. 1,
MULTNOMAH COUNTY, OREGON

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, OPEU, School Employees Union Local 140 (HEREINAFTER CALLED "UNION"), AND SCHOOL DISTRICT NO. 1, MULTNOMAH COUNTY, OREGON (HEREINAFTER CALLED "DISTRICT") MADE ON THE AUTHORITY OF ITS BOARD OF DIRECTORS.

ARTICLE 1 – RECOGNITION AND APPLICATION OF AGREEMENT

The District recognizes the Union as the sole and exclusive bargaining representative for all nutrition services and custodial employees except for confidential, supervisory or managerial employees as defined by law or as determined by the Employment Relations Board, ~~substitute employees working less than ninety (90) consecutive calendar days in the same assignment,~~ adult volunteers and student volunteers.

The District will provide Union representatives time to speak at public School Board meetings apart from the public comment period provided the Union gives the Board Office at least 7 calendar days' written advance notice of its intent to address the Board.

ARTICLE 2 – TEMPORARY EMPLOYEES

A. A temporary employee is one who is hired to fill a position with a duration of six (6) consecutive months, or less, or to replace a regular employee on an approved leave of absence or absence due to an on-the-job injury. Note: Custodians refer to CCSL.

B. Temporary employees are entitled to all benefits of this Agreement except the benefits provided by Articles 17.A.5, B.1, 2, 3 and 4, 21 and 22.A of this Agreement.

C. Temporary employees will, upon re-employment, be given seniority credit for previous time worked as a temporary unless a period of six (6) months or more has elapsed since their last period of employment.

D. CUSTODIANS – Temporary employees will be hired in rank order from the Civil Service Board Eligibility List. Employees hired as temporary will retain their position on the civil service list. The District shall notify the Union of the beginning date and projected ending date for each temporary employee hired.

ARTICLE 3 – STATUS OF AGREEMENT

A. This Agreement shall modify, replace or add to any policies, rules, regulations, procedures or practices of the District which are or shall be contrary or inconsistent with its terms. The

provisions of this Agreement and specific modifications thereto found in the appendices shall be incorporated into and become part of the established policies, rules, regulations, practices and procedures of the District.

B. In the event a conflict should occur between any provision in the body of this Agreement and a provision in any properly executed Exhibit, Appendix, Understanding or other attachment to this Agreement, the provisions of the respective attachment shall be controlling.

C. In the event that any provision of this Agreement is or shall at any time be determined to be contrary to law by a court or agency of competent jurisdiction, all other provisions of this Agreement shall continue in effect. Only the subjects of the deleted provisions and the affected provisions shall be subject to further collective bargaining during the term of this Agreement with respect to the period covered by the Agreement. Any further collective bargaining resulting from the terms of this paragraph will be conducted according to ORS 243.702.

~~D. There shall be four (4) signed copies of the final Agreement for the purpose of records. Two (2) shall be retained by the District, two (2) by the Union.~~

~~E.~~D. The District shall make the Agreement available online and provide a copy to an employee covered by the Agreement upon request.

~~F.~~E. The District, the Union and their respective representatives shall take no action in violation of, or inconsistent with, any provision of this Agreement.

~~G.~~F. The parties acknowledge that during negotiations which resulted in this Agreement, each had the right and opportunity to make demands and proposals with respect to any subjects appropriate for bargaining, and that the understandings and agreements arrived at by the parties are set forth in this Agreement. Therefore, except as otherwise expressly provided for in this Agreement, or as required by State collective bargaining law, or as provided by the Custodians' Civil Service Law, the District and the Union agree that the other shall not be obligated to negotiate or bargain collectively with respect to any subject matter, during the term of this Agreement.

~~H.~~G. ~~If, It is anticipated that~~ during the life of this Agreement, District upgrades of its computer and records systems ~~may~~ make it administratively and financially feasible to implement a ~~weekly or~~ biweekly or twice-per-month payroll period for bargaining unit employees, ~~then~~and ~~may necessitate other changes in payroll and record keeping. As these changes occur,~~ the parties will ~~use the contract administration process~~ engage in discussions about implementation at the Labor Management committee (LMC) to make appropriate adjustments to the provisions of this Agreement to accommodate these changes. Nothing in this agreement shall prevent the parties from engaging in the mid-term bargaining process related to mid-term contract changes as provided by PECBA.~~The Union preserves its rights under Oregon law to bargain over the changes in payroll and record keeping in addition to utilizing the procedures of Article 4 - Contract Administration of this Agreement.~~

~~ARTICLE 4 CONTRACT ADMINISTRATION~~

A. ~~At the request of either party, representatives of the Union and the District shall meet at mutually agreed times and places for the purpose of reviewing the administration of this Agreement.These meetings are not intended to bypass the grievance procedure, and shall not constitute an invitation to continuously renegotiate the provisions of this Agreement. The Union may, however, present a problem on behalf of a group of employees which involves an alleged violation of this Agreement, and only after failure to resolve the problem at these meetings may the Union upon its own initiative file a grievance at Step 2 provided that the Union must show by clear and convincing evidence throughout the grievance proceedings that at least one employee has been directly adversely affected by the alleged violation of the Agreement.~~

ARTICLE 5 – UNION RIGHTS

A. The Union, through its representatives, shall have the right to transact official Union business relevant to employees on School District property at all reasonable times, provided that it does not interfere with or interrupt classes or other normal School District operations. Such rooms or other appropriate meeting facilities shall be made available for Union use as requested without charge to the Union, except that the Board may make reasonable charge when special service is required beyond normal operational practice.

B. The Union representative shall have the right to use School District facilities and equipment, including ~~typewriters,~~ photocopiers, ~~calculating machines~~ and all types of audiovisual equipment at reasonable times, when the same are not otherwise in use. This shall not include use of, or access to, the District's computer equipment and systems, including but not limited to, equipment used for its HRMS, financial, purchasing and inventory administration. The Union agrees to pay the cost of all materials and supplies incidental to such use.

C. Union representatives shall make their presence known to the appropriate administrative authority when visiting School District facilities. Such visits shall not interrupt work or disrupt normal School District functions.

D. The Union shall have the right to make non-controversial announcements at employee staff meetings or by use of any existing communication procedures not ordinarily available to students including e-mail if appropriate. The District will distribute to each new hire a Union New Employee Packet. The Union will provide the packets to the District.

E. The Union and its representatives shall have the right to post notices of activities and matters of Union business and concern on staff bulletin boards. At least one such bulletin board shall be in each School District building. The Union may use the District mailboxes for communications.

F. The District shall make available to the Union upon ample request to the Office of the Superintendent any and all reasonably available information, statistics and records which are relevant to negotiations or necessary for the proper enforcement of the terms of this Agreement including the processing of grievances pursuant to Article 10. Should such

requests exceed more than two (2) per month, or fifty (50) pages total, the Union shall upon written request, reimburse the District for the costs involved in fulfilling the Union's request at the loaded hourly rate(s) and the number of hours worked by the person(s) fulfilling the request. Printed and copied documents shall be invoiced at the rate of four cents (4¢) per page. Other materials shall be invoiced at their actual cost to the District. This provision does not apply to, nor include, the periodic lists of bargaining unit members that are provided to the Union. Upon Union request, documents that relate to disciplinary action will be provided to the Union free of charge.

G. Copies of written work rules which are applicable to a classification of employees and issued by supervision after the execution of this Agreement, for which failure to comply may result in discipline of an employee, shall be provided to the Union.

H. The Union shall provide the District with the names of authorized Union stewards and PPS-employed designated union representatives and their work locations. The District will grant reasonable time for stewards and PPS-employed designated union representatives to engage in representation activities described in ORS 243.798 without loss of compensation, seniority, leave accrual or any other benefits.~~A steward will be granted time off without loss of pay, for time falling within the steward's scheduled hours, to represent employees during grievance hearings and investigatory interviews called by supervision.~~

I. The Union shall reimburse the District for the salary and benefit costs of any employee released from their~~his/her~~ work assignment to conduct business on behalf of the Union excluding business conducted with the District.

J. Upon request of the Union, the District shall provide an unpaid leave of absence not to exceed two (2) years for a bargaining unit employee to serve as an officer of the Union. Time spent on such leave shall not count toward longevity pay but the employee shall retain their~~his/her~~ promotion eligibility seniority.

K. With one week's advance notice by employee, District may grant leave for Union business subject to operational needs. Such leave may not be unreasonably denied. An employee may utilize vacation leave consistent with Article 21 of this Agreement or Emergency/Personal Business Leave. Otherwise, such leave will be unpaid.

L. Two Labor Management Committees shall be formed. The Union shall select three (3) employees each from the Nutrition Services department and the Custodial department to meet with the Managers, Directors and/or designees of those departments three times per year (approximately October 15, January 30, and April 15). Either LMC may have additional meetings as needed. LMC Topics for discussion may include but are not limited to:

- Training
- Quantities and Qualities of Equipment and Supplies
- Absenteeism
- Recruitment
- Staffing Levels

- Efficiency of operations
- Health and safety as it relates to labor allocation
- Labor allocation/formulas
- Respectful work environment
- Nutrition Services LMC may also discuss job classification changes, additions or deletions.
- APPA Facilities Management Evaluation Plan (FMEP)

    - The District is contracting with APPA to complete a FMEP. The District expects to receive the report prior to June 30, 2024.
    - The District will share the results with SEIU Local 503 and will discuss the report at the labor-management committee meeting.
    - If the report recommends the District increase staffing levels, then the parties will discuss options to adjust staffing.

The decision of the Directors or Managers regarding staffing formulas shall be final. Nothing herein shall preclude an employee or the Union, on behalf of an employee, at other times, from bringing a specific urgent concern to the attention of the Directors or Managers, and upon mutual agreement the parties shall have a supplemental LMC meeting.

M. New Employee Orientation. The District shall make new employees in the bargaining unit available for thirty (30) minutes on paid time to attend a union-led new employee orientation (NEO) within thirty (30) calendar days. For nutrition services employees, the thirty (30) calendar days does not include summer break. The District will schedule thirty (30) minutes for the NEO during the regular orientation schedule. The District will provide the Union representative with three (3) business days' notice prior to the scheduled NEO. A Union steward or designated union representative may conduct the NEO on paid time with reasonable notice to the steward's supervisor. If no Union representative is available to present the NEO, an alternative time may be scheduled upon mutual agreement.

ARTICLE 6 – NO STRIKE CLAUSE

During the life of this Agreement, the Union or any employee(s) will not authorize, cause, engage in, or sanction any form of illegal concerted work stoppage, boycott, picketing, or any other interruption of work at, within, or concerning any facilities or operations of the School District. The District shall not cause an illegal lockout of employees from their work.

ARTICLE 7 – MANAGEMENT RIGHTS CLAUSE

Except as otherwise provided in this Agreement, the Union agrees that the Board and its designees shall retain control and direction over all matters of inherent managerial policy. Such matters shall include, but are not limited to:

A. The executive management and administrative control of the school system and its properties and facilities, including the development of budgets and actions as may be

necessary to meet emergency situations;

B. Hire all employees and the right to determine their qualifications and the conditions of their continued employment or their discipline, dismissal, demotion, promotion or transfer; except as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

C. The unqualified right of assignment and direction of work of all of its personnel, and to determine the number of shifts and hours and days of work and starting times and scheduling of all the foregoing;

D. The unqualified right to establish the work, payroll and school calendars;

E. Determine the services, supplies and equipment necessary to continue its operations and to determine the methods, schedules and standards of operation, the means, methods and processes of carrying on the work, including automation thereof or changes therein, and the institution of new and/or improved methods or changes therein; Adopt reasonable rules and regulations;

F. Determine the location or relocation of its facilities, including the establishment or relocations of new schools, buildings, departments, divisions or subdivisions thereof and the relocation or closing of offices, departments, schools, programs, divisions or subdivisions, buildings or other facilities;

G. Determine the placement of operations, production, services, maintenance or distribution of work and the source of materials and supplies;

H. Determine the financial policies, including all accounting and payroll processes and procedures and all matters pertaining to public relations;

I. Determine the size of the management organization, its functions, authority, amount of supervision and table of organization;

J. Determine the policy affecting the selection, testing or training of employees, providing such selection shall be based upon lawful criteria, except as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL");

K. The selection and utilization of technology;

L. The District expressly retains the right to contract out or subcontract any work performed in the past by employees, or currently being performed by employees, or that may in the future be performed by employees and the Union expressly waives any duty the District might have under law to bargain these matters. It is expressly agreed that this provision represents the full and complete agreement between the parties with respect to all contracting out. Notwithstanding the requirements of ORS 243.650 to 243.782, by this Agreement the District and the Union agree that the District has met its duty to bargain this subject. The Union expressly disclaims and waives any further duty on the part of the

District to bargain over the right to contract or subcontract any and all work and the impact of any decision to contract or subcontract any and all work. Before the District contracts/subcontracts work presently, regularly, and exclusively performed by bargaining unit members where such contracting will result in the layoff or demotion of current employees, the following shall occur:

1. The Union shall be notified in writing at least sixty (60) days in advance of the proposed implementation. Such notification shall include an analysis of the likely impact on employees, and shall also outline the projected financial impact and other considerations that the District has deemed are pertinent to its deliberation to contract or subcontract work.

2. Upon receipt of the notice, the Union shall have ten (10) days in which to notify the District of its desire to meet and discuss the contracting/subcontracting decision. The Union may propose changes in existing work rules, benefits, and/or wage rates in order to compete more effectively with the contractors or subcontractors and/or the Union may propose alternative staffing arrangements that it believes would reduce the impact of the contracting/subcontracting. The District shall not finalize the decision to contract/subcontract such work until after it has afforded the Union the opportunity to meet as provided above and considered all timely Union proposals before a decision is finalized.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the District shall be limited only by the specific, written terms of this Agreement and then only to the extent that such terms are in conformance with the Constitution and the laws of the state of Oregon, including the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

ARTICLE 8 – PAYROLL

A. Upon appropriate written request from the employee, the District shall deduct from the salary of any employee for District approved deductions, including but not limited to:

Approved Charitable Organizations
Health Insurance Premiums
Fixed or Variable Tax Deferred Annuity Plans
I.R.C. Section 125 Flexible Spending Account Plan

Upon appropriate written request from the employee, the District will make direct deposit of wages to up to two (2) different accounts with financial institutions.

B. When employment terminates by discharge, layoff or resignation, the District will issue the employee's final wages in accordance with state law. If state law changes from the payment procedure stated above, the District's practice will change in accordance with state law for final payments or no more than fourteen (14) calendar days, whichever would pay the worker soonest.

C. Upon written, electronic or recorded oral request from an employee, monthly Union dues and any additional voluntary Union deductions will be deducted from the employee's pay

and remitted to the Union. All applications, authorizations, or cancellations of membership will be submitted by the employee to the Union. Any written application for Union membership, authorizations for Union dues and other deductions, or dues cancellations that the District receives will be promptly forwarded to the Union. The Union will maintain the written, electronic and recorded oral authorization records and will provide copies to the District upon request. All monies deducted pursuant to this Article will be remitted to the Union within ten (10) days after the deductions are made by the Employer.

D. Notification of New Hires: The District shall provide the Union with an editable electronic list (such as an Excel document) of all new hires into bargaining unit positions, within ten (10) calendar days of the employee's date of hire. The new hire list shall include:

- The employee's name and date of hire
- The employee's job title/classification, pay rate and worksite location
- The employee's available contact information including cellular, home and work telephone numbers, work and personal electronic mail address, home address or personal mailing address
- The employee's self-disclosed sex and race/ethnicity information

E. The Union will submit an electronic file containing new authorizations or changes in authorizations for employee Union deductions to the District by the fifteenth (15th) day of each month. New or changed payroll deductions received by the fifteenth (15th) will be effective for the month during which they were submitted.

F. The Union agrees that it will indemnify, defend and hold harmless the District and all persons acting on behalf of the District from all suit actions, proceedings, complaints, claims, liability or expense resulting from the implementation or enforcement of this Article or any provision thereof.

ARTICLE 9 – ENTIRE AGREEMENT

This Agreement constitutes the sole and entire existing Agreement between the parties and completely and correctly expresses all of the rights and obligations of the parties. No prior oral or written past practices, agreements, procedures, traditions, and rules or regulations shall continue or be controlling. The Union, for the life of this Agreement, voluntarily and unqualifiedly waives its right and agrees that the District shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or with respect to any subject or matter which was or might have been raised in bargaining but which is not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of the Union at the time that it negotiated or signed this Agreement.

Any changes to this Agreement are subject to the written approval of the Union and the District.

ARTICLE 10 – GRIEVANCE PROCEDURE

The purpose of this procedure is to provide for an orderly adjustment of grievances contended by an employee or group of employees.

SECTION 1 – Definitions

1. A "grievant" is an employee or group of employees who initiates a complaint alleging that they have been directly injured through a violation of the terms of this Agreement. The term "grievant" shall also include the Union with respect to alleged violations of its organizational rights under this Agreement.

2. A "grievance" is an allegation by an employee that they have been directly injured by a violation of this Agreement. ~~The term "grievance" shall not include and this procedure shall not apply to any matter for which a specific administrative or judicial remedy has been prescribed by the State and/or Federal Statute (such as employment discrimination, employment and dismissal of custodians, health and safety).~~
3. When processing a grievance, the term "days" shall refer to calendar days except for traditional recess periods (winter break, spring break, summer), which are part of the employee's established work year.

4. A group grievance is an allegation by a group of employees or the Union that a group of employees have been directly injured by a violation of the Agreement.

SECTION 2 – Grievance Process

STEP 1

The grievant, with or without union representation, ~~shall~~ must discuss any ~~the~~ grievance with their~~his or her~~ immediate supervisor outside the bargaining unit prior to submitting a written grievance. The grievant must state they are initiating the Step 1 grievance process. The purpose of this discussion is to attempt to resolve the issue informally. Grievances resolved at Step 1 will not be precedent setting, except by mutual agreement of the Union and the District.

STEP 2

If the grievance remains unresolved, the ~~u~~Union may submit a Step 2 grievance ~~shall be submitted~~ in writing to the affected employee's ~~immediate~~ department director~~supervisor outside the bargaining unit~~ within thirty (30) calendar days of when the employee knew or reasonably should have known of the alleged violation. ~~A~~The written grievance shall include a statement of the grievance, citing the specific provisions of the Agreement alleged to be violated, a clear explanation of the alleged violation including the date of the occurrence, and the remedy requested. The District shall not be obligated to process any grievance that does not comply with the requirements of this Section. The department

director will hold a Step 2 grievance meeting within thirty (30) calendar days from the Step 2 filing date. ~~–~~The ~~supervisor~~ department director shall respond to the grievance, in writing, within fourteen (14) calendar days following the ~~date~~ Step 2 grievance meeting.~~the grievance was presented~~. ~~Grievances resolved at Step 1 will not be precedent-setting, except by mutual agreement of the Union and the District.~~

~~STEP 2~~

~~If the grievance is not settled at Step 1, the grievance may be submitted in writing to the Director within fourteen (14) calendar days of the due date for the response at Step 1. The Director or designee will promptly conduct an investigation and respond in writing within fourteen (14) calendar days after receiving the written grievance.~~ Grievances regarding discipline must be filed at Step 2 within fourteen (14) calendar days of the issuance of the discipline. Group grievances must be filed at Step 2.

STEP 3

If the grievance is not resolved at Step 2, the ~~u~~Union ~~it~~ may ~~be~~ appeal~~ed~~ the decision within fourteen (14) calendar days of the due date of the response at Step 2 to the Director of Employee and Labor Relations ~~Human Resources~~ (or the designee), who may either review the grievance or appoint an appropriate administrator to conduct a review. The ~~review at~~ Step 3 grievance meeting shall be completed within thirty (30) calendar days ~~, include a meeting~~ and be deemed a hearing under ORS 332.544. The Director of Employee and Labor Relations~~Human Resources~~ (or designee) shall respond, in writing, to the Union within seven (7) calendar days of the completion of the review. Grievances regarding discharge shall be filed at Step 3 within fourteen (14) calendar days of the issuance of the discharge.

STEP 4

If the grievance is not resolved at Step 3, the Union may, within thirty (30) calendar days of the due date of the response at Step 3, notify the District, in writing, of its intent to arbitrate and within seven (7) calendar days of such notice, the Union shall request a list of arbitrators from the Employment Relations Board as provided below.

Grievances regarding discharge of employees subject to the Custodian Civil Service Law where the employee has elected to appeal the discharge pursuant to the Civil Service Board Rules may not be submitted to arbitration under this Agreement.

The grievance may be submitted to arbitration according to the following procedures:

A. The arbitrator shall be selected from a list of five (5) Oregon arbitrators provided by the Employment Relations Board who are also certified by the American Arbitration Association. Each party shall then alternately strike one name from the list until one remains and such person shall be the arbitrator. Nothing is intended to preclude the parties from mutually agreeing on an arbitrator.

B. Only the ~~u~~Union ~~An employee~~ may ~~not~~ file a grievance at Step 2; advance a grievance

to Step 3, and appeal a grievance to arbitration ~~without Union representation and~~ with~~out~~ notice to the District of the appeal to arbitration.

C. In reviewing disciplinary cases, the arbitrator may not use a work performance standard other than the one adopted by the District. The arbitrator must render his/her decision in writing within thirty (30) days following completion of the hearings. The arbitrator's decision shall be final and binding unless properly appealed and set aside. Any such appeal must be filed in the forum of competent jurisdiction within thirty (30) days of the issuance of the arbitrator's decision.

D. The decision of the arbitrator shall be binding on all parties, provided: (1) the arbitrator must restrict his/her decision to interpretation of the Agreement, (2) it is in accordance with the legal meaning of this Agreement, and (3) it is based on substantial evidence.

E. The costs of the arbitration shall be shared equally by the parties.

F. The arbitrator's decision shall be confined exclusively to the explicit provision(s) of this Agreement at issue between the parties. The arbitrator shall have no authority to add to, detract from, remove, alter or amend or in any other way modify any provision of this Agreement or impose on any party hereto a limitation or obligation not explicitly provided for in this Agreement. The arbitrator shall not substitute his/her judgment for that of either the District or the Union.

SECTION 3 – General Procedures

a. The grievant must be present at Steps 1 and 2 and may be present at all other steps. In processing the grievance, the grievant may:

b. Represent ~~himself/herself~~themself a~~ts described in~~ Step 1 of this grievance procedure, or

c. Be represented by their~~his/her~~ Union at the Union's expense.

2. It may at times become necessary to extend time limits. These extensions are to be kept to a minimum and must be mutually consented to in writing by the parties involved.

3. Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified time limits shall permit the grievant to proceed to the next step. Failure at any step of this procedure to appeal a decision to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

4. The Board and its administrators shall cooperate with the grievant in the investigations of any grievance, and further will furnish the grievant or his/her representative with such necessary and readily available information as requested for the processing of any grievance.

5. Except as otherwise provided by law, an employee shall invoke and exhaust the grievance procedure remedies before resorting to any other legal or administrative remedies for the conduct complained of, and failure to do so shall preclude resorting to such other remedies.

6. A representative of the Union may be present at all steps of the procedure.

SECTION 4 – ARTICLErticle 12 GRIEVANCESrievances

1. The following procedure applies to any grievance alleging a violation of Article 12 (Nondiscrimination)

2. Any Grievance alleging a violation of Article 12 (Nondiscrimination) must be submitted to the employee's Department Head or designee within thirty (30) calendar days of the date the grievant or the union knew or by reasonable diligence should have known of the alleged grievances.

3. The Department Head or Designee must respond within thirty (30) calendar days after receipt of the grievance.

~~1.~~4. Grievances alleging a violation of Article 12 (Nondiscrimination) are not arbitrable.

ARTICLE 11 – DISCIPLINE, DEMOTION AND DISCHARGE

A. No employee shall be disciplined without just cause. Discipline shall include written reprimands (excluding evaluations) placed in the employee's personnel file, suspension without pay, demotion or discharge. A written reprimand shall be stated as such and becomes part of the employee's personnel file. An evaluation or matters related thereto involving comments regarding the employee's performance do not constitute a reprimand.

B. The District agrees to follow progressive discipline and any disciplinary action taken against an employee shall be appropriate to the behavior that precipitates said action. The nature and seriousness of the offense shall determine at which level progressive discipline is initiated.

C. The specific grounds forming the basis for disciplinary action will be made available to the employee and the Union in writing. If the District issues a written discipline, then the discipline will contain the following notice: "Employees who wish to challenge this discipline must contact SEIU Local 503 no later than thirty (30) calendar days from the date of issuance of this discipline."

D. If a complaint based on an allegation brought by a community member or non-supervisory third-party is used to support disciplinary action, the supervisor shall cause the complaint to be reduced to writing and placed in the personnel file. Subject to the district's legal

obligations and restrictions, the names of the complainant shall be disclosed if the employee so requests.

E. An employee shall have the right to request and have a Union representative present at any meeting that the employee reasonably believes may result in his/her discipline. Prior to such a meeting, the employee will be notified of its purpose and afforded an opportunity to consult with his/her representative. The right of representation will not exist when the meeting relates solely to evaluation of the employee's work performance.

F. In the event that an employee is scheduled for a disciplinary conference, the District shall give a minimum of twenty-four (24) hours' notice to the employee of such conference, unless the matter is one of unusual urgency.

G. The probationary period for newly hired employees will be one (1) calendar year. Periodic written evaluations will be done on each probationary employee. Termination of probationary employees shall not be subject to appeal except as provided by statute.

H. Training coursework test results shall not be grounds for discipline.

ARTICLE 12 – NONDISCRIMINATION

In administering the terms and conditions of this Agreement, the parties agree to comply with applicable State and/or Federal Statutes and/or regulations regarding nondiscrimination, i.e., on the basis of age, gender or gender identity, religion, race, color, national origin, mental or physical disability, marital status, sexual orientation, veteran status, union, or political activity and association or other category protected by Federal, State or Municipal law. It is the expressed intent of the Union, in executing this Agreement, that the Board and its designees shall retain sole control and direction over the District's compliance with such laws and/or regulations and that this Article shall in no way be interpreted as affecting the application thereof. The Union and the District shall cooperate in making reasonable accommodations to the disabilities of bargaining unit personnel. The Union shall use its best efforts to direct employees complaining of such discrimination to appropriate District administrative processes. It is the intention of the parties that the interpretation given to this Article shall be consistent with the proper interpretation of the provisions of the Oregon Fair Employment Practices Law.

ARTICLE – 13 PERSONNEL FILE

A. Each employee shall have the right, upon request, to review the contents of their~~his/her~~ personnel records (whether located in the official personnel or building personnel file) in accordance with ORS 652.750. Only one official personnel file shall be maintained by the District.

B. A representative of the Union or counsel for the employee may, (1) at the employee's request, accompany their~~him/her~~ in this review and/or (2) be authorized by the employee in writing to review the file and/or obtain a complete unredacted copy of the personnel file.

~~B.~~C. An employee may request that reprimands (excluding evaluations) be removed from their personnel file after two (2) years, provided that no subsequent such entries of the

same nature have been made into that file. The District retains discretion on whether to agree to remove the reprimand upon request and will consider the severity and nature of the misconduct in making its decision. The District will comply with all public record retention laws.

~~C.~~D. The District shall provide an employee with a copy of any materials placed in their~~his/her~~ official personnel and building personnel file. Materials placed in an employee's file shall bear the date of such placement. An employee may respond in writing within thirty (30) days to any material placed in such file and the response shall become part of the file.

~~D.~~E. Anonymous materials shall not be placed in the personnel file.

~~E.~~F. The employee may request materials which they~~he/she~~ feels pertinent to their~~his/her~~ professional career, performance and qualifications be placed in his/her personnel file.

~~F.~~G. Any official grievance filed by an employee shall not be placed in the official personnel file of the employee, and shall not be used in any connection with or recommendation for job placement or performance.

~~G.~~H. The reference to an employee's personnel file used herein is not intended to show an employee's possession or ownership; rather, it refers to the District's records of personnel-related information for the individual employee.

ARTICLE 14 – EMPLOYEE EVALUATION

A. Formal evaluation of employees shall be in writing and shall be for the purpose of establishing a record of the employee's work performance. The employee's job description shall be a basis for the evaluation. When the District makes changes in job descriptions, they shall be given to the Union and the affected employees. If the changes involve additional certification or change the minimum qualifications for the position, the District will provide the Union with reasonable advanced notice and an opportunity to meet and discuss the impact of the change on current employees.

The evaluator shall review the written evaluation with the employee and provide the employee with a copy. The employee shall sign the evaluation acknowledging receipt. If the employee has objections to the evaluation, they~~s/he,~~ may within thirty (30) calendar days following receipt of the evaluation put such objections in writing and have them attached to the evaluation report and placed in ~~his/her~~their personnel file.

B. The District will continue its practice and current policy of ~~annual~~ employee evaluations on regular and probationary employees. Should budget reductions result in the inability of the District to complete annual evaluations, the District may opt to perform evaluations every other year after written notification of such change to the Union.

C. Employee evaluations are not grievable.

~~C.~~ On an annual basis, the District will provide an anonymous survey to allow employees to provide feedback on their work environment.

ARTICLE 15 – OVERTIME AND CALL BACK

A. OVERTIME

1. Overtime shall be compensated at time and one-half the employee's hourly rate of pay and will be paid for all work time scheduled by the District in excess of eight (8) hours in one day or forty (40) hours in one week. The overtime rate shall also apply to work performed on Saturdays and Sundays unless such days fall within an employee's regular workweek assignment.

~~1.~~2. The District will attempt to solicit volunteers prior to assigning mandatory overtime.

~~2.~~3. An employee scheduled to work on their~~his/her~~ regular day off shall be guaranteed a minimum of four (4) hours of work or actual time worked should the employee choose to leave sooner than four (4) hours.

B. CALL BACK

1. An employee called back to work after completing a shift shall be compensated at the greater of the following:

   a. Overtime rate times actual hours worked (which shall include reasonable time of travel to and from their~~his/her~~ home, not to exceed twenty (20) minutes each way); or

   b. Four (4) hours of straight-time pay or actual time worked should the employee choose to leave sooner than four (4) hours.

2. If the employee is called back to work on their~~his/her~~ regular day off, the minimum provided in A.2 will apply.

C. EXTENSION OF WORK YEAR

For employees in positions with a work year of less than twelve (12) months, work performed outside an employee's regular work year shall not be viewed as call back. Time worked beyond the normal work year is only paid at overtime rates under the circumstances described in paragraph A.1.

D. OVERTIME ON HOLIDAYS

An employee who works on a paid holiday (See Article 21) shall receive holiday pay plus their~~his/her~~ overtime rate for hours worked.

E. EXCEPTIONS TO THE MINIMUMS

Any minimum hours requirements in this Agreement shall not apply in situations where there is a lack of work due to power failure, lack of water, interruption of transportation services, or other utilities. This provision also includes acts of God and other situations and conditions beyond the control of the District such as restrictions imposed by municipal and other authorities including, but not limited to, curfews, evacuations, martial law etc. In these situations, pay shall be for time actually worked.

F. SHIFT ASSIGNMENTS

In the event multi-shifts are established within any department, employees in that department will be given the opportunity to indicate their shift preference. Shift assignments shall be determined first by asking for volunteers to work a particular shift. If there are more volunteers than are needed, when qualifications are equal, employees shall be selected based on seniority amongst the volunteers in the particular department. If there are not sufficient volunteers, then the District shall assign the least senior qualified employee in the department.

G. WEEKEND WORK

Work performed on Saturday or Sunday shall be compensated at the regular straight time rate unless such work is in excess of forty (40) hours in one workweek. The provisions of Article 15A.2. and 15B.2. do not apply. The District shall assign this work to employees who volunteer to work on Saturdays and Sundays.

~~H. COMPENSATORY TIME~~

~~In lieu of pay, compensatory time off at the overtime rate may be specified by the District. However, time off must be granted by the end of the next calendar month following the month in which the overtime was worked.~~

ARTICLE 16 – LUNCH AND REST PERIODS

A. Employees (excluding head custodians) working five (5) or more hours per day shall be entitled to a minimum of one-half (1/2) hour duty-free lunch period without pay. Employees who are required to work during this time shall be compensated for such time worked unless the interruption is the result of employees choosing to take their lunch periods together.

B. Custodian In-service Training Days – Head Custodians will receive a minimum of one-half (1/2) hour duty-free lunch period without pay instead of an on-duty lunch when the In-Service Training is five (5) hours or more and the Head Custodian has been relieved of duties at their assigned school during the training.

C. Employees shall receive a fifteen (15) minute rest period during each four (4) hours of work not to exceed two (2) such breaks during a regular eight (8) hour day, unless unusual circumstances prevent the taking of a particular break.

ARTICLE 17 – LEAVES

Leaves provided under this Article are intended to meet the legitimate needs of employees and are granted to those employees who work on a regularly scheduled basis. The use of leaves must be limited to instances of personal need and are not to be abused. Use of accrued leave in accordance with the provisions below shall not be cause for discipline and shall not be counted as an occurrence under the District's attendance policy; however, any abuses may be subject to the provisions of Article 11 - Discipline, Demotion and Discharge. "Abuse" is defined as being improper or excessive use of leave or a pattern of use which is improper or excessive.

The District shall respond to all employee leave requests within fourteen (14) calendar days.

Sections A and B of this Article are intended to comply fully with the requirements of Oregon's Paid Sick Time law. Should the District deem it necessary, the District may grant paid leave to ensure compliance with the minimum requirements of Oregon's Paid Sick Time law as circumstances may require and notwithstanding any provision of this Agreement.

A. SICK LEAVE

1. Employees in paid status at least fifty percent (50%) of the month or more shall accrue sick leave at a rate equivalent to one (1) day per month, based upon the employee's scheduled workday. The use of sick pay shall be limited to purposes provided in the Oregon Sick Time Law and BOLI regulations ~~personal illness of the employee,~~ including medical or dental appointments~~, except where modified by this Agreement or as otherwise required by law.~~ When possible, the employee should schedule medical and dental appointments outside working hours.

2. Employees who have completed one (1) full year of service with the District shall be accredited with the equivalent annual sick leave at the beginning of each fiscal year for twelve (12) month employees or school year for ten (10) month employees. If an employee uses the advance credit in excess of that which would be normal accrual and terminates employment or goes on a leave of absence without pay, the District shall be entitled to recover from the employee's final paycheck, an amount of money equal to the amount paid for overused sick leave. Employees who have not completed one (1) full year of service with the District shall be credited with accrued sick leave on a monthly basis.

3. There is no limit on the amount of sick leave which can be accumulated.

4. When an employee has exhausted their~~his/her~~ accumulated sick leave credits, s/he shall be entitled, in the event of illness, to receive one (1) day for each year of service at two-thirds (2/3) of their~~his/her~~ daily rate of pay. Each year's allowance may only be used once.

5. The District will establish a Sick Leave Bank for use by employees who have exhausted their sick leave. The Union can solicit voluntary contributions from employees up to seven hundred hours (700) hours per year. The Union may carry

over from one (1) fiscal year to the next the remaining balance of the unused employee contributions to the Sick Leave Bank. At no time may the balance of the Bank exceed seven hundred (700) hours. The guidelines for use of the Sick Leave Bank will be jointly developed by the District and the Union which will include the following:

a. Use of hours from the Bank shall be only in cases of critical illness or injury of an employee.

b. The employee must have exhausted all of their~~his/her~~ accumulated sick leave and vacation hours.

c. To be eligible, an employee must have been employed by the District for three (3) years or more.

d. Request for use of the Sick Leave Bank will be jointly approved by the Union and the District. Request of less than five (5) days or more than thirty (30) days will not be approved.

e. The Bank will not be used in association with a Workers' Compensation claim.

f. Employees' contribution to the Bank shall not be for less than four (4) hours nor more than forty (40) hours.

g. An employee who contributes sick leave hours to the bank must retain five (5) days' worth of sick leave hours in their own sick leave account.

6. The District shall continue its election pursuant to ORS 238.350 (sick leave credit for retirement benefits).

7. If an employee utilizes sick leave for at least half the workdays in a month while receiving Workers' Compensation time loss benefits, the District will provide contractual insurance benefits for the month. An employee who uses sick leave shall be entitled to insurance benefits only if the sick leave is used continuously until the sick leave is exhausted or the employee returns to work. Employees who have an accepted Workers' Compensation claim and are receiving time loss payments at the time of the execution of this agreement shall be paid the supplemental payment for the maximum of 180 days.

B. OTHER PAID LEAVES

An employee who is on an authorized paid leave as provided by this Section shall receive no loss of pay or benefits.

1. Family Illness

All employees shall receive up to three (3) additional days per fiscal year with pay in case of illness of a member of the employee's immediate family. "Immediate Family" shall be interpreted to mean spouse, children, siblings, stepsiblings, parents, step parents, grandparents, grandchildren, in-laws and step in-lawsStep mother-in-law, father-in-law, brothers and sisters of the employee, domestic partner, foster children, any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship, or any other person living in the home with the employee (use of this leave shall be for instances where care or attention by the employee is necessary). In the event that emergency conditions arise, an extension of family leaves shall be determined upon the merits of the individual case by the Office of the Superintendent. After utilizing the available days of family illness leave, the employee may charge against theirhis/her accumulated sick leave when additional time is needed to provide care for a member of the employee's immediate family. The District may require a physician's statement verifying the illness of the family member.

2. Absence Due to Quarantine or Isolation

An employee's absenceabsence from work because of quarantine or isolation to prevent the spread of a communicable disease by the appropriate public health official shall not be charged against the employee's sick leave and the employee shall suffer no loss in pay. Quarantine or isolation npay will not extend past the standard quarantine or isolatoinisolation period established by the local public health authority, but in no event shall it exceed thirty (30) days.

To qualify for quarantine or isolation pay under this Section, an employee must be fully vaccinated (if a vaccine is available) as defined under guidelines set by the federal and state health authority, including any boosters.
An employee's absence from work because of quarantine by the appropriate public health official shall not be charged against the employee's sick leave and the employee shall suffer no loss in pay during such a period as a result of the quarantine; provided, however, that such quarantine is declared solely for the purpose of preventing the spread of a communicable disease to others.

3. Funeral Leave

   a. An employee shall be permitted an absence of up to one (1) day to attend the funeral of a relative or friend. When, in theirhis/her opinion circumstances demand it, the Supervisor shall authorize two (2) days' leave to attend the funeral of a relative.
   b. An employee shall be permitted five (5) consecutive days off with pay due to the death of an immediate family member as defined above (Article 17, B Other Paid Leaves, Section 1 Family Illness) spouse, domestic partner, parent or child. An employee shall be permitted three (3) consecutive days off with pay due to the death of a grandparent, grandchild, mother-in-law, father-in-law, brother, sister, or other person living in the home of the employee provided the employee was responsible for the care of such person. Following an absence under this section of three (3) or five (5) days and upon request, an employee

shall be permitted two (2) additional days of leave at two-thirds (2/3) of his/her scheduled salary. In the event of death during the employee's vacation time, the employee shall be entitled to the funeral leave provided by this Section in lieu of vacation time.

4. Emergency/Personal Business Leave

Employees shall be entitled up to three (3) days' leave per work year without loss of pay under the following circumstances:

a. Emergency Leave - In the case of unanticipated circumstances beyond the employee's control and for which prior planning cannot be made; or

5. Personal Business - For attending to matters which cannot be scheduled outside the employee's work hours and for which the personal attention of the employee is required. In such cases, a request indicating the reason for the leave must be made to the responsible administrator at least twenty-four (24) hours in advance. Such leaves shall not be used for recreation, other employment, union or political activities, or to extend other leave categories as provided by this Agreement.

6. Mandatory Court Appearances

a. An employee subpoenaed to appear as a court witness shall be excused from theirhis/her work assignment without loss of pay, provided that the employee shall submit any witness fee received to the School District Business Office along with a copy of the subpoena. In cases where the employee is a plaintiff or defendant to the action, absence will be without pay or, at the employee's election, emergency leave as provided in Paragraph 4 of this Section. An employee required to appear in court as a co-plaintiff or co-defendant with the District shall be released without loss of pay.

b. An employee subpoenaed for jury duty shall be excused from theirhis/her work assignment without loss of pay provided that the employee shall submit any jury fee received to the School District Business Office along with a copy of the subpoena. On days when the employee is excused from jury duty, s/hethey shall report to his/hertheir work assignment provided four (4) hours or more of his/hertheir workday remains at the time they ares/he is excused; and provided that length of time on jury duty prior to excuse and his/her workday with the District shall not exceed his/hertheir normal workday.

C. UNPAID LEAVES

Employees on unpaid leave shall not be entitled to use any accrued paid leave, except as provided in Section C.2 and C.3 of this Article.

1. Special Leaves of Absence

Employees who have been continuously employed for two (2) or more years may apply for a special leave of absence without pay. The Superintendent or designee shall exercise their~~his/her~~ discretion in the granting of such leaves. Employees on such leaves shall not be permitted to engage in remunerative service without the approval of the Superintendent.

2. Childcare Leave

   a. An employee covered by this Agreement shall be eligible for a childcare leave (maternity, paternity or adoption) for up to six (6) months. The District may, upon written request, extend such leave for additional periods of time. An employee on childcare leave covered by OFLA may use accrued leave in the following order: sick, personal and then vacation.

   b. The District shall retain full control and authority to establish policies and regulations in accordance with State statutes, regarding the administration of child care leaves. Such policies and regulations may include, but not be limited to: application procedures, requirements for physician statements, return procedures, etc. Such policies and regulations shall not be considered as part of this Agreement.

3. Federal Family Medical Leave Act and Oregon Family Leave Act

   Family medical leave shall be granted according to the provisions of the Federal Family Medical Leave Act and the Oregon Family Leave Act (FMLA and OFLA). If there is a conflict in the two (2) statutes, the employee gets the greater benefit. The District may require employees to utilize all accrued paid leave if on an approved FMLA/OFLA leave of absence. Leaves for FMLA and/or OFLA shall be used in the following order: sick, personal and then vacation.

4. Military Leave

   The District shall be solely responsible for the establishment of a military leave policy required by ORS 408.210 through 408.290.

D. RETURN FROM LEAVE

Employees shall be expected to return from leave immediately upon expiration of leave, unless there are circumstances beyond their control. Failure to return from leave or being absent from work without any grant of leave for three (3) or more consecutive days shall be considered job abandonment and the employee will be terminated.

Employees who are on an approved leave shall have the right to return to their position or one that is comparable in duties and responsibilities within twelve (12) calendar months. An employee who returns to duty following a leave shall be entitled to any step increases received by other employees within their ~~his/her~~

classification provided s/he was continuously employed for at least one-half (1/2) of theirhis/her designated work year immediately prior to beginning the leave.

ARTICLE 18 – INSURANCE

A. The District will offer medical, dental and vision benefits to benefit-eligible employees as specified in this Article.

B.

A. Insurance for Full TimeFull-Time Employees. For Eemployees who are scheduled to work at least thirty (30) hours per week and have been employed at least sixty (60) days are eligible for benefits as specified in this Article.,

B.

C.A. The District will offer medical, dental and vision benefits to benefit-eligible employees.

Ffor the remainder of the current benefit plan year (Oct. 1, 202319–Sept 30, 202004), the District will continue to provide the existing medical, dental, and vision benefits described during open enrollment. Employees will continue to pay the established employee's share during theis 2023-2024 benefit plan year time period.

D.A. INSURANCE COMMITTEE

1. The Insurance committee shall be composed of three (3) bargaining unit members and one SEIU staff person and up to four (4) District employees. Bargaining unit members shall be released on paid time for a maximum of two (2) hours each to meet on insurance committee matters. Within two weeks of receiving the rates for the following benefit year, the District will provide SEIU with an opportunity to meet and discuss available plans, structure and premiums for the upcoming fiscal year. The District will select the insurance plan(s) and carrier(s) to offer, but will make reasonable efforts to maintain benefits that are substantially similar to those offered the previous year.

E. Effective October 1, 202004, the District will contribute the full actual cost of employee medical, dental, and vision premiums for eligible employees who elect employee-only coverage with a monthly premium cost less than $1,200. Eligible employees who elect any other coverage level coverage with a monthly premium cost greater than $1,200 per month will contribute three percent (3%) of the total monthly premium cost, and the District will contribute the remaining amount. If the total cost of the benefits exceeds the District Cap as provided in Appendix C, employees will make a supplement contribution as specified in Appendix C. [**BARGAINING NOTE: DELETE APPX C**]

C. Insurance for Part-Time Employees. Effective October 1, 2024, employees who are regularly scheduled to work between 20 and 29 hours per week and have been employed at least sixty (60) days, may elect part time medical, vision and dental insurance at the employee-only coverage level. Eligible employees who elect employee-only coverage will

contribute ten percent (10%) of the total monthly premium cost, and the District will contribute the remaining amount.

D. INSURANCE COMMITTEE

1. The Insurance committee shall be composed of three (3) bargaining unit members and one SEIU staff person and up to four (4) District employees. Bargaining unit members shall be released on paid time for a maximum of two (2) hours each to meet on insurance committee matters. Within two weeks of receiving the rates for the following benefit year, the District will provide SEIU with an opportunity to meet and discuss available plans, structure and premiums for the upcoming fiscal year. The District will select the insurance plan(s) and carrier(s) to offer, but will make reasonable efforts to maintain benefits that are substantially similar to those offered the previous year.

~~F.~~E. The District will announce the employee contribution for each plan during open enrollment. The employee contribution will not change during the benefit year.

~~G.~~F. WORKERS' COMPENSATION

All employees of the District are eligible for State Workers' Compensation benefits. For absence due to a compensable injury as defined in ORS Chapter 656, an employee shall retain the compensation check which s/he receives for time lost. An employee may supplement his/her compensation check with accrued accumulated sick leave. Coordination of Workers' Compensation benefits and Sick Leave Benefits shall be in accordance with applicable state regulations. An employee who is injured on the job shall have the right for a period set forth by the Workers' Compensation statutes to return to a position similar to the one s/he occupied but subject to seniority provisions of Article 20 - Reduction Of Staff.

~~H.~~G. LIFE INSURANCE AND LONG-TERM DISABILITY BENEFIT

The District will pay the cost of life insurance and long-term disability benefits for all full-time employees eligible for health insurance benefits.

ARTICLE 19 – SAFETY

A. SAFETY

In the interest of safety and the well-being of students, employees and the public, the District and the Union agree to the objective of a safe and healthy workplace. The District shall maintain safe and healthy working conditions in accordance with all established Board policies, Federal and State regulations. The District and employees covered under this Agreement should work to avoid or minimize hazards. An employee's failure to comply with safety standards when flagrant, deliberate or repeated, may have disciplinary consequences. The District has an obligation to make the standards known to the employees through training programs and hands-on training.

B. PHYSICAL EXAMINATIONS

In the interest of safety and the well-being of students, employees and the public, the District and the Union agree to the objective of a substance-free workplace. The District, at its discretion, may require that new employees have a physical examination including substance testing once a job offer has been made. Such examination of a current employee(s) may also be required with reasonable suspicion based on specific, articulable observations. The District will pay the cost of all District required physical examinations and substance testing.

C. The District will pay for the costs of record checks and fingerprinting of existing employees as required by State law.

D. Custodians. The parties acknowledge the requirements under the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

E. PROPERTY LOSS

The District shall reimburse employees for loss of personal property, excluding the employee's automobile, which occurs while the employee is on duty under the following circumstances:

1. When the loss is a result of any unwarranted assault on the employee's person suffered while on duty.

2. Property stolen by the use of forcible entry on a locked container on District Property.

Reimbursement shall be at replacement costs (not exceeding actual cost) less any insurance or Workers' Compensation reimbursement. Reimbursement shall not be made for losses less than five dollars ($5.00) or that portion in excess of four hundred dollars ($400.00) and shall not be made when carelessness or negligence on the part of the employee was evident.

Employees shall cooperate and support the District in its investigation and resolution of any reported loss. The District will provide assistance in attempting to investigate and/or reclaim other stolen or damaged personal property including automobiles.

F. Employee Complaints. All employee complaints made against another employee must be submitted pursuant to District policy and this agreement. For harassment complaints, the District will evaluate whether a safety plan is appropriate. The District will not require the complainant to move work locations as part of any safety plan.

G. Temperature of the Workplace. Labor Management Committee meetings may include workplace temperature as a discussion topic. For heat management, PPS will follow the

OSHA Heat Illness Prevention Rule and the PPS Heat Illness Prevention Plan including the following:

1. Access to shade when the heat index is at/above 80 degrees Fahrenheit;
2. Ensuring that each employee takes health illness prevention rest breaks, regardless of the length of the shift if the heat index is at or above 90 degrees; and
3. If a supervisor observes signs or an employee reports symptoms of heat illness, the employee must be relieved from duty and provided with a means to reduce body temperature.

This subsection G is intended to align with the OSHA Heat Illness Prevention Rule and the PPS Heat Illness Prevention Plan.

ARTICLE 20 – REDUCTION OF STAFF

DEFINITIONS

For clarity purposes, the following definitions shall apply:

A. "Department" — For purposes of this procedure the parties shall recognize two (2) departments:

1. Nutrition Services;
2. Custodians

B. "Vacancy" — An unoccupied position/job that the District has decided to fill.

C. "Seniority" — Length of an employee's continuous employment with the District from that employee's most recent date of hire

D. "Bump" — The act of a senior employee displacing an employee with less seniority.

E. "Layoff" — An employee is considered to have been laid off when he/she is no longer actually working any hours for the District as a result of the reduction of the work force.

F. "Voluntary Lay Off" — An employee who would otherwise have not been laid off may opt to be voluntarily laid off.

G. "Recall rights" — Except as otherwise noted herein, laid off employees shall retain recall rights for a period of twenty-four (24) calendar months from the date of layoff. Employees who have exercised a voluntary lay off shall be deemed to have quit and shall relinquish all recall rights.

GENERAL PROVISIONS

A. In the event staff reductions become necessary, the District will lay off personnel in the

inverse order of seniority by classification. The Union shall be provided the opportunity to consult with the District when the necessity of such reductions is determined. Two (2) weeks' written notice of layoff shall be given to each employee to be laid off under the provisions of this Article. Persons given such notice may not exercise the paid leave provisions of Article 17 - Leaves, except for sick leave when supported by a doctor's statement, funeral leave in case of immediate family, quarantine, mandatory court appearances or jury duty.

B. An employee whose position is eliminated, but retains his/her employment due to his/her seniority, and who rejects an assignment of equal wage rate and classification shall be deemed to have resigned and forfeit all rights under this Article.

REDUCTION IN FORCE PROCEDURE

A. The District will terminate all temporary employees replacing regular employees on leaves of absence prior to laying off any regular employee.

B. Unassigned employees will be allowed, on the basis of seniority, in the following order, to:

1. Fill a vacant position in the same classification. If such vacancy does not exist, the employee may:

2. Bump the least senior employee in the same classification. If there is no one with less seniority in the same classification in the department, the employee may:

3. Bump the least senior employee in the next lowest classification. If there is no one with less seniority in a lower classification in the department, the employee may:

4. Request a voluntary lay-off.

5. Employee will move to layoff status.

C. The parties specifically recognize that an employee affected by the "bumping" process is not the less senior; rather, it is the least senior employee.

D. An employee who moves to a new position must be able to perform the duties of that position in a satisfactory manner within a two (2) week trial period. If the District disqualifies the employee he/she shall retain the right to bump one (1) more time. If an employee self-disqualifies he/she shall move to layoff status.

E. Civil Service Custodian: A Civil Service Custodian who bumps into a lower Civil Service classification shall retain his or her previous rate until a position in the original classification is offered. A Civil Service custodian bumped into a Non-Civil Service position will be paid at the next lower wage rate in the lower wage range.

RECALL FROM LAYOFF

A. An employee who is laid off shall be recalled by the District based upon seniority within the classification from which s/he was laid off.

B. Employees laid off shall retain such right of recall for a period of twenty-four (24) calendar months from the date of layoff. Employees recalled by the District shall be reinstated with seniority rights accumulated as of the date of their layoff. Any employee recalled by the District who rejects such an assignment shall be deemed to have quit and shall relinquish all recall rights provided in this Article and Agreement.

C. Civil Service Custodians: A Civil Service Custodian laid off or bumped into a lower classification, including a non-civil service classification, shall retain such right of recall and shall be placed on the eligible list of the civil service board and be appointed (without interview) according to seniority as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL"). Employees recalled by the District shall be reinstated with seniority rights accumulated as of the date of their layoff. Any employee recalled by the District who rejects such an assignment shall be deemed to have quit and shall relinquish all recall rights provided in this Article and Agreement unless the rejection is due to a reduction of hours by at least one (1) hour per day.

D. An employee who is laid off and recalled by the District into an assignment with reduced hours of at least one (1) hour per day, may reject the assignment, and retain all recall rights provided in this Article and Agreement.

VOLUNTARY LAYOFF

A. Rather than accept a move to another position, an employee may opt to be voluntarily laid off. The District agrees it will not protest the unemployment compensation claim of any employee who chooses to be voluntarily laid off. These employees shall be deemed to have quit and shall relinquish all recall rights.

ARTICLE 21 – VACATIONS AND HOLIDAYS

A. Full-time employees who are employed on a twelve (12) month basis shall receive vacation with pay as follows:

Years of Service		Monthly Accrual		Annual Accrual	
1-5	years of service	6.7	hours	10	days
6	"	7.4	"	11	"
7	"	8.0	"	12	"
8	"	8.7	"	13	"
9	"	9.4	"	14	"
10	"	10.0	"	15	"
11	"	10.7	"	16	"
12	"	11.4	"	17	"
13	"	12.0	"	18	"

14	"	12.7	"	19	"
15	"	13.4	"	20	"
16	"	14.0	"	21	"
17	"	14.7	"	22	(max.)

Employees shall accumulate vacation credits at the appropriate above monthly accrual rate following completion of each month worked. For employees with dates of hire after the first working day of a month, accrual shall begin (and/or be increased to the next step) the following month. For the purpose of this Article "month worked" shall mean on-the-job time, vacation time and authorized paid leave. Employees may carry over from one (1) fiscal year to the next the equivalent of two (2) year's vacation accrual.

For both full-time and part-time employees, vacations must be scheduled through an employee's supervisor. A supervisor may require that vacations be scheduled at a time least disruptive to the department to which the employee is assigned.

An employee who occupies a position having a work year of less than twelve (12) months and who transfers to a twelve (12) month assignment may count the time employed in the previous assignment as qualifying for vacation allowance. The basis for this allowance shall be the number of days worked in the previous position divided by a 21.75-day calendar month. This will be converted to years of service and the employee shall commence to accrue vacation credits at the monthly rate shown above.

Part-time employees. Part-time employees earn vacation time if they are in assignments designated by the District to be a twelve (12) month assignment. The maximum accrual rate is 6.7 hours per month prorated according to the employee's normal work schedule. The proration is determined by comparing the part-time employee's normal work schedule to the normal full-time work schedule. Vacation is not earned in any year that the employee is absent from work due to unpaid leave or voluntary furlough or voluntary layoff (for example, during holiday vacation periods). Extra hours worked during periods schools are in recess shall not count towards vacation accrual. For employees in positions that are designated as twelve (12) month positions, accrual shall commence the beginning of the month, provided the employee was in the assignment for at least half of the preceding month. A part-time employee who transfers to an assignment of less than twelve (12) months or who terminates employment shall be given vacation time off work prior to the transfer or termination or be paid for any accrued vacation. The District has no obligation to continue any part-time twelve (12) month assignment and there is no implied right to any part-time employee to be placed in a twelve (12) month assignment.

B. HOLIDAYS

1. ~~Regularly employed 170-190-200-210 day e~~Employees shall receive the following paid holidays subject to the provisions below:

Labor Day
Veterans' Day
Thanksgiving Day

Christmas Day
New Year's Day
Martin Luther King, Jr. Day
President's Day
Memorial Day
Juneteenth
Independence Day

~~Regularly employed twelve (12) month employees shall receive the above days, and in addition, shall receive Independence Day and Christmas Day. Holiday pay is included in the monthly annual salary of salaried employees.~~ Regularly employed hourly employees shall receive full pay for holidays.

- Employees shall receive holiday pay provided the observed holiday falls on a scheduled workday of an employee and that the employee worked or was on an authorized paid leave the nearest scheduled workday immediately before and following the observed holiday.

2. The District reserves the right to change the days designated as paid holidays provided that in so doing it does not reduce the number of paid holidays. Thirty (30) days prior to implementing such change, the District shall notify the Union of the reasons therefore and provide opportunity for consultation.

3. Employees who are members of a religious faith may use the leave provisions of Article 17B.4.B - Personal Business Leave for participation in religious observances when such participation during the workday is required by that faith.

ARTICLE 22 – COMPENSATION

~~A. SOCIAL SECURITY~~

~~At the time of the execution of this Agreement, continued participation by the District in the National Social Security Pension Act was anticipated. The District shall not take any formal action to withdraw the participation without notifying the Union and providing opportunity for consultation.~~

~~B.~~A. PERSONAL VEHICLES

Employees who are required to use their personal vehicles for travel on behalf of the District during on-duty time shall be reimbursed by the District. The District may require as a condition for reimbursement that the employee provide a certificate of insurance showing that the employee has basic liability coverage equal to or greater than minimum amounts required by District policy or regulation. Reimbursement shall be at the rate established by the District or Internal Revenue Service, whichever is higher.

~~C.~~B. TRI-MET

The District shall continue its pre-tax program for Tri-Met passes to the extent such current

program is offered by Tri-Met.

~~D.~~C. BONUS PAY

The District may implement a bonus pay program for a group of employees (such as employees assigned to a particular school) to receive additional compensation above their normal wage.

~~E.~~D. WORK WEAR

Nutrition Services - The District agrees to furnish and maintain aprons for all nutrition services employees. If the District requires chef or lab coats, it shall provide them. The District will not implement any changes to the Nutrition Services uniforms without mutual consent of the Union.

~~F.~~E. SCHOOL OR SITE CLOSURE DUE TO INCLEMENT WEATHER

1. Custodian – All custodians are expected to report for their regularly scheduled shift when the school or site is closed for inclement weather. All custodians who report to work when the school or site is closed for inclement weather will receive 1.5 times their base rate of pay for all hours worked. If a custodian believes attempting to travel to the school or site would create a substantial safety risk, the custodian ~~may~~ must notify their~~his or her~~ immediate supervisor and will be permitted to use vacation, emergency/personal business leave, or leave without pay.

2. Nutrition Services – ~~-~~In the event the District closes school for inclement weather, Nutrition Services employees will not report to work and will be permitted to use available personal/emergency leave. ~~for five (5) or more days during a single school year, the District will meet with the Union to bargain the impact of the closures on the Nutrition Service employees.~~

~~G.~~F. DISASTER TIME

1. Disaster Time pay will be implemented when: A state of emergency is declared by the City of Portland, Multnomah County, the State of Oregon, or the federal government, in which the area covered by the emergency declaration includes the service area of Portland Public Schools; and PPS has declared an All PPS Closed day, which includes BESC/central operations.

2. All custodians are expected to report for their regularly scheduled shift when disaster time is implemented. If a custodian believes attempting to travel to the school or site would create a substantial safety risk, the custodian may notify his or her immediate supervisor and will be permitted to use vacation, emergency/personal leave, or leave without pay.

3. Custodians will be paid their straight time hourly rate in addition to his or her regularly monthly pay when disaster time is implemented unless the custodian does

not report to work as permitted under Section G.2 of this Article.

G. LONGEVITY PREMIUM

~~3.~~1. Employees who have 15 or more consecutive years of service with the District from the employee's start date will receive longevity premium pay in the amount of one percent (1%) of the employee's base rate of pay.

ARTICLE 23 – NUTRITION SERVICES EXTRA WORK

A. EXTRA WORK

Definitions:

For clarity purposes, the following definitions shall apply:

"Down day" — Any day a school site or "department" is closed down for operations.

"Limited available work" — Regularly scheduled days when the workload is drastically limited. Examples include but are not limited to: Parent-Teacher conference days, testing days, and Outdoor School.

"Regularly scheduled work day" — A day an employee would have been scheduled to work if there were NOT "limited available work".

"Prescheduled in-service training" — Management sponsored in-service training scheduled on a "down day" at least one (1) calendar month in advance.

~~1. Working on "down days"~~

~~a. When a school or site experiences a "down day", except in the event of prescheduled in-service training, employees may volunteer to work at another location.~~

~~b. When all else is equal, assignment shall be made on the basis of classification and seniority.~~

~~c. If there are limited volunteers, the work will be assigned to substitute employees.~~

~~2.~~1. Nutrition Services employees whose "regularly scheduled work day" has ~~was cancelled~~ the number of ~~or~~ hours greatly reduced due to "limited available work," or has a "down day," may be assigned to work at another location~~will be asked to make themselves available until 7:30 a.m. on said scheduled work day, for a possible assignment~~.

a. Nutrition Services Lead Assistants will report all "regularly scheduled days"

with “limited available work” to ~~the~~ their ~~Substitute Placement M~~manager at least twenty-four (24) hours prior.

~~b. No employee will be required to work more than they are regularly scheduled to work, however they may volunteer to do so.~~

~~c.~~b. ~~Substitute Placement Manager~~The District will make assignments with consideration given to employee classification, regular schedule, transportation limitations, distance from employee’s home, etc.

~~d.~~c. When all else is equal, assignments shall be made on the basis of classification and seniority.

~~e.~~d. Employees or substitutes working in a position on a temporary basis will not be displaced by an employee whose work schedule is reduced due to “limited available work”.

ARTICLE 24 – TRANSFERS AND VACANCIES

Nutrition Services Employees
Custodians See Applicable Provisions of “CCSL”

~~A.~~ When a vacancy exists because of a transfer, promotion, demotion, resignation or termination, the District agrees to fill the position within sixty (60) working days. When filling vacancies, the District agrees that if all other factors are equal, seniority will be used to decide placement. The District will consider employee preference when assigning work locations.

A. JOB POSTINGS

Vacant positions shall be posted for the purpose of providing opportunity to existing employees to make application for such positions. The vacant position excluding temporary positions, will be posted for at least five (5) working days prior to the closing date. The listing shall include a job summary, the location, actual hours (subject to change based upon operational needs) and the classification for the particular position. The job posting shall be sent to each worksite with a copy to the Union. Employees who are interested in a position shall make their desire known by applying for the position.

B. WORK LOCATION

For Nutrition Services employees, the District will notify employees of their work location at least two (2) weeks prior to the first day students attend classes at the beginning of each school year.

~~B.~~C. TRANSFERS

Employees may request a transfer to a specific location or geographic region. Such requests may be filed at any time. Employees may inquire of their department regarding the transfer procedure, posting process, the status of their transfer request, or the reason they have not been selected for a position and will receive a response within ten (10) days. The District agrees the difficulty in backfilling a transferee will not be considered when filling positions.

In cases of District-initiated changes to an employee's regular work location, the District will consider employee preference to the extent practicable while ensuring that the operational needs of the District are met. The District will provide at least five (5) calendar days' advanced notice prior to changing an employee's regular work location except in cases of emergency appointment or building need. Upon request, the District will provide the written reason(s) for any change to an employee's regular work location. Such requests must be made within five (5) calendar days of the change.

~~C.~~D. There shall be a two (2) week trial period for an employee accepting a transfer or a promotion. During or at the end of the two (2) week period, the employee may elect to return to his/her previous assignment or the administration may return the employee to his/her previous assignment as long as the decision to do so is not arbitrary or capricious.

~~D.~~E. CUSTODIANS

Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL") will be followed for vacancies.

ARTICLE 25 – DURATION

A. Except as may otherwise be provided for in this Article, this Agreement shall become effective upon ratification and shall continue in effect through 11:59 PM on June 30, 2023~~3~~6. ~~The parties agree to meet on paid time prior to the start of 2023 bargaining to discuss our respective compensation studies. The parties agree to schedule the first bargaining session for successor contract negotiations no later than February 10, 2023.~~

B. Should there be an intervening change in the law which would significantly reduce the District's revenue, and thus, its fiscal stability below the level being planned for at the time of the execution of this Agreement, the parties agree to reopen the negotiations on salaries.

APPENDIX A – NUTRITION SERVICES

A. Nutrition Services Wages

Effective 7/1/23 Wages include an 8.5% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$22.88	$23.46	$24.05	$24.66	$25.28	$25.92	$26.57	$27.24	$27.93	$28.63

Assistant	$18.72	$19.19	$19.67	$20.17	$20.68	$21.20	$21.73	$22.28	$22.84	$23.42

Effective 7/1/24 Wages include a 4% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$23.80	$24.40	$25.01	$25.64	$26.29	$26.95	$27.63	$28.33	$29.04	$29.77
Assistant	$19.47	$19.96	$20.46	$20.98	$21.51	$22.05	$22.61	$23.18	$23.76	$24.36

Effective 7/1/25 Wages include a 3% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$24.52	$25.14	$25.77	$26.42	$27.09	$27.77	$28.47	$29.19	$29.92	$30.67
Assistant	$20.06	$20.57	$21.09	$21.62	$22.17	$22.73	$23.30	$23.89	$24.49	$25.11

1. Effective July 1, 2022~~2~~3, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table plus any applicable ~~longevity as specified in Section B and~~ premium pay as specified in Section ~~E~~ D (Premium Pay) of Appendix A. Step 1 of the Wage Table reflects an 8.5% increase to the 2022-2023 base wage for the Nutrition Services Lead position and the Nutrition Services Assistant position. ~~The wage table reflects July 1, 2022 increases of 19.8% for the Nutrition Services Assistant position and 7% for the Nutrition Services Lead and Summer Monitor positions.~~

2. Wage Scale Placement for Current Employees.

    a. ~~Upon ratification of this agreement~~Effective July 1, 2023, Nutrition Services employees will be placed on the wage scale based on years of service in their classification. For example, a Nutrition Services Lead who has completed three full years of employment with the District in their classification, and is currently in their fourth year of employment in the classification, will be placed on Step 4 of the wage scale for Nutrition Services Lead classification.

3. Newly hired employees will be placed on Step 1 for their classification.

4. Employees who are promoted from the Nutrition Services Assistant classification to the Nutrition Services Lead classification will be placed at the step that results in a minimum 2.5% increase in compensation.

~~Within thirty (30) calendar days following July 1, 2022, PPS will make a one-time only payment of five hundred dollars ($500) to all Nutrition Services employees employed on July 1, 2022. This payment will be subject to all appropriate taxes, withholdings and deduct~~
~~Nutrition Services Wage Table~~

Classification	July 1, 2022
Nutrition Services Assistant	$17.25
Nutrition Services Lead*	$21.08
Summer Monitor	$19.62

5. Effective July 1, 2024, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table. This wage scale reflects a July 1, 2024, increase of four percent (4%). Employees who have not reached the top step will advance one step on the wage table.

6. Effective July 1, 2025, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table. This wage scale reflects a July 1, 2025, increase of three percent (3%). Employees who have not reached the top step will advance one step on the wage table.

7. Employees whose salaries are above the top step will be frozen at their wage rate for the life of the agreement.

[COMMENT: TABLES PROVIDED SEPARATELY]

*NS Lead in a Roving position will receive a fifty-cents-per-hour ($0.50/hr) premium for all hours worked in the position.[COMMENT: Addressed in language below]

B. LONGEVITY

Employees will receive longevity pay as a percentage of their base pay based on years of service:

1. After five (5) years, the longevity shall be three percent (3%) or
2. after ten (10) years, the longevity shall be five percent (5%), or
3. after fifteen (15) years, the longevity shall be seven percent (7%), or
4. after twenty (20) years, the longevity shall be nine percent (9%), or
5. after twenty-five (25) years, the longevity shall be eleven percent (11%), or
6. after thirty (30) years, the longevity shall be thirteen percent (13%).

Time spent in a higher classification shall be counted toward longevity eligibility if the employee is reclassified to a lower classification. If the employee is returned to the higher classification, s/he shall be reinstated with any longevity previously accrued while in that classification. Longevity pay shall commence at the beginning of the payroll period

~~following the month in which a Nutrition Services employee has completed the required time for longevity. A change in class designation or title without a substantial change in job duties shall be considered the same classification for purposes of longevity pay.~~

~~[COMMENT: MOVED BELOW, LANGUAGE REVISED BELOW]Roving Leads- The department will guarantee each roving lead a minimum of six (6) hours of work on a daily basis throughout the regular school year, with the exception of in-service and other odd scheduled days. NS Lead in a Roving position will receive a fifty-cent-per- hour ($.50) premium for all hours worked in the position.~~

~~C.~~B. WORK YEAR

By May 30, the District shall attempt to notify employees, whose work year corresponds with the school year, of the intended employment status including, but not limited to, work hours and location with the District for the following school year. Failure by the District to provide such notice of changes in the staffing plans following issuance of notification will not interfere with the authority of the District to reassign or lay-off an employee.

The Board retains the right and authority to change the days on which school shall be held and to make any adjustments to the work year. In the event of adjustment to the work year, the District shall consult with the Union before implementing any change, and the salaries set forth in this Agreement shall be adjusted for the added or deleted days on the basis of the employee's daily rate under said salary schedules.

~~D.~~C. SUMMER PROGRAM WORK

Employees who work in the summer program in a lower classification than during the regular school year shall be paid the maximum rate of the lower classification including longevity and/or certification pay for which they are eligible. Monitors shall be paid at the Roving Lead rate in the wage table. By April 1, the administration will inform employees of the application procedures to be followed for any summer program vacancies. If the administration determines that the qualifications of two or more employees are equal, the most senior employee will be selected. By June 1, the administration shall distribute to all worksites and to the Union a listing of those employees selected to work or be on-call for the summer program. ~~Bargaining unit employees, who have complied with the application procedures established by the District, will be considered for summer, winter, or spring special programs prior to substitutes.~~ Employees in the USDA summer program working the day prior to and immediately after Juneteenth and/or July 4 shall receive holiday pay for the holiday.

~~E.~~D. PREMIUM PAY

1. The standard day shift shall begin between 5:00 am and 12:00 noon. Employees working eight (8) hour shifts beginning at other times shall receive an additional seven percent (7%) of their base salary.

2. Persons holding School Nutrition Association certification of Level I or higher on July 1, 2017 shall receive additional compensation of fifty~~sixteen~~ cents ($.50~~16~~) per hour

through the duration of this agreement.

3. Employees who serve in a department committee leadership role will receive additional compensation of fifty cents ($.50) per hour while performing the leadership role

~~3.~~4. Roving Leads- The department will guarantee each roving lead a minimum of six (6) hours of work on a daily basis throughout the regular school year, with the exception of in-service and other odd scheduled days. NS Lead in a Roving position will receive a one dollar~~fifty cent~~ per hour ($1.00~~0.50~~) premium for all hours worked in the position.

~~F.~~E. TRAINING

Some or all of the fees for educational classes directly related to the improvement of job skills, as approved in advance by the Director, shall be reimbursed to the employee upon submission of evidence of satisfactory completion of said classes.

APPENDIX B – CUSTODIANS

Wages include a 6% COLA increase

Effective 7/1/2023	1	2	3	4	5	6	7	8	9	10
Position/Step										
Head Custodian D	27.05	27.97	28.91	29.90	30.91	31.96	33.06	34.18	35.33	36.54
Head Custodian C	24.57	25.40	26.26	27.15	28.08	29.04	30.02	31.04	32.10	33.18
Head Custodian B	22.32	23.08	23.87	24.67	25.51	26.38	27.28	28.20	29.17	30.15
Head Custodian A	21.32	22.04	22.79	23.57	24.37	25.20	26.06	26.94	27.86	28.81
High School Lead	21.32	22.04	22.79	23.57	24.37	25.20	26.06	26.94	27.86	28.81
Custodian	20.37	21.06	21.78	22.52	23.28	24.08	24.89	25.74	26.61	27.51

Wages include a 3% COLA increase

Effective 7/1/2024	1	2	3	4	5	6	7	8	9	10
Position/Step										
Head Custodian D	27.87	28.81	29.78	30.80	31.84	32.92	34.06	35.21	36.39	37.64
Head Custodian C	25.31	26.17	27.05	27.97	28.93	29.92	30.93	31.98	33.07	34.18
Head Custodian B	22.99	23.78	24.59	25.42	26.28	27.18	28.10	29.05	30.05	31.06
Head Custodian A	21.96	22.71	23.48	24.28	25.11	25.96	26.85	27.75	28.70	29.68
High School Lead	21.96	22.71	23.48	24.28	25.11	25.96	26.85	27.75	28.70	29.68
Custodian	20.99	21.70	22.44	23.20	23.98	24.81	25.64	26.52	27.41	28.34

Wages include a 3% COLA increase

Effective 7/1/2025	1	2	3	4	5	6	7	8	9	10

Position/Step										
Head Custodian D	28.71	29.68	30.68	31.73	32.80	33.91	35.09	36.27	37.49	38.77
Head Custodian C	26.07	26.96	27.87	28.81	29.80	30.82	31.86	32.94	34.07	35.21
Head Custodian B	23.68	24.50	25.33	26.19	27.07	28.00	28.95	29.93	30.96	32.00
Head Custodian A	22.62	23.40	24.19	25.01	25.87	26.74	27.66	28.59	29.57	30.58
High School Lead	22.62	23.40	24.19	25.01	25.87	26.74	27.66	28.59	29.57	30.58
Custodian	21.62	22.36	23.12	23.90	24.70	25.56	26.41	27.32	28.24	29.20

In implementing the provisions of the above salary schedules for custodians, the parties agree to the following:

1. Effective July 1, 2022~~2~~3, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects an increase effective July 1, 2022~~2~~3 ~~increase~~ of six ~~fifteen~~ percent (~~15~~6%). Employees who have not reached the top step will advance one step on the Salary Schedule.

2. Effective July 1, 2024, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects a July 1, 2024, increase of three percent (3%). Employees who have not reached the top step will advance one step on the Salary Schedule.

~~1.~~3. Effective July 1, 2025, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects a July 1, 2025, increase of three percent (3%). Employees who have not reached the top step will advance one step on the Salary Schedule.

~~5.~~8. Employees whose salaries are above the top step will be frozen at their wage rate for the life of the agreement.

~~2.~~4. Any employee who is promoted will move to the next highest pay in the new range that results in a minimum of a 3.4% increase.

A. SHIFTS AND WORKWEEK

1. Shifts for head custodians shall be eight (8) hours including an on-duty lunch, and shall commence no later than 6:30 am, with the exception of Custodial training days. Shifts for other custodians shall be eight (8) hours plus one-half (1/2) hour lunch. An additional one dollar ($1.00) per hour will be paid for hours worked by custodians between midnight and 5:00 am.

2. Each custodian shall be assigned to a shift with a regular starting and ending time. Except in cases of transfer, promotion or emergency, the beginning and ending time of a shift shall not be changed by the Administration without fourteen (14) calendar days' notice to the employee, except when mutually agreed upon.

3. The usual workweek for custodians shall be Monday through Friday. An employee's

scheduled workweek shall not be changed without two (2) weeks' advance notice and shall remain so changed for at least three (3) months, unless both the employee and the department agree.

B. SPECIAL SALARY PROVISIONS

1. A custodian employee temporarily assigned to substitute or act in a higher classification shall receive seven dollars ($7.00) per day plus one dollar ($1.00) for each additional level. Example: A Custodian acting as a Custodian "B" will receive a total of eight dollars ($8.00) additional compensation. Such additional compensation shall be payable as follows:

   1 through 2 hours = no additional compensation
   3 through 5 hours = one-half (1/2) additional compensation
   6 through 8 hours = full additional compensation

A custodian substituting or acting in a higher classification for more than twenty (20) consecutive workdays shall receive the next highest pay in the new range for the position in which they are substituting or acting, or the daily rate specified in this section, whichever is higher. Such pay shall commence on the twenty-first (21st) workday.

2.

a. Employees required to travel from one school or administrative building to another will receive an additional ~~three~~ four dollars ($~~3~~4.00) per day for transportation and an additional three~~two~~ dollars ~~and fifty cents~~ ($~~2~~3.~~5~~00) for each subsequent trip per day.

b. Custodians assigned responsibility for lock up at a high school shall receive an additional two dollars ($2.00) per day.

c. A custodian who is being promoted to the position of "D" Head Custodian shall be allowed one (1) week orientation in the new position prior to assuming the full responsibility provided that the resigning "D" Head Custodian has given the District at least five (5) weeks' written notice of his/her resignation. During the two-week period, the custodian being promoted shall be paid his/her new regular salary as a "D" Head Custodian.

d. A Head Custodian that is regularly assigned to the Mobile Head Custodian assignment will be paid the Head Custodian C rate at the step that is at least three and four tenths percent (3.4%) higher than the Head Custodian's current rate.

C. Custodians required to attend in-service classes relating to their work assignment shall be compensated at time and one-half (1-1/2) of their regular rate when such participation occurs after eight (8) hours of work in one (1) day or forty (40) hours of work in a week.

D. A ten (10) hour day, four (4) day workweek schedule may be implemented upon mutual agreement of the Union and the District.

E. “D” Head Custodians may select from their assigned crew the helpers to be assigned on the day shift.

F. The District shall approve vacations as requested by the employee based upon operational needs. Such request shall not be arbitrarily denied and the reason for the denial shall be provided to the employee. Use of vacation leave is subject to the supervisor’s approval. An employee may request to use vacation leave at any time. However, where the use of vacation leave is planned and foreseeable, an employee should request leave at least two (2) weeks in advance. In case more requests are received than can be approved for a particular period, the employer shall approve requests in order of receipt, or by seniority where requests are received on the same date.

G. Employees may request a transfer to a specific site or geographic region. Such requests may be filled at any time. Employees may inquire of their department, questions regarding the transfer procedure, the status of their transfer request, or the reason they have not been selected for a position.

H. Buildings are generally classified according to the following criteria:

A building = less than 45,000 sq. ft.
B building = 45,000 - 74,999 sq. ft. or 500-600 students
C building = 75,000 – 200,000 sq. ft. or more than 600 students
D building = more than 200,000 sq. ft.

The District or the Union may request that a building/site be reclassified upward and the District and Union may, through mutual agreement, amend this section of the agreement.

No employee will suffer a loss of pay due to the reclassification of the building to a lower classification. When a building is reclassified upward, a vacancy will be identified by the District and the Custodian Civil Service Law will be followed. The following listing of buildings by classification shall be reviewed and updated upon ratification of this Agreement and shall be effective for the duration of this Agreement:

A BUILDINGS	B BUILDINGS	C BUILDINGS	C BUILDING CONT.	D BUILDINGS
Applegate	Abernethy	Ainsworth	Sellwood	Benson High School
Chief Joseph	Astor	Alameda	Sunnyside	~~B~~P E ~~S~~C
Clarendon	Atkinson	Arleta	Tubman	Cleveland High School
Columbia	Bridger	Beach	Vernon	Franklin High School
East Sylvan	Bridlemile	Beaumont	Vestal	Grant High School
Hollyrood*	Capitol Hill	Boise-Eliot	West Sylvan	Jackson Middle School
Humboldt*	~~Creative Science~~Clark	Buckman	Woodlawn	Jefferson High School
Maplewood	Forest Park	Chapman	Youngson	Lincoln High School
Meek	Glencoe	~~Cesar~~ Chavez		McDaniel High School
Rieke	Hayhurst	Creston		Marshall High School
Sacajawea	Irvington	DaVinci		Roosevelt High School
Stephenson	James John	Duniway		Wells High School
Wilcox/Rice	Kenton	Faubion		
Terwilliger	Lee	Fernwood		
	Lewis	George		
	Marysville	Gray		
	MLC	Grout		
	Ockley Green	Harrison Park		
	Peninsula	Hosford		
	Rosa Parks	Kellogg		
	Rose City Park	Kelly		
	Sabin	King		
	Scott	Lane		
	Sitton	Laurelhurst		
	Skyline	Lent		
	Whitman	Llewellyn		
	Winterhaven	Markham		
	Woodmere	Mt. Tabor		
	Woodstock	Richmond		
		Rigler		
		Roseway Heights		

* Denotes Leased Site

~~Appendix C~~ ~~District Insurance Cap~~

~~District Contribution and Cap. The District's total monthly contribution towards medical, dental and vision insurance premiums will not exceed the District Cap. The District Cap is equal to $1,355 multiplied by the number of benefit-eligible employees in the bargaining unit. The District will contribute the actual cost of employee medical, dental, and vision premiums minus~~

~~the total amount of the employee contributions specified in Article 18 unless the actual cost minus the employee contributions specified in Article 18 exceeds the District Cap.~~

~~Supplemental Employee Contribution. If the total cost of eligible medical, dental, and vision premiums exceeds $1,355 times the number of benefit-eligible employees minus the employee contributions specified in Article 18 - Insurance, the District will contribute an amount equal to the District Cap and the remaining balance will be paid through a supplemental employee contribution. The Supplemental Employee Contribution will be calculated as follows:~~

~~**(Total Monthly Premium – Total Employee Contributions from Article 18 – District Cap)**~~

~~**÷ (Total Number of Employees Enrolled in District Benefits)**~~

~~**Monthly Supplemental Employee Contribution for Each Employee Enrolled in District Benefits**~~

~~The District will announce the Supplemental Employee Contribution, if necessary, during open enrollment. The Supplemental Employee Contribution will not change during the benefit year.~~

Signature Page

[Insert following ratification]

AGREEMENT

BETWEEN SCHOOL DISTRICT NO. 1
MULTNOMAH COUNTY, OREGON AND
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503,
SCHOOL EMPLOYEES UNION LOCAL 140

2023 - 2026

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[TOC WILL BE UPDATED UPON FINALIZING]

AGREEMENT BETWEEN
SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 503 OPEU, School Employees Union Local 140 AND

SCHOOL DISTRICT NO. 1,
MULTNOMAH COUNTY, OREGON

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, OPEU, School Employees Union Local 140 (HEREINAFTER CALLED "UNION"), AND SCHOOL DISTRICT NO. 1, MULTNOMAH COUNTY, OREGON (HEREINAFTER CALLED "DISTRICT") MADE ON THE AUTHORITY OF ITS BOARD OF DIRECTORS.

ARTICLE 1 – RECOGNITION AND APPLICATION OF AGREEMENT

The District recognizes the Union as the sole and exclusive bargaining representative for all nutrition services and custodial employees except for confidential, supervisory or managerial employees as defined by law or as determined by the Employment Relations Board, adult volunteers and student volunteers.

The District will provide Union representatives time to speak at public School Board meetings apart from the public comment period provided the Union gives the Board Office at least 7 calendar days' written advance notice of its intent to address the Board.

ARTICLE 2 – TEMPORARY EMPLOYEES

A. A temporary employee is one who is hired to fill a position with a duration of six (6) consecutive months, or less, or to replace a regular employee on an approved leave of absence or absence due to an on-the-job injury. Note: Custodians refer to CCSL.

B. Temporary employees are entitled to all benefits of this Agreement except the benefits provided by Articles 17.A.5, B.1, 2, 3 and 4, 21 and 22.A of this Agreement.

C. Temporary employees will, upon re-employment, be given seniority credit for previous time worked as a temporary unless a period of six (6) months or more has elapsed since their last period of employment.

D. CUSTODIANS – Temporary employees will be hired in rank order from the Civil Service Board Eligibility List. Employees hired as temporary will retain their position on the civil service list. The District shall notify the Union of the beginning date and projected ending date for each temporary employee hired.

ARTICLE 3 – STATUS OF AGREEMENT

A. This Agreement shall modify, replace or add to any policies, rules, regulations, procedures or practices of the District which are or shall be contrary or inconsistent with its terms. The provisions of this Agreement and specific modifications thereto found in the appendices

shall be incorporated into and become part of the established policies, rules, regulations, practices and procedures of the District.

B. In the event a conflict should occur between any provision in the body of this Agreement and a provision in any properly executed Exhibit, Appendix, Understanding or other attachment to this Agreement, the provisions of the respective attachment shall be controlling.

C. In the event that any provision of this Agreement is or shall at any time be determined to be contrary to law by a court or agency of competent jurisdiction, all other provisions of this Agreement shall continue in effect. Only the subjects of the deleted provisions and the affected provisions shall be subject to further collective bargaining during the term of this Agreement with respect to the period covered by the Agreement. Any further collective bargaining resulting from the terms of this paragraph will be conducted according to ORS 243.702.

D. The District shall make the Agreement available online and provide a copy to an employee covered by the Agreement upon request.

E. The District, the Union and their respective representatives shall take no action in violation of, or inconsistent with, any provision of this Agreement.

F. The parties acknowledge that during negotiations which resulted in this Agreement, each had the right and opportunity to make demands and proposals with respect to any subjects appropriate for bargaining, and that the understandings and agreements arrived at by the parties are set forth in this Agreement. Therefore, except as otherwise expressly provided for in this Agreement, or as required by State collective bargaining law, or as provided by the Custodians' Civil Service Law, the District and the Union agree that the other shall not be obligated to negotiate or bargain collectively with respect to any subject matter, during the term of this Agreement.

G. If, during the life of this Agreement, District upgrades of its computer and records systems make it administratively and financially feasible to implement a biweekly or twice-per-month payroll period for bargaining unit employees, then the parties will engage in discussions about implementation at the Labor Management committee (LMC) to make appropriate adjustments to the provisions of this Agreement to accommodate these changes. Nothing in this agreement shall prevent the parties from engaging in the mid-term bargaining process related to mid-term contract changes as provided by PECBA.

ARTICLE 3 – UNION RIGHTS

A. The Union, through its representatives, shall have the right to transact official Union business relevant to employees on School District property at all reasonable times, provided that it does not interfere with or interrupt classes or other normal School District operations. Such rooms or other appropriate meeting facilities shall be made available for Union use as requested without charge to the Union, except that the Board may make

reasonable charge when special service is required beyond normal operational practice.

B. The Union representative shall have the right to use School District facilities and equipment, including photocopiers, and all types of audiovisual equipment at reasonable times, when the same are not otherwise in use. This shall not include use of, or access to, the District's computer equipment and systems, including but not limited to, equipment used for its HRMS, financial, purchasing and inventory administration. The Union agrees to pay the cost of all materials and supplies incidental to such use.

C. Union representatives shall make their presence known to the appropriate administrative authority when visiting School District facilities. Such visits shall not interrupt work or disrupt normal School District functions.

D. The Union shall have the right to make non-controversial announcements at employee staff meetings or by use of any existing communication procedures not ordinarily available to students including e-mail if appropriate. The District will distribute to each new hire a Union New Employee Packet. The Union will provide the packets to the District.

E. The Union and its representatives shall have the right to post notices of activities and matters of Union business and concern on staff bulletin boards. At least one such bulletin board shall be in each School District building. The Union may use the District mailboxes for communications.

F. The District shall make available to the Union upon ample request to the Office of the Superintendent any and all reasonably available information, statistics and records which are relevant to negotiations or necessary for the proper enforcement of the terms of this Agreement including the processing of grievances pursuant to Article 10. Should such requests exceed more than two (2) per month, or fifty (50) pages total, the Union shall upon written request, reimburse the District for the costs involved in fulfilling the Union's request at the loaded hourly rate(s) and the number of hours worked by the person(s) fulfilling the request. Printed and copied documents shall be invoiced at the rate of four cents (4¢) per page. Other materials shall be invoiced at their actual cost to the District. This provision does not apply to, nor include, the periodic lists of bargaining unit members that are provided to the Union. Upon Union request, documents that relate to disciplinary action will be provided to the Union free of charge.

G. Copies of written work rules which are applicable to a classification of employees and issued by supervision after the execution of this Agreement, for which failure to comply may result in discipline of an employee, shall be provided to the Union.

H. The Union shall provide the District with the names of authorized Union stewards and PPS-employed designated union representatives and their work locations. The District will grant reasonable time for stewards and PPS-employed designated union representatives to engage in representation activities described in ORS 243.798 without loss of compensation, seniority, leave accrual or any other benefits.

I. The Union shall reimburse the District for the salary and benefit costs of any employee

released from their work assignment to conduct business on behalf of the Union excluding business conducted with the District.

J. Upon request of the Union, the District shall provide an unpaid leave of absence not to exceed two (2) years for a bargaining unit employee to serve as an officer of the Union. Time spent on such leave shall not count toward longevity pay but the employee shall retain their promotion eligibility seniority.

K. With one week's advance notice by employee, District may grant leave for Union business subject to operational needs. Such leave may not be unreasonably denied. An employee may utilize vacation leave consistent with Article 21 of this Agreement or Emergency/Personal Business Leave. Otherwise, such leave will be unpaid.

L. Two Labor Management Committees shall be formed. The Union shall select three (3) employees each from the Nutrition Services department and the Custodial department to meet with the Managers, Directors and/or designees of those departments three times per year (approximately October 15, January 30, and April 15). Either LMC may have additional meetings as needed. LMC Topics for discussion may include but are not limited to:

- Training
- Quantities and Qualities of Equipment and Supplies
- Absenteeism
- Recruitment
- Staffing Levels
- Efficiency of operations
- Health and safety as it relates to labor allocation
- Labor allocation/formulas
- Respectful work environment
- Nutrition Services LMC may also discuss job classification changes, additions or deletions.
- APPA Facilities Management Evaluation Plan (FMEP)

    - The District is contracting with APPA to complete a FMEP. The District expects to receive the report prior to June 30, 2024.
    - The District will share the results with SEIU Local 503 and will discuss the report at the labor-management committee meeting.
    - If the report recommends the District increase staffing levels, then the parties will discuss options to adjust staffing.
    - The decision of the Directors or Managers regarding staffing formulas shall be final. Nothing herein shall preclude an employee or the Union, on behalf of an employee, at other times, from bringing a specific urgent concern to the attention

of the Directors or Managers, and upon mutual agreement the parties shall have a supplemental LMC meeting.

New Employee Orientation. The District shall make new employees in the bargaining unit available for thirty (30) minutes on paid time to attend a union-led new employee orientation (NEO) within thirty (30) calendar days. For nutrition services employees, the thirty (30) calendar days does not include summer break. The District will schedule thirty (30) minutes for the NEO during the regular orientation schedule. The District will provide the Union representative with three (3) business days' notice prior to the scheduled NEO. A Union steward or designated union representative may conduct the NEO on paid time with reasonable notice to the steward's supervisor. If no Union representative is available to present the NEO, an alternative time may be scheduled upon mutual agreement.

ARTICLE 5 – NO STRIKE CLAUSE

During the life of this Agreement, the Union or any employee(s) will not authorize, cause, engage in, or sanction any form of illegal concerted work stoppage, boycott, picketing, or any other interruption of work at, within, or concerning any facilities or operations of the School District. The District shall not cause an illegal lockout of employees from their work.

ARTICLE 6 – MANAGEMENT RIGHTS CLAUSE

Except as otherwise provided in this Agreement, the Union agrees that the Board and its designees shall retain control and direction over all matters of inherent managerial policy. Such matters shall include, but are not limited to:

A. The executive management and administrative control of the school system and its properties and facilities, including the development of budgets and actions as may be necessary to meet emergency situations;

B. Hire all employees and the right to determine their qualifications and the conditions of their continued employment or their discipline, dismissal, demotion, promotion or transfer; except as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

C. The unqualified right of assignment and direction of work of all of its personnel, and to determine the number of shifts and hours and days of work and starting times and scheduling of all the foregoing;

D. The unqualified right to establish the work, payroll and school calendars;

E. Determine the services, supplies and equipment necessary to continue its operations and to determine the methods, schedules and standards of operation, the means, methods and processes of carrying on the work, including automation thereof or changes therein, and the institution of new and/or improved methods or changes therein; Adopt reasonable rules and regulations;

F. Determine the location or relocation of its facilities, including the establishment or relocations of new schools, buildings, departments, divisions or subdivisions thereof and the relocation or closing of offices, departments, schools, programs, divisions or

subdivisions, buildings or other facilities;

G. Determine the placement of operations, production, services, maintenance or distribution of work and the source of materials and supplies;

H. Determine the financial policies, including all accounting and payroll processes and procedures and all matters pertaining to public relations;

I. Determine the size of the management organization, its functions, authority, amount of supervision and table of organization;

J. Determine the policy affecting the selection, testing or training of employees, providing such selection shall be based upon lawful criteria, except as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL");

K. The selection and utilization of technology;

L. The District expressly retains the right to contract out or subcontract any work performed in the past by employees, or currently being performed by employees, or that may in the future be performed by employees and the Union expressly waives any duty the District might have under law to bargain these matters. It is expressly agreed that this provision represents the full and complete agreement between the parties with respect to all contracting out. Notwithstanding the requirements of ORS 243.650 to 243.782, by this Agreement the District and the Union agree that the District has met its duty to bargain this subject. The Union expressly disclaims and waives any further duty on the part of the District to bargain over the right to contract or subcontract any and all work and the impact of any decision to contract or subcontract any and all work. Before the District contracts/subcontracts work presently, regularly, and exclusively performed by bargaining unit members where such contracting will result in the layoff or demotion of current employees, the following shall occur:

1. The Union shall be notified in writing at least sixty (60) days in advance of the proposed implementation. Such notification shall include an analysis of the likely impact on employees, and shall also outline the projected financial impact and other considerations that the District has deemed are pertinent to its deliberation to contract or subcontract work.

2. Upon receipt of the notice, the Union shall have ten (10) days in which to notify the District of its desire to meet and discuss the contracting/subcontracting decision. The Union may propose changes in existing work rules, benefits, and/or wage rates in order to compete more effectively with the contractors or subcontractors and/or the Union may propose alternative staffing arrangements that it believes would reduce the impact of the contracting/subcontracting. The District shall not finalize the decision to contract/subcontract such work until after it has afforded the Union the opportunity to meet as provided above and considered all timely Union proposals before a decision is finalized.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the District shall be limited only by the specific, written terms of this Agreement and then only to the extent that such terms are in conformance with the Constitution and the laws of the state of Oregon, including the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

ARTICLE 7 – PAYROLL

A. Upon appropriate written request from the employee, the District shall deduct from the salary of any employee for District approved deductions, including but not limited to:

Approved Charitable Organizations
Health Insurance Premiums
Fixed or Variable Tax Deferred Annuity Plans
I.R.C. Section 125 Flexible Spending Account Plan

Upon appropriate written request from the employee, the District will make direct deposit of wages to up to two (2) different accounts with financial institutions.

B. When employment terminates by discharge, layoff or resignation, the District will issue the employee's final wages in accordance with state law. If state law changes from the payment procedure stated above, the District's practice will change in accordance with state law for final payments or no more than fourteen (14) calendar days, whichever would pay the worker soonest.

C. Upon written, electronic or recorded oral request from an employee, monthly Union dues and any additional voluntary Union deductions will be deducted from the employee's pay and remitted to the Union. All applications, authorizations, or cancellations of membership will be submitted by the employee to the Union. Any written application for Union membership, authorizations for Union dues and other deductions, or dues cancellations that the District receives will be promptly forwarded to the Union. The Union will maintain the written, electronic and recorded oral authorization records and will provide copies to the District upon request. All monies deducted pursuant to this Article will be remitted to the Union within ten (10) days after the deductions are made by the Employer.

D. Notification of New Hires: The District shall provide the Union with an editable electronic list (such as an Excel document) of all new hires into bargaining unit positions, within ten (10) calendar days of the employee's date of hire. The new hire list shall include:

- The employee's name and date of hire
- The employee's job title/classification, pay rate and worksite location
- The employee's available contact information including cellular, home and work telephone numbers, work and personal electronic mail address, home address or personal mailing address
- The employee's self-disclosed sex and race/ethnicity information

E. The Union will submit an electronic file containing new authorizations or changes in authorizations for employee Union deductions to the District by the fifteenth (15th) day of

each month. New or changed payroll deductions received by the fifteenth (15th) will be effective for the month during which they were submitted.

F. The Union agrees that it will indemnify, defend and hold harmless the District and all persons acting on behalf of the District from all suit actions, proceedings, complaints, claims, liability or expense resulting from the implementation or enforcement of this Article or any provision thereof.

ARTICLE 8 – ENTIRE AGREEMENT

This Agreement constitutes the sole and entire existing Agreement between the parties and completely and correctly expresses all of the rights and obligations of the parties. No prior oral or written past practices, agreements, procedures, traditions, and rules or regulations shall continue or be controlling. The Union, for the life of this Agreement, voluntarily and unqualifiedly waives its right and agrees that the District shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or with respect to any subject or matter which was or might have been raised in bargaining but which is not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of the Union at the time that it negotiated or signed this Agreement.

Any changes to this Agreement are subject to the written approval of the Union and the District.

ARTICLE 9 – GRIEVANCE PROCEDURE

The purpose of this procedure is to provide for an orderly adjustment of grievances contended by an employee or group of employees.

SECTION 1 – Definitions

1. A “grievant” is an employee or group of employees who initiates a complaint alleging that they have been directly injured through a violation of the terms of this Agreement. The term “grievant” shall also include the Union with respect to alleged violations of its organizational rights under this Agreement.

2. A “grievance” is an allegation by an employee that they have been directly injured by a violation of this Agreement.
3. When processing a grievance, the term “days” shall refer to calendar days except for traditional recess periods (winter break, spring break, summer), which are part of the employee’s established work year.

4. A group grievance is an allegation by a group of employees or the Union that a group of employees have been directly injured by a violation of the Agreement.

SECTION 2 – Grievance Process

STEP 1

The grievant, with or without union representation, must discuss any grievance with their immediate supervisor outside the bargaining unit prior to submitting a written grievance. The grievant must state they are initiating the Step 1 grievance process. The purpose of this discussion is to attempt to resolve the issue informally. Grievances resolved at Step 1 will not be precedent setting, except by mutual agreement of the Union and the District.

STEP 2If the grievance remains unresolved, the Union may submit a Step 2 grievance in writing to the affected employee's department director within thirty (30) calendar days of when the employee knew or reasonably should have known of the alleged violation. The written grievance shall include a statement of the grievance, citing the specific provisions of the Agreement alleged to be violated, a clear explanation of the alleged violation including the date of the occurrence, and the remedy requested. The District shall not be obligated to process any grievance that does not comply with the requirements of this Section. The department director will hold a Step 2 grievance meeting within thirty (30) calendar days from the Step 2 filing date. The department director shall respond to the grievance, in writing, within fourteen (14) calendar days following the Step 2 grievance meeting..

Grievances regarding discipline must be filed at Step 2 within fourteen (14) calendar days of the issuance of the discipline. Group grievances must be filed at Step 2.

STEP 3

If the grievance is not resolved at Step 2, the Union may appeal the decision within fourteen (14) calendar days of the due date of the response at Step 2 to the Director of Employee and Labor Relations (or the designee), who may either review the grievance or appoint an appropriate administrator to conduct a review. The Step 3 grievance meeting shall be completed within thirty (30) calendar days and be deemed a hearing under ORS 332.544. The Director of Employee and Labor Relations (or designee) shall respond, in writing, to the Union within seven (7) calendar days of the completion of the review. Grievances regarding discharge shall be filed at Step 3 within fourteen (14) calendar days of the issuance of the discharge.

STEP 4

If the grievance is not resolved at Step 3, the Union may, within thirty (30) calendar days of the due date of the response at Step 3, notify the District, in writing, of its intent to arbitrate and within seven (7) calendar days of such notice, the Union shall request a list of arbitrators from the Employment Relations Board as provided below.

Grievances regarding discharge of employees subject to the Custodian Civil Service Law where the employee has elected to appeal the discharge pursuant to the Civil Service Board Rules may not be submitted to arbitration under this Agreement.

The grievance may be submitted to arbitration according to the following procedures:

A. The arbitrator shall be selected from a list of five (5) Oregon arbitrators provided by the

Employment Relations Board who are also certified by the American Arbitration Association. Each party shall then alternately strike one name from the list until one remains and such person shall be the arbitrator. Nothing is intended to preclude the parties from mutually agreeing on an arbitrator.

B. Only the Union may file a grievance at Step 2; advance a grievance to Step 3, and appeal a grievance to arbitration with notice to the District of the appeal to arbitration.

C. In reviewing disciplinary cases, the arbitrator may not use a work performance standard other than the one adopted by the District. The arbitrator must render his/her decision in writing within thirty (30) days following completion of the hearings. The arbitrator's decision shall be final and binding unless properly appealed and set aside. Any such appeal must be filed in the forum of competent jurisdiction within thirty (30) days of the issuance of the arbitrator's decision.

D. The decision of the arbitrator shall be binding on all parties, provided: (1) the arbitrator must restrict his/her decision to interpretation of the Agreement, (2) it is in accordance with the legal meaning of this Agreement, and (3) it is based on substantial evidence.

E. The costs of the arbitration shall be shared equally by the parties.

F. The arbitrator's decision shall be confined exclusively to the explicit provision(s) of this Agreement at issue between the parties. The arbitrator shall have no authority to add to, detract from, remove, alter or amend or in any other way modify any provision of this Agreement or impose on any party hereto a limitation or obligation not explicitly provided for in this Agreement. The arbitrator shall not substitute his/her judgment for that of either the District or the Union.

SECTION 3 – General Procedures

a. The grievant must be present at Steps 1 and 2 and may be present at all other steps. In processing the grievance, the grievant may:

b. Represent themself at Step 1 of this grievance procedure, or

c. Be represented by their Union at the Union's expense.

2. It may at times become necessary to extend time limits. These extensions are to be kept to a minimum and must be mutually consented to in writing by the parties involved.

3. Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified time limits shall permit the grievant to proceed to the next step. Failure at any step of this procedure to appeal a decision to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

4. The Board and its administrators shall cooperate with the grievant in the investigations of any grievance, and further will furnish the grievant or his/her representative with such necessary and readily available information as requested for the processing of any grievance.

5. Except as otherwise provided by law, an employee shall invoke and exhaust the grievance procedure remedies before resorting to any other legal or administrative remedies for the conduct complained of, and failure to do so shall preclude resorting to such other remedies.

6. A representative of the Union may be present at all steps of the procedure.

SECTION 4 – Article 11 Grievances

1. The following procedure applies to any grievance alleging a violation of Article 11 (Nondiscrimination)

2. Any Grievance alleging a violation of Article 11 (Nondiscrimination) must be submitted to the employee's Department Head or designee within thirty (30) calendar days of the date the grievant or the union knew or by reasonable diligence should have known of the alleged grievances.

3. The Department Head or Designee must respond within thirty (30) calendar days after receipt of the grievance.

4. Grievances alleging a violation of Article 1! (Nondiscrimination) are not arbitrable.

ARTICLE 10 – DISCIPLINE, DEMOTION AND DISCHARGE

A. No employee shall be disciplined without just cause. Discipline shall include written reprimands (excluding evaluations) placed in the employee's personnel file, suspension without pay, demotion or discharge. A written reprimand shall be stated as such and becomes part of the employee's personnel file. An evaluation or matters related thereto involving comments regarding the employee's performance do not constitute a reprimand.

B. The District agrees to follow progressive discipline and any disciplinary action taken against an employee shall be appropriate to the behavior that precipitates said action. The nature and seriousness of the offense shall determine at which level progressive discipline is initiated.

C. The specific grounds forming the basis for disciplinary action will be made available to the employee and the Union in writing. If the District issues a written discipline, then the discipline will contain the following notice: "Employees who wish to challenge this discipline must contact SEIU Local 503 no later than thirty (30) calendar days from the date of issuance of this discipline."

D. If a complaint based on an allegation brought by a community member or non-supervisory third-party is used to support disciplinary action, the supervisor shall cause the complaint to be reduced to writing and placed in the personnel file. Subject to the district's legal obligations and restrictions, the names of the complainant shall be disclosed if the employee so requests.

E. An employee shall have the right to request and have a Union representative present at any meeting that the employee reasonably believes may result in his/her discipline. Prior to such a meeting, the employee will be notified of its purpose and afforded an opportunity to consult with his/her representative. The right of representation will not exist when the meeting relates solely to evaluation of the employee's work performance.

F. In the event that an employee is scheduled for a disciplinary conference, the District shall give a minimum of twenty-four (24) hours' notice to the employee of such conference, unless the matter is one of unusual urgency.

G. The probationary period for newly hired employees will be one (1) calendar year. Periodic written evaluations will be done on each probationary employee. Termination of probationary employees shall not be subject to appeal except as provided by statute.

H. Training coursework test results shall not be grounds for discipline.

ARTICLE 11 – NONDISCRIMINATION

In administering the terms and conditions of this Agreement, the parties agree to comply with applicable State and/or Federal Statutes and/or regulations regarding nondiscrimination, i.e., on the basis of age, gender or gender identity, religion, race, color, national origin, mental or physical disability, marital status, sexual orientation, veteran status, union, or political activity and association or other category protected by Federal, State or Municipal law. It is the expressed intent of the Union, in executing this Agreement, that the Board and its designees shall retain sole control and direction over the District's compliance with such laws and/or regulations and that this Article shall in no way be interpreted as affecting the application thereof. The Union and the District shall cooperate in making reasonable accommodations to the disabilities of bargaining unit personnel. The Union shall use its best efforts to direct employees complaining of such discrimination to appropriate District administrative processes. It is the intention of the parties that the interpretation given to this Article shall be consistent with the proper interpretation of the provisions of the Oregon Fair Employment Practices Law.

ARTICLE 12 – PERSONNEL FILE

A. Each employee shall have the right, upon request, to review the contents of their personnel records (whether located in the official personnel or building personnel file) in accordance with ORS 652.750. Only one official personnel file shall be maintained by the District.

B. A representative of the Union or counsel for the employee may, (1) at the employee's request, accompany their in this review and/or (2) be authorized by the employee in writing to review the file and/or obtain a complete unredacted copy of the personnel file.

C. An employee may request that reprimands (excluding evaluations) be removed from their personnel file after two (2) years, provided that no subsequent such entries of the same nature have been made into that file. The District retains discretion on whether to agree to remove the reprimand upon request and will consider the severity and nature of the misconduct in making its decision. The District will comply with all public record retention laws.

D. The District shall provide an employee with a copy of any materials placed in their official personnel and building personnel file. Materials placed in an employee's file shall bear the date of such placement. An employee may respond in writing within thirty (30) days to any material placed in such file and the response shall become part of the file.

E. Anonymous materials shall not be placed in the personnel file.

F. The employee may request materials which they feels pertinent to their professional career, performance and qualifications be placed in his/her personnel file.

G. Any official grievance filed by an employee shall not be placed in the official personnel file of the employee, and shall not be used in any connection with or recommendation for job placement or performance.

H. The reference to an employee's personnel file used herein is not intended to show an employee's possession or ownership; rather, it refers to the District's records of personnel-related information for the individual employee.

ARTICLE 13 – EMPLOYEE EVALUATION

A. Formal evaluation of employees shall be in writing and shall be for the purpose of establishing a record of the employee's work performance. The employee's job description shall be a basis for the evaluation. When the District makes changes in job descriptions, they shall be given to the Union and the affected employees. If the changes involve additional certification or change the minimum qualifications for the position, the District will provide the Union with reasonable advanced notice and an opportunity to meet and discuss the impact of the change on current employees.

The evaluator shall review the written evaluation with the employee and provide the employee with a copy. The employee shall sign the evaluation acknowledging receipt. If the employee has objections to the evaluation, they may within thirty (30) calendar days following receipt of the evaluation put such objections in writing and have them attached to the evaluation report and placed in their personnel file.

B. The District will continue its practice and current policy of employee evaluations on regular and probationary employees. Should budget reductions result in the inability of the District to complete annual evaluations, the District may opt to perform evaluations every other year after written notification of such change to the Union.

C. Employee evaluations are not grievable.

On an annual basis, the District will provide an anonymous survey to allow employees to provide feedback on their work environment.

ARTICLE 14 – OVERTIME AND CALL BACK

A. OVERTIME

1. Overtime shall be compensated at time and one-half the employee's hourly rate of pay and will be paid for all work time scheduled by the District in excess of eight (8) hours in one day or forty (40) hours in one week. The overtime rate shall also apply to work performed on Saturdays and Sundays unless such days fall within an employee's regular workweek assignment.
2. The District will attempt to solicit volunteers prior to assigning mandatory overtime.
3. An employee scheduled to work on their regular day off shall be guaranteed a minimum of four (4) hours of work or actual time worked should the employee choose to leave sooner than four (4) hours.

B. CALL BACK

1. An employee called back to work after completing a shift shall be compensated at the greater of the following:
    a. Overtime rate times actual hours worked (which shall include reasonable time of travel to and from their home, not to exceed twenty (20) minutes each way); or
    b. Four (4) hours of straight-time pay or actual time worked should the employee choose to leave sooner than four (4) hours.
2. If the employee is called back to work on their regular day off, the minimum provided in A.2 will apply.

C. EXTENSION OF WORK YEAR

For employees in positions with a work year of less than twelve (12) months, work performed outside an employee's regular work year shall not be viewed as call back. Time worked beyond the normal work year is only paid at overtime rates under the circumstances described in paragraph A.1.

D. OVERTIME ON HOLIDAYS

An employee who works on a paid holiday (See Article 20) shall receive holiday pay plus their overtime rate for hours worked.

E. EXCEPTIONS TO THE MINIMUMS

Any minimum hours requirements in this Agreement shall not apply in situations where there is a lack of work due to power failure, lack of water, interruption of transportation services, or other utilities. This provision also includes acts of God and other situations and conditions beyond the control of the District such as restrictions imposed by municipal and other authorities including, but not limited to, curfews, evacuations, martial law etc. In these situations, pay shall be for time actually worked.

F. SHIFT ASSIGNMENTS

In the event multi-shifts are established within any department, employees in that department will be given the opportunity to indicate their shift preference. Shift assignments shall be determined first by asking for volunteers to work a particular shift. If there are more volunteers than are needed, when qualifications are equal, employees shall be selected based on seniority amongst the volunteers in the particular department. If there are not sufficient volunteers, then the District shall assign the least senior qualified employee in the department.

G. WEEKEND WORK

Work performed on Saturday or Sunday shall be compensated at the regular straight time rate unless such work is in excess of forty (40) hours in one workweek. The provisions of Article 15A.2. and 15B.2. do not apply. The District shall assign this work to employees who volunteer to work on Saturdays and Sundays.

ARTICLE 15 – LUNCH AND REST PERIODS

A. Employees (excluding head custodians) working five (5) or more hours per day shall be entitled to a minimum of one-half (1/2) hour duty-free lunch period without pay. Employees who are required to work during this time shall be compensated for such time worked unless the interruption is the result of employees choosing to take their lunch periods together.

B. Custodian In-service Training Days – Head Custodians will receive a minimum of one-half (1/2) hour duty-free lunch period without pay instead of an on-duty lunch when the In-Service Training is five (5) hours or more and the Head Custodian has been relieved of duties at their assigned school during the training.

C. Employees shall receive a fifteen (15) minute rest period during each four (4) hours of work not to exceed two (2) such breaks during a regular eight (8) hour day, unless unusual circumstances prevent the taking of a particular break.

ARTICLE 16 – LEAVES

Leaves provided under this Article are intended to meet the legitimate needs of employees and are granted to those employees who work on a regularly scheduled basis. The use of leaves

must be limited to instances of personal need and are not to be abused. Use of accrued leave in accordance with the provisions below shall not be cause for discipline and shall not be counted as an occurrence under the District's attendance policy; however, any abuses may be subject to the provisions of Article 10 - Discipline, Demotion and Discharge. "Abuse" is defined as being improper or excessive use of leave or a pattern of use which is improper or excessive.

The District shall respond to all employee leave requests within fourteen (14) calendar days.

Sections A and B of this Article are intended to comply fully with the requirements of Oregon's Paid Sick Time law. Should the District deem it necessary, the District may grant paid leave to ensure compliance with the minimum requirements of Oregon's Paid Sick Time law as circumstances may require and notwithstanding any provision of this Agreement.

A. SICK LEAVE

1. Employees in paid status at least fifty percent (50%) of the month or more shall accrue sick leave at a rate equivalent to one (1) day per month, based upon the employee's scheduled workday. The use of sick pay shall be limited to purposes provided in the Oregon Sick Time Law and BOLI regulations including medical or dental appointments. When possible, the employee should schedule medical and dental appointments outside working hours.

2. Employees who have completed one (1) full year of service with the District shall be accredited with the equivalent annual sick leave at the beginning of each fiscal year for twelve (12) month employees or school year for ten (10) month employees. If an employee uses the advance credit in excess of that which would be normal accrual and terminates employment or goes on a leave of absence without pay, the District shall be entitled to recover from the employee's final paycheck, an amount of money equal to the amount paid for overused sick leave. Employees who have not completed one (1) full year of service with the District shall be credited with accrued sick leave on a monthly basis.

3. There is no limit on the amount of sick leave which can be accumulated.

4. When an employee has exhausted their accumulated sick leave credits, s/he shall be entitled, in the event of illness, to receive one (1) day for each year of service at two-thirds (2/3) of their daily rate of pay. Each year's allowance may only be used once.

5. The District will establish a Sick Leave Bank for use by employees who have exhausted their sick leave. The Union can solicit voluntary contributions from employees up to seven hundred hours (700) hours per year. The Union may carry over from one (1) fiscal year to the next the remaining balance of the unused employee contributions to the Sick Leave Bank. At no time may the balance of the Bank exceed seven hundred (700) hours. The guidelines for use of the Sick Leave Bank will be jointly developed by the District and the Union which will include the following:

a. Use of hours from the Bank shall be only in cases of critical illness or injury of an employee.

b. The employee must have exhausted all of their accumulated sick leave and vacation hours.

c. To be eligible, an employee must have been employed by the District for three (3) years or more.

d. Request for use of the Sick Leave Bank will be jointly approved by the Union and the District. Request of less than five (5) days or more than thirty (30) days will not be approved.

e. The Bank will not be used in association with a Workers' Compensation claim.

f. Employees' contribution to the Bank shall not be for less than four (4) hours nor more than forty (40) hours.

g. An employee who contributes sick leave hours to the bank must retain five (5) days' worth of sick leave hours in their own sick leave account.

6. The District shall continue its election pursuant to ORS 238.350 (sick leave credit for retirement benefits).

7. If an employee utilizes sick leave for at least half the workdays in a month while receiving Workers' Compensation time loss benefits, the District will provide contractual insurance benefits for the month. An employee who uses sick leave shall be entitled to insurance benefits only if the sick leave is used continuously until the sick leave is exhausted or the employee returns to work. Employees who have an accepted Workers' Compensation claim and are receiving time loss payments at the time of the execution of this agreement shall be paid the supplemental payment for the maximum of 180 days.

B. OTHER PAID LEAVES

An employee who is on an authorized paid leave as provided by this Section shall receive no loss of pay or benefits.

1. Family Illness

All employees shall receive up to three (3) additional days per fiscal year with pay in case of illness of a member of the employee's immediate family. "Immediate Family" shall be interpreted to mean spouse, children, siblings, stepsiblings, parents, step parents, grandparents, grandchildren, in-laws and step in-laws, brothers and sisters of the employee, domestic partner, foster children, any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family

relationship, or any other person living in the home with the employee (use of this leave shall be for instances where care or attention by the employee is necessary). In the event that emergency conditions arise, an extension of family leaves shall be determined upon the merits of the individual case by the Office of the Superintendent. After utilizing the available days of family illness leave, the employee may charge against their accumulated sick leave when additional time is needed to provide care for a member of the employee's immediate family. The District may require a physician's statement verifying the illness of the family member.

2. Absence Due to Quarantine or Isolation

   An employee's absence from work because of quarantine or isolation to prevent the spread of a communicable disease by the appropriate public health official shall not be charged against the employee's sick leave and the employee shall suffer no loss in pay. Quarantine or isolation pay will not extend past the standard quarantine or isolation period established by the local public health authority, but in no event shall it exceed thirty (30) days.

   To qualify for quarantine or isolation pay under this Section, an employee must be fully vaccinated (if a vaccine is available) as defined under guidelines set by the federal and state health authority, including any boosters.

3. Funeral Leave

   a. An employee shall be permitted an absence of up to one (1) day to attend the funeral of a relative or friend. When, in their opinion circumstances demand it, the Supervisor shall authorize two (2) days' leave to attend the funeral of a relative.
   b. An employee shall be permitted five (5) consecutive days off with pay due to the death of an immediate family member as defined above (Article 16, B Other Paid Leaves, Section 1 Family Illness) Following an absence under this section of three (3) or five (5) days and upon request, an employee shall be permitted two (2) additional days of leave at two-thirds (2/3) of his/her scheduled salary. In the event of death during the employee's vacation time, the employee shall be entitled to the funeral leave provided by this Section in lieu of vacation time.

4. Emergency/Personal Business Leave

   Employees shall be entitled up to three (3) days' leave per work year without loss of pay under the following circumstances:

   a. Emergency Leave - In the case of unanticipated circumstances beyond the employee's control and for which prior planning cannot be made; or

5. Personal Business - For attending to matters which cannot be scheduled outside the employee's work hours and for which the personal attention of the employee is

required. In such cases, a request indicating the reason for the leave must be made to the responsible administrator at least twenty-four (24) hours in advance. Such leaves shall not be used for recreation, other employment, union or political activities, or to extend other leave categories as provided by this Agreement.

6. Mandatory Court Appearances

   a. An employee subpoenaed to appear as a court witness shall be excused from their work assignment without loss of pay, provided that the employee shall submit any witness fee received to the School District Business Office along with a copy of the subpoena. In cases where the employee is a plaintiff or defendant to the action, absence will be without pay or, at the employee's election, emergency leave as provided in Paragraph 4 of this Section. An employee required to appear in court as a co-plaintiff or co-defendant with the District shall be released without loss of pay.

   b. An employee subpoenaed for jury duty shall be excused from their work assignment without loss of pay provided that the employee shall submit any jury fee received to the School District Business Office along with a copy of the subpoena. On days when the employee is excused from jury duty, they shall report to their work assignment provided four (4) hours or more of their workday remains at the time they are excused; and provided that length of time on jury duty prior to excuse and his/her workday with the District shall not exceed their normal workday.

C. UNPAID LEAVES

Employees on unpaid leave shall not be entitled to use any accrued paid leave, except as provided in Section C.2 and C.3 of this Article.

1. Special Leaves of Absence

   Employees who have been continuously employed for two (2) or more years may apply for a special leave of absence without pay. The Superintendent or designee shall exercise their discretion in the granting of such leaves. Employees on such leaves shall not be permitted to engage in remunerative service without the approval of the Superintendent.

2. Childcare Leave

   a. An employee covered by this Agreement shall be eligible for a childcare leave (maternity, paternity or adoption) for up to six (6) months. The District may, upon written request, extend such leave for additional periods of time. An employee on childcare leave covered by OFLA may use accrued leave in the following order: sick, personal and then vacation.

   b. The District shall retain full control and authority to establish policies and

regulations in accordance with State statutes, regarding the administration of child care leaves. Such policies and regulations may include, but not be limited to: application procedures, requirements for physician statements, return procedures, etc. Such policies and regulations shall not be considered as part of this Agreement.

3. Federal Family Medical Leave Act and Oregon Family Leave Act

   Family medical leave shall be granted according to the provisions of the Federal Family Medical Leave Act and the Oregon Family Leave Act (FMLA and OFLA). If there is a conflict in the two (2) statutes, the employee gets the greater benefit. The District may require employees to utilize all accrued paid leave if on an approved FMLA/OFLA leave of absence. Leaves for FMLA and/or OFLA shall be used in the following order: sick, personal and then vacation.

4. Military Leave

   The District shall be solely responsible for the establishment of a military leave policy required by ORS 408.210 through 408.290.

D. RETURN FROM LEAVE

Employees shall be expected to return from leave immediately upon expiration of leave, unless there are circumstances beyond their control. Failure to return from leave or being absent from work without any grant of leave for three (3) or more consecutive days shall be considered job abandonment and the employee will be terminated.

Employees who are on an approved leave shall have the right to return to their position or one that is comparable in duties and responsibilities within twelve (12) calendar months. An employee who returns to duty following a leave shall be entitled to any step increases received by other employees within their classification provided s/he was continuously employed for at least one-half (1/2) of their designated work year immediately prior to beginning the leave.

ARTICLE 17 – INSURANCE

A. The District will offer medical, dental and vision benefits to benefit-eligible employees as specified in this Article.

B.
Insurance for Full-Time Employees. For employees who are scheduled to work at least thirty (30) hours per week and have been employed at least sixty (60) days, for the benefit plan year Oct. 1, 2023–Sept 30, 2024, the District will continue to provide the medical, dental, and vision benefits described during open enrollment. Employees will continue to pay the established employee's share during the 2023-2024 benefit plan year.

Effective October 1, 2024, the District will contribute the full actual cost of employee medical, dental, and vision premiums for eligible employees who elect employee-only coverage. Eligible employees who elect any other coverage level will contribute three percent (3%) of the total monthly premium cost, and the District will contribute the remaining amount.

C. Insurance for Part-Time Employees. Effective October 1, 2024, employees who are regularly scheduled to work between 20 and 29 hours per week and have been employed at least sixty (60) days, may elect part time medical, vision and dental insurance at the employee-only coverage level. Eligible employees who elect employee-only coverage will contribute ten percent (10%) of the total monthly premium cost, and the District will contribute the remaining amount.

D. INSURANCE COMMITTEE

1. The Insurance committee shall be composed of three (3) bargaining unit members and one SEIU staff person and up to four (4) District employees. Bargaining unit members shall be released on paid time for a maximum of two (2) hours each to meet on insurance committee matters. Within two weeks of receiving the rates for the following benefit year, the District will provide SEIU with an opportunity to meet and discuss available plans, structure and premiums for the upcoming fiscal year. The District will select the insurance plan(s) and carrier(s) to offer, but will make reasonable efforts to maintain benefits that are substantially similar to those offered the previous year.

E. The District will announce the employee contribution for each plan during open enrollment. The employee contribution will not change during the benefit year.

F. WORKERS' COMPENSATION

All employees of the District are eligible for State Workers' Compensation benefits. For absence due to a compensable injury as defined in ORS Chapter 656, an employee shall retain the compensation check which s/he receives for time lost. An employee may supplement his/her compensation check with accrued accumulated sick leave. Coordination of Workers' Compensation benefits and Sick Leave Benefits shall be in accordance with applicable state regulations. An employee who is injured on the job shall have the right for a period set forth by the Workers' Compensation statutes to return to a position similar to the one s/he occupied but subject to seniority provisions of Article 19 - Reduction Of Staff.

G. LIFE INSURANCE AND LONG-TERM DISABILITY BENEFIT

The District will pay the cost of life insurance and long-term disability benefits for all full-time employees eligible for health insurance benefits.

ARTICLE 18 – SAFETY

A. SAFETY

In the interest of safety and the well-being of students, employees and the public, the District and the Union agree to the objective of a safe and healthy workplace. The District shall maintain safe and healthy working conditions in accordance with all established Board policies, Federal and State regulations. The District and employees covered under this Agreement should work to avoid or minimize hazards. An employee's failure to comply with safety standards when flagrant, deliberate or repeated, may have disciplinary consequences. The District has an obligation to make the standards known to the employees through training programs and hands-on training.

B. PHYSICAL EXAMINATIONS

In the interest of safety and the well-being of students, employees and the public, the District and the Union agree to the objective of a substance-free workplace. The District, at its discretion, may require that new employees have a physical examination including substance testing once a job offer has been made. Such examination of a current employee(s) may also be required with reasonable suspicion based on specific, articulable observations. The District will pay the cost of all District required physical examinations and substance testing.

C. The District will pay for the costs of record checks and fingerprinting of existing employees as required by State law.

D. Custodians. The parties acknowledge the requirements under the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL").

E. PROPERTY LOSS

The District shall reimburse employees for loss of personal property, excluding the employee's automobile, which occurs while the employee is on duty under the following circumstances:

1. When the loss is a result of any unwarranted assault on the employee's person suffered while on duty.

2. Property stolen by the use of forcible entry on a locked container on District Property.

Reimbursement shall be at replacement costs (not exceeding actual cost) less any insurance or Workers' Compensation reimbursement. Reimbursement shall not be made for losses less than five dollars ($5.00) or that portion in excess of four hundred dollars ($400.00) and shall not be made when carelessness or negligence on the part of the employee was evident.

Employees shall cooperate and support the District in its investigation and resolution of any

reported loss. The District will provide assistance in attempting to investigate and/or reclaim other stolen or damaged personal property including automobiles.

F. Employee Complaints. All employee complaints made against another employee must be submitted pursuant to District policy and this agreement. For harassment complaints, the District will evaluate whether a safety plan is appropriate. The District will not require the complainant to move work locations as part of any safety plan.

G. Temperature of the Workplace. Labor Management Committee meetings may include workplace temperature as a discussion topic. For heat management, PPS will follow the OSHA Heat Illness Prevention Rule and the PPS Heat Illness Prevention Plan including the following:

1. Access to shade when the heat index is at/above 80 degrees Fahrenheit;
2. Ensuring that each employee takes health illness prevention rest breaks, regardless of the length of the shift if the heat index is at or above 90 degrees; and
3. If a supervisor observes signs or an employee reports symptoms of heat illness, the employee must be relieved from duty and provided with a means to reduce body temperature.

This subsection G is intended to align with the OSHA Heat Illness Prevention Rule and the PPS Heat Illness Prevention Plan.

ARTICLE 19 – REDUCTION OF STAFF

DEFINITIONS

For clarity purposes, the following definitions shall apply:

A. “Department” — For purposes of this procedure the parties shall recognize two (2) departments:

1. Nutrition Services;
2. Custodians

B. “Vacancy” — An unoccupied position/job that the District has decided to fill.

C. “Seniority” — Length of an employee’s continuous employment with the District from that employee’s most recent date of hire

D. “Bump” — The act of a senior employee displacing an employee with less seniority.

E. “Layoff” — An employee is considered to have been laid off when he/she is no longer actually working any hours for the District as a result of the reduction of the work force.

F. “Voluntary Lay Off” — An employee who would otherwise have not been laid off may opt to

be voluntarily laid off.

G. "Recall rights" — Except as otherwise noted herein, laid off employees shall retain recall rights for a period of twenty-four (24) calendar months from the date of layoff. Employees who have exercised a voluntary lay off shall be deemed to have quit and shall relinquish all recall rights.

GENERAL PROVISIONS

A. In the event staff reductions become necessary, the District will lay off personnel in the inverse order of seniority by classification. The Union shall be provided the opportunity to consult with the District when the necessity of such reductions is determined. Two (2) weeks' written notice of layoff shall be given to each employee to be laid off under the provisions of this Article. Persons given such notice may not exercise the paid leave provisions of Article 17 - Leaves, except for sick leave when supported by a doctor's statement, funeral leave in case of immediate family, quarantine, mandatory court appearances or jury duty.

B. An employee whose position is eliminated, but retains his/her employment due to his/her seniority, and who rejects an assignment of equal wage rate and classification shall be deemed to have resigned and forfeit all rights under this Article.

REDUCTION IN FORCE PROCEDURE

A. The District will terminate all temporary employees replacing regular employees on leaves of absence prior to laying off any regular employee.

B. Unassigned employees will be allowed, on the basis of seniority, in the following order, to:

1. Fill a vacant position in the same classification. If such vacancy does not exist, the employee may:

2. Bump the least senior employee in the same classification. If there is no one with less seniority in the same classification in the department, the employee may:

3. Bump the least senior employee in the next lowest classification. If there is no one with less seniority in a lower classification in the department, the employee may:

4. Request a voluntary lay-off.

5. Employee will move to layoff status.

C. The parties specifically recognize that an employee affected by the "bumping" process is not the less senior; rather, it is the least senior employee.

D. An employee who moves to a new position must be able to perform the duties of that

position in a satisfactory manner within a two (2) week trial period. If the District disqualifies the employee he/she shall retain the right to bump one (1) more time. If an employee self-disqualifies he/she shall move to layoff status.

E. Civil Service Custodian: A Civil Service Custodian who bumps into a lower Civil Service classification shall retain his or her previous rate until a position in the original classification is offered. A Civil Service custodian bumped into a Non-Civil Service position will be paid at the next lower wage rate in the lower wage range.

RECALL FROM LAYOFF

A. An employee who is laid off shall be recalled by the District based upon seniority within the classification from which s/he was laid off.

B. Employees laid off shall retain such right of recall for a period of twenty-four (24) calendar months from the date of layoff. Employees recalled by the District shall be reinstated with seniority rights accumulated as of the date of their layoff. Any employee recalled by the District who rejects such an assignment shall be deemed to have quit and shall relinquish all recall rights provided in this Article and Agreement.

C. Civil Service Custodians: A Civil Service Custodian laid off or bumped into a lower classification, including a non-civil service classification, shall retain such right of recall and shall be placed on the eligible list of the civil service board and be appointed (without interview) according to seniority as provided by the Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL"). Employees recalled by the District shall be reinstated with seniority rights accumulated as of the date of their layoff. Any employee recalled by the District who rejects such an assignment shall be deemed to have quit and shall relinquish all recall rights provided in this Article and Agreement unless the rejection is due to a reduction of hours by at least one (1) hour per day.

D. An employee who is laid off and recalled by the District into an assignment with reduced hours of at least one (1) hour per day, may reject the assignment, and retain all recall rights provided in this Article and Agreement.

VOLUNTARY LAYOFF

A. Rather than accept a move to another position, an employee may opt to be voluntarily laid off. The District agrees it will not protest the unemployment compensation claim of any employee who chooses to be voluntarily laid off. These employees shall be deemed to have quit and shall relinquish all recall rights.

ARTICLE 20 – VACATIONS AND HOLIDAYS

A. Full-time employees who are employed on a twelve (12) month basis shall receive vacation with pay as follows:

Years of Service	Monthly Accrual	Annual Accrual

1-5	years of service	6.7	hours	10	days
6	"	7.4	"	11	"
7	"	8.0	"	12	"
8	"	8.7	"	13	"
9	"	9.4	"	14	"
10	"	10.0	"	15	"
11	"	10.7	"	16	"
12	"	11.4	"	17	"
13	"	12.0	"	18	"
14	"	12.7	"	19	"
15	"	13.4	"	20	"
16	"	14.0	"	21	"
17	"	14.7	"	22	(max.)

Employees shall accumulate vacation credits at the appropriate above monthly accrual rate following completion of each month worked. For employees with dates of hire after the first working day of a month, accrual shall begin (and/or be increased to the next step) the following month. For the purpose of this Article "month worked" shall mean on-the-job time, vacation time and authorized paid leave. Employees may carry over from one (1) fiscal year to the next the equivalent of two (2) year's vacation accrual.

For both full-time and part-time employees, vacations must be scheduled through an employee's supervisor. A supervisor may require that vacations be scheduled at a time least disruptive to the department to which the employee is assigned.

An employee who occupies a position having a work year of less than twelve (12) months and who transfers to a twelve (12) month assignment may count the time employed in the previous assignment as qualifying for vacation allowance. The basis for this allowance shall be the number of days worked in the previous position divided by a 21.75-day calendar month. This will be converted to years of service and the employee shall commence to accrue vacation credits at the monthly rate shown above.

Part-time employees. Part-time employees earn vacation time if they are in assignments designated by the District to be a twelve (12) month assignment. The maximum accrual rate is 6.7 hours per month prorated according to the employee's normal work schedule. The proration is determined by comparing the part-time employee's normal work schedule to the normal full-time work schedule. Vacation is not earned in any year that the employee is absent from work due to unpaid leave or voluntary furlough or voluntary layoff (for example, during holiday vacation periods). Extra hours worked during periods schools are in recess shall not count towards vacation accrual. For employees in positions that are designated as twelve (12) month positions, accrual shall commence the beginning of the month, provided the employee was in the assignment for at least half of the preceding month. A part-time employee who transfers to an assignment of less than twelve (12) months or who terminates employment shall be given vacation time off work prior to the transfer or termination or be paid for any accrued vacation. The District has no obligation to continue any part-time twelve (12) month assignment and there is no implied right to any

part-time employee to be placed in a twelve (12) month assignment.

B. HOLIDAYS

1. Employees shall receive the following paid holidays subject to the provisions below:

Labor Day
Veterans' Day
Thanksgiving Day
Christmas Day
New Year's Day
Martin Luther King, Jr. Day
President's Day
Memorial Day
Juneteenth
Independence Day

Regularly employed hourly employees shall receive full pay for holidays.

- Employees shall receive holiday pay provided the observed holiday falls on a scheduled workday of an employee and that the employee worked or was on an authorized paid leave the nearest scheduled workday immediately before and following the observed holiday.

2. The District reserves the right to change the days designated as paid holidays provided that in so doing it does not reduce the number of paid holidays. Thirty (30) days prior to implementing such change, the District shall notify the Union of the reasons therefore and provide opportunity for consultation.

3. Employees who are members of a religious faith may use the leave provisions of Article 16B.4.B - Personal Business Leave for participation in religious observances when such participation during the workday is required by that faith.

ARTICLE 21 – COMPENSATION

A. PERSONAL VEHICLES

Employees who are required to use their personal vehicles for travel on behalf of the District during on-duty time shall be reimbursed by the District. The District may require as a condition for reimbursement that the employee provide a certificate of insurance showing that the employee has basic liability coverage equal to or greater than minimum amounts required by District policy or regulation. Reimbursement shall be at the rate established by the District or Internal Revenue Service, whichever is higher.

B. TRI-MET

The District shall continue its pre-tax program for Tri-Met passes to the extent such current program is offered by Tri-Met.

C. BONUS PAY

The District may implement a bonus pay program for a group of employees (such as employees assigned to a particular school) to receive additional compensation above their normal wage.

D. WORK WEAR

Nutrition Services - The District agrees to furnish and maintain aprons for all nutrition services employees. If the District requires chef or lab coats, it shall provide them. The District will not implement any changes to the Nutrition Services uniforms without mutual consent of the Union.

E. SCHOOL OR SITE CLOSURE DUE TO INCLEMENT WEATHER

1. Custodian – All custodians are expected to report for their regularly scheduled shift when the school or site is closed for inclement weather. All custodians who report to work when the school or site is closed for inclement weather will receive 1.5 times their base rate of pay for all hours worked. If a custodian believes attempting to travel to the school or site would create a substantial safety risk, the custodian must notify their immediate supervisor and will be permitted to use vacation, emergency/personal business leave, or leave without pay.

2. Nutrition Services – In the event the District closes school for inclement weather, Nutrition Services employees will not report to work and will be permitted to use available personal/emergency leave.

F. DISASTER TIME

1. Disaster Time pay will be implemented when: A state of emergency is declared by the City of Portland, Multnomah County, the State of Oregon, or the federal government, in which the area covered by the emergency declaration includes the service area of Portland Public Schools; and PPS has declared an All PPS Closed day, which includes BESC/central operations.

2. All custodians are expected to report for their regularly scheduled shift when disaster time is implemented. If a custodian believes attempting to travel to the school or site would create a substantial safety risk, the custodian may notify his or her immediate supervisor and will be permitted to use vacation, emergency/personal leave, or leave without pay.

3. Custodians will be paid their straight time hourly rate in addition to his or her regularly monthly pay when disaster time is implemented unless the custodian does not report to work as permitted under Section G.2 of this Article.

G. LONGEVITY PREMIUM

1. Employees who have 15 or more consecutive years of service with the District from the employee's start date will receive longevity premium pay in the amount of one percent (1%) of the employee's base rate of pay.

ARTICLE 22 – NUTRITION SERVICES EXTRA WORK

A. EXTRA WORK

Definitions:

For clarity purposes, the following definitions shall apply:

"Down day" — Any day a school site or "department" is closed down for operations.

"Limited available work" — Regularly scheduled days when the workload is drastically limited. Examples include but are not limited to: Parent-Teacher conference days, testing days, and Outdoor School.

"Regularly scheduled work day" — A day an employee would have been scheduled to work if there were NOT "limited available work".

"Prescheduled in-service training" — Management sponsored in-service training scheduled on a "down day" at least one (1) calendar month in advance.

1. Nutrition Services employees whose "regularly scheduled work day" has the number of hours greatly reduced due to "limited available work," or has a "down day," may be assigned to work at another location.

    a. Nutrition Services Lead Assistants will report all "regularly scheduled days" with "limited available work" to their manager at least twenty-four (24) hours prior.

    b. The District will make assignments with consideration given to employee classification, regular schedule, transportation limitations, distance from employee's home, etc.

    c. When all else is equal, assignments shall be made on the basis of classification and seniority.

    d. Employees or substitutes working in a position on a temporary basis will not be displaced by an employee whose work schedule is reduced due to "limited available work".

ARTICLE 23 – TRANSFERS AND VACANCIES

Nutrition Services Employees
Custodians See Applicable
Provisions of CCSL

When a vacancy exists because of a transfer, promotion, demotion, resignation or termination, the District agrees to fill the position within sixty (60) working days. When filling vacancies, the District agrees that if all other factors are equal, seniority will be used to decide placement. The District will consider employee preference when assigning work locations.

A. JOB POSTINGS

Vacant positions shall be posted for the purpose of providing opportunity to existing employees to make application for such positions. The vacant position excluding temporary positions, will be posted for at least five (5) working days prior to the closing date. The listing shall include a job summary, the location, actual hours (subject to change based upon operational needs) and the classification for the particular position. The job posting shall be sent to each worksite with a copy to the Union. Employees who are interested in a position shall make their desire known by applying for the position.

B. WORK LOCATION

For Nutrition Services employees, the District will notify employees of their work location at least two (2) weeks prior to the first day students attend classes at the beginning of each school year.

C. TRANSFERS

Employees may request a transfer to a specific location or geographic region. Such requests may be filed at any time. Employees may inquire of their department regarding the transfer procedure, posting process, the status of their transfer request, or the reason they have not been selected for a position and will receive a response within ten (10) days. The District agrees the difficulty in backfilling a transferee will not be considered when filling positions.

In cases of District-initiated changes to an employee's regular work location, the District will consider employee preference to the extent practicable while ensuring that the operational needs of the District are met. The District will provide at least five (5) calendar days' advanced notice prior to changing an employee's regular work location except in cases of emergency appointment or building need. Upon request, the District will provide the written reason(s) for any change to an employee's regular work location. Such requests must be made within five (5) calendar days of the change.

D. There shall be a two (2) week trial period for an employee accepting a transfer or a promotion. During or at the end of the two (2) week period, the employee may elect to

return to his/her previous assignment or the administration may return the employee to his/her previous assignment as long as the decision to do so is not arbitrary or capricious.

E. CUSTODIANS

Custodians' Civil Service Law, ORS 242.310-640 & 242.990 ("CCSL") will be followed for vacancies.

ARTICLE 24 – DURATION

A. Except as may otherwise be provided for in this Article, this Agreement shall become effective upon ratification and shall continue in effect through 11:59 PM on June 30, 2026.

B. Should there be an intervening change in the law which would significantly reduce the District's revenue, and thus, its fiscal stability below the level being planned for at the time of the execution of this Agreement, the parties agree to reopen the negotiations on salaries.

APPENDIX A – NUTRITION SERVICES

A. Nutrition Services Wages

Effective 7/1/23 Wages include an 8.5% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$22.88	$23.46	$24.05	$24.66	$25.28	$25.92	$26.57	$27.24	$27.93	$28.63
Assistant	$18.72	$19.19	$19.67	$20.17	$20.68	$21.20	$21.73	$22.28	$22.84	$23.42

Effective 7/1/24 Wages include a 4% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$23.80	$24.40	$25.01	$25.64	$26.29	$26.95	$27.63	$28.33	$29.04	$29.77
Assistant	$19.47	$19.96	$20.46	$20.98	$21.51	$22.05	$22.61	$23.18	$23.76	$24.36

Effective 7/1/25 Wages include a 3% COLA increase

Position/Step	1	2	3	4	5	6	7	8	9	10
Lead	$24.52	$25.14	$25.77	$26.42	$27.09	$27.77	$28.47	$29.19	$29.92	$30.67
Assistant	$20.06	$20.57	$21.09	$21.62	$22.17	$22.73	$23.30	$23.89	$24.49	$25.11

1. Effective July 1, 2023, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table plus any applicable premium pay as specified in Section D (Premium Pay) of Appendix A. Step 1 of the Wage Table

reflects an 8.5% increase to the 2022-2023 base wage for the Nutrition Services Lead position and the Nutrition Services Assistant position.

2. Wage Scale Placement for Current Employees.

    a. Effective July 1, 2023, Nutrition Services employees will be placed on the wage scale based on years of service in their classification. For example, a Nutrition Services Lead who has completed three full years of employment with the District in their classification, and is currently in their fourth year of employment in the classification, will be placed on Step 4 of the wage scale for Nutrition Services Lead classification.

3. Newly hired employees will be placed on Step 1 for their classification.

4. Employees who are promoted from the Nutrition Services Assistant classification to the Nutrition Services Lead classification will be placed at the step that results in a minimum 2.5% increase in compensation.

5. Effective July 1, 2024, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table. This wage scale reflects a July 1, 2024, increase of four percent (4%). Employees who have not reached the top step will advance one step on the wage table.

6. Effective July 1, 2025, Nutrition Services employees will be paid according to the rate in the Nutrition Services wage table. This wage scale reflects a July 1, 2025, increase of three percent (3%). Employees who have not reached the top step will advance one step on the wage table.

7. Employees whose salaries are above the top step will be frozen at their wage rate for the life of the agreement.

B. WORK YEAR

By May 30, the District shall attempt to notify employees, whose work year corresponds with the school year, of the intended employment status including, but not limited to, work hours and location with the District for the following school year. Failure by the District to provide such notice of changes in the staffing plans following issuance of notification will not interfere with the authority of the District to reassign or lay-off an employee.

The Board retains the right and authority to change the days on which school shall be held and to make any adjustments to the work year. In the event of adjustment to the work year, the District shall consult with the Union before implementing any change, and the salaries set forth in this Agreement shall be adjusted for the added or deleted days on the basis of the employee's daily rate under said salary schedules.

C. SUMMER PROGRAM WORK

Employees who work in the summer program in a lower classification than during the regular school year shall be paid the maximum rate of the lower classification including longevity and/or certification pay for which they are eligible. Monitors shall be paid at the Roving Lead rate in the wage table. By April 1, the administration will inform employees of the application procedures to be followed for any summer program vacancies. If the administration determines that the qualifications of two or more employees are equal, the most senior employee will be selected. By June 1, the administration shall distribute to all worksites and to the Union a listing of those employees selected to work or be on-call for the summer program. Employees in the USDA summer program working the day prior to and immediately after Juneteenth and/or July 4 shall receive holiday pay for the holiday.

D. PREMIUM PAY

1. The standard day shift shall begin between 5:00 am and 12:00 noon. Employees working eight (8) hour shifts beginning at other times shall receive an additional seven percent (7%) of their base salary.

2. Persons holding School Nutrition Association certification of Level I or higher on July 1, 2017 shall receive additional compensation of fifty cents ($.50) per hour through the duration of this agreement.

3. Employees who serve in a department committee leadership role will receive additional compensation of fifty cents ($.50) per hour while performing the leadership role

4. Roving Leads- The department will guarantee each roving lead a minimum of six (6) hours of work on a daily basis throughout the regular school year, with the exception of in-service and other odd scheduled days. NS Lead in a Roving position will receive a one dollar per hour ($1.00) premium for all hours worked in the position.

E. TRAINING

Some or all of the fees for educational classes directly related to the improvement of job skills, as approved in advance by the Director, shall be reimbursed to the employee upon submission of evidence of satisfactory completion of said classes.

APPENDIX B – CUSTODIANS

Wages include a 6% COLA increase

Effective 7/1/2023	1	2	3	4	5	6	7	8	9	10
Position/Step										
Head Custodian D	27.05	27.97	28.91	29.90	30.91	31.96	33.06	34.18	35.33	36.54
Head Custodian C	24.57	25.40	26.26	27.15	28.08	29.04	30.02	31.04	32.10	33.18
Head Custodian B	22.32	23.08	23.87	24.67	25.51	26.38	27.28	28.20	29.17	30.15
Head Custodian A	21.32	22.04	22.79	23.57	24.37	25.20	26.06	26.94	27.86	28.81

High School Lead	21.32	22.04	22.79	23.57	24.37	25.20	26.06	26.94	27.86	28.81
Custodian	20.37	21.06	21.78	22.52	23.28	24.08	24.89	25.74	26.61	27.51

Wages include a 3% COLA increase

Effective 7/1/2024	1	2	3	4	5	6	7	8	9	10
Position/Step										
Head Custodian D	27.87	28.81	29.78	30.80	31.84	32.92	34.06	35.21	36.39	37.64
Head Custodian C	25.31	26.17	27.05	27.97	28.93	29.92	30.93	31.98	33.07	34.18
Head Custodian B	22.99	23.78	24.59	25.42	26.28	27.18	28.10	29.05	30.05	31.06
Head Custodian A	21.96	22.71	23.48	24.28	25.11	25.96	26.85	27.75	28.70	29.68
High School Lead	21.96	22.71	23.48	24.28	25.11	25.96	26.85	27.75	28.70	29.68
Custodian	20.99	21.70	22.44	23.20	23.98	24.81	25.64	26.52	27.41	28.34

Wages include a 3% COLA increase

Effective 7/1/2025	1	2	3	4	5	6	7	8	9	10
Position/Step										
Head Custodian D	28.71	29.68	30.68	31.73	32.80	33.91	35.09	36.27	37.49	38.77
Head Custodian C	26.07	26.96	27.87	28.81	29.80	30.82	31.86	32.94	34.07	35.21
Head Custodian B	23.68	24.50	25.33	26.19	27.07	28.00	28.95	29.93	30.96	32.00
Head Custodian A	22.62	23.40	24.19	25.01	25.87	26.74	27.66	28.59	29.57	30.58
High School Lead	22.62	23.40	24.19	25.01	25.87	26.74	27.66	28.59	29.57	30.58
Custodian	21.62	22.36	23.12	23.90	24.70	25.56	26.41	27.32	28.24	29.20

In implementing the provisions of the above salary schedules for custodians, the parties agree to the following:

1. Effective July 1, 2023, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects an increase effective July 1, 2023 of six percent (6%). Employees who have not reached the top step will advance one step on the Salary Schedule.

2. Effective July 1, 2024, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects a July 1, 2024, increase of three percent (3%). Employees who have not reached the top step will advance one step on the Salary Schedule.

3. Effective July 1, 2025, custodians will be paid according to the rate in the Custodians wage table in Appendix B. This wage scale reflects a July 1, 2025, increase of three percent (3%). Employees who have not reached the top step will advance one step on the Salary Schedule.

8. Employees whose salaries are above the top step will be frozen at their wage rate for the life of the agreement.

4. Any employee who is promoted will move to the next highest pay in the new range

that results in a minimum of a 3.4% increase.

A. SHIFTS AND WORKWEEK

1. Shifts for head custodians shall be eight (8) hours including an on-duty lunch, and shall commence no later than 6:30 am, with the exception of Custodial training days. Shifts for other custodians shall be eight (8) hours plus one-half (1/2) hour lunch. An additional one dollar ($1.00) per hour will be paid for hours worked by custodians between midnight and 5:00 am.

2. Each custodian shall be assigned to a shift with a regular starting and ending time. Except in cases of transfer, promotion or emergency, the beginning and ending time of a shift shall not be changed by the Administration without fourteen (14) calendar days' notice to the employee, except when mutually agreed upon.

3. The usual workweek for custodians shall be Monday through Friday. An employee's scheduled workweek shall not be changed without two (2) weeks' advance notice and shall remain so changed for at least three (3) months, unless both the employee and the department agree.

B. SPECIAL SALARY PROVISIONS

1. A custodian employee temporarily assigned to substitute or act in a higher classification shall receive seven dollars ($7.00) per day plus one dollar ($1.00) for each additional level. Example: A Custodian acting as a Custodian "B" will receive a total of eight dollars ($8.00) additional compensation. Such additional compensation shall be payable as follows:

   1 through 2 hours = no additional compensation
   3 through 5 hours = one-half (1/2) additional compensation
   6 through 8 hours = full additional compensation

A custodian substituting or acting in a higher classification for more than twenty (20) consecutive workdays shall receive the next highest pay in the new range for the position in which they are substituting or acting, or the daily rate specified in this section, whichever is higher. Such pay shall commence on the twenty-first (21st) workday.

2.

a. Employees required to travel from one school or administrative building to another will receive an additional four dollars ($4.00) per day for transportation and an additional three dollars ($3.00) for each subsequent trip per day.

b. Custodians assigned responsibility for lock up at a high school shall receive an additional two dollars ($2.00) per day.

c. A custodian who is being promoted to the position of "D" Head Custodian shall be allowed one (1) week orientation in the new position prior to assuming the

full responsibility provided that the resigning “D” Head Custodian has given the District at least five (5) weeks’ written notice of his/her resignation. During the two-week period, the custodian being promoted shall be paid his/her new regular salary as a “D” Head Custodian.

d. A Head Custodian that is regularly assigned to the Mobile Head Custodian assignment will be paid the Head Custodian C rate at the step that is at least three and four tenths percent (3.4%) higher than the Head Custodian’s current rate.

C. Custodians required to attend in-service classes relating to their work assignment shall be compensated at time and one-half (1-1/2) of their regular rate when such participation occurs after eight (8) hours of work in one (1) day or forty (40) hours of work in a week.

D. A ten (10) hour day, four (4) day workweek schedule may be implemented upon mutual agreement of the Union and the District.

E. “D” Head Custodians may select from their assigned crew the helpers to be assigned on the day shift.

F. The District shall approve vacations as requested by the employee based upon operational needs. Such request shall not be arbitrarily denied and the reason for the denial shall be provided to the employee. Use of vacation leave is subject to the supervisor’s approval. An employee may request to use vacation leave at any time. However, where the use of vacation leave is planned and foreseeable, an employee should request leave at least two (2) weeks in advance. In case more requests are received than can be approved for a particular period, the employer shall approve requests in order of receipt, or by seniority where requests are received on the same date.

G. Employees may request a transfer to a specific site or geographic region. Such requests may be filled at any time. Employees may inquire of their department, questions regarding the transfer procedure, the status of their transfer request, or the reason they have not been selected for a position.

H. Buildings are generally classified according to the following criteria:

A building = less than 45,000 sq. ft.
B building = 45,000 - 74,999 sq. ft. or 500-600 students
C building = 75,000 – 200,000 sq. ft. or more than 600 students
D building = more than 200,000 sq. ft.

The District or the Union may request that a building/site be reclassified upward and the District and Union may, through mutual agreement, amend this section of the agreement.

No employee will suffer a loss of pay due to the reclassification of the building to a lower classification. When a building is reclassified upward, a vacancy will be identified by the

District and the Custodian Civil Service Law will be followed. The following listing of buildings by classification shall be reviewed and updated upon ratification of this Agreement and shall be effective for the duration of this Agreement:

A BUILDINGS	B BUILDINGS	C BUILDINGS	C BUILDING CONT.	D BUILDINGS
Applegate	Abernethy	Ainsworth	Sellwood	Benson High School
Chief Joseph	Astor	Alameda	Sunnyside	PEC
Clarendon	Atkinson	Arleta	Tubman	Cleveland High School
Columbia	Bridger	Beach	Vernon	Franklin High School
East Sylvan	Bridlemile	Beaumont	Vestal	Grant High School
Hollyrood	Capitol Hill	Boise-Eliot	West Sylvan	Jackson Middle School
Humboldt*	Clark	Buckman	Woodlawn	Jefferson High School
Maplewood	Forest Park	Chapman	Youngson	Lincoln High School
Meek	Glencoe	Chavez		McDaniel High School
Rieke	Hayhurst	Creston		Marshall High School
Sacajawea	Irvington	DaVinci		Roosevelt High School
Stephenson	James John	Duniway		Wells High School
Wilcox/Rice	Kenton	Faubion		
Terwilliger	Lee	Fernwood		
	Lewis	George		
	Marysville	Gray		
	MLC	Grout		
	Ockley Green	Harrison Park		
	Peninsula	Hosford		
	Rosa Parks	Kellogg		
	Rose City Park	Kelly		
	Sabin	King		
	Scott	Lane		
	Sitton	Laurelhurst		
	Skyline	Lent		
	Whitman	Llewellyn		
	Winterhaven	Markham		
	Woodmere	Mt. Tabor		
	Woodstock	Richmond		
		Rigler		
		Roseway Heights		

* Denotes Leased Site

Signature Page

[Insert following ratification]

4862-1606-8432, v. 3

RESOLUTION No. 6836

Resolution to approve Portland Public Schools' application for the 2023-25 Jumpstart Biennium of the Oregon Department of Education's Early Literacy Success School District Grant

RECITALS

A. The Early Literacy Success School District Grants are a new funding opportunity from the Oregon Department of Education (provided by HB 3198 (2023)). These are non-competitive, two-year grants-in-aid available to Oregon school districts to support comprehensive early literacy plans that are research-based, culturally responsive, and in alignment with our state Early Literacy Framework.
B. The Oregon Department of Education requires the Board of Education to approve the application and submit the minutes to complete our district application process by February 28, 2024.
C. The Board of Education reviewed the Early Literacy Grant Application on January 23, 2024 at an open meeting with the opportunity to provide public comment.

RESOLUTION

The Board of Education hereby approves Portland Public Schools' application for the 2023-25 Jumpstart Biennium of the Oregon Department of Education's Early Literacy Success School District Grants.

PPS Early Literacy Success Grant Application

PORTLAND
Public Schools

January 23, 2024

Presentation Overview

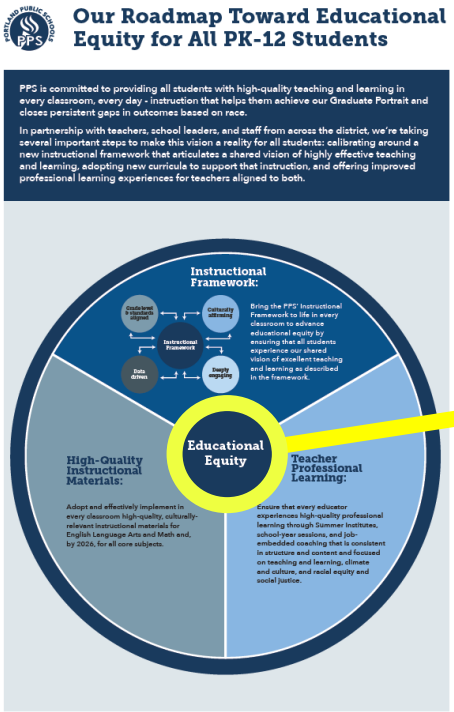
Agenda:

- Overview of ODE's Early Literacy Success District Grant
- PPS Early Literacy Plan (current state & next steps)
  - Research-Aligned Curriculum
  - Professional Development & Coaching
  - Extended Learning Programs
  - High-Dosage Tutoring
  - Hiring
- Budget Review

Presenters:

- Kristina Howard, Interim Chief Academic Officer
- Dr. Emily Glasgow, Senior Director PreK-5 Core Academics
- Melissa Schachner, Director K-5 English Language Arts & Social Studies
- Darcy Soto, Director Learning Acceleration

Our Why: Educational Equity

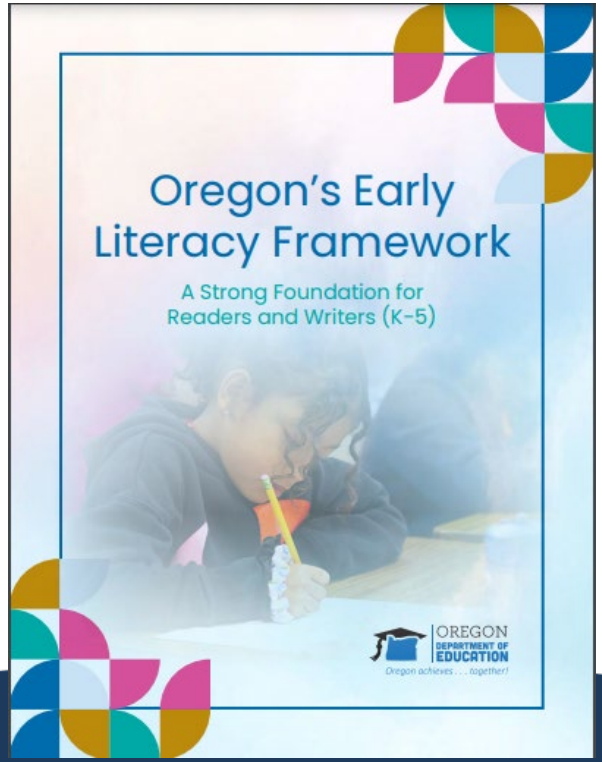


Raising the achievement of all students while (1) eliminating the gaps between the lowest and highest performing students and (2) eliminating the racial predictability and disproportionality of which student groups occupy the highest and lowest achievement categories.

OR Early Literacy Success Initiative (HB 3198)

In 2023, the OR Legislature established early literacy as a top priority. In creating the **Early Literacy Success Initiative**, they identified four goals:

1. Increase early literacy for children from **birth to third grade**;
2. Reduce literacy **academic disparities** for student groups that have historically experienced academic disparities;
3. Increase **support to parents and guardians** to enable them to be partners in the development of their children's literacy skills and knowledge; and
4. Increase access to early literacy learning through support that is **research-aligned, culturally responsive, student-centered and family-centered**.



Early Literacy Success School District Grant

Overall ODE Information:

(application guidance)

What: Non-competitive, application-based, annual grant-in-aid for school districts

Why: To support comprehensive early literacy plans that are research-based and culturally responsive

When: Application due Jan. 8, 2024 (Board review/approval submitted by Feb. 28, 2024)

How much: $90 mil for 2023-25 biennium

PPS Information:

What: Use of funds to supplement and extend existing investments in early literacy

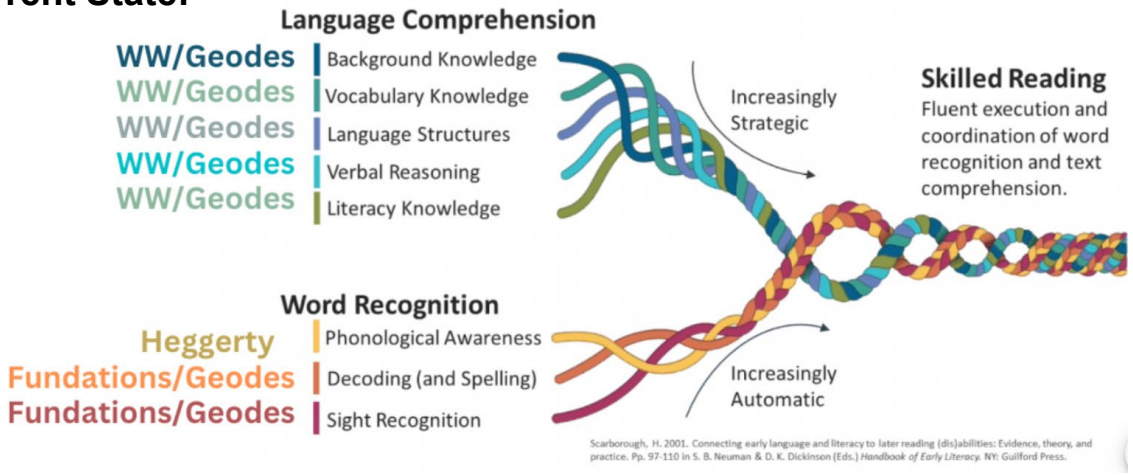
When: Application submitted on Jan. 5, 2024 (Board review on Jan. 23, 2024/Vote on Feb. 5, 2024)

How much: $6,697,684 for 2023-25 biennium (split evenly across two years with option to roll funds)

Research -Aligned Curriculum

Allowable Expense Category #1

Current State:



Grant Extension:

Heggerty phonological awareness curriculum in PreK

Professional Development & Coaching

Allowable Expense Category #2

Current State:

- K-5 teachers trained in core curriculum materials;
- Ongoing professional learning cycles to internalize and implement the curriculum;
- School-based coaches to support planning and implementation;
- 143 PPS educators fully LETRS trained (LETRS study)

Grant Extension:

- PreK PD on phonological awareness/Heggerty;
- Year-long intensive Science of Reading PD and bridge to practice coaching for approx. 20 schools/year;
- Funds to support Wit & Wisdom module unpacking at school sites

Extended Learning Programs

Allowable Expense Category #3

Current State:

- Early Kindergarten Transition at 18 Title I sites;
- 2023 Summer Acceleration Academy served 2,278 students at 17 sites--majority of students were rising first and second graders (funded by ESSER and SIA)

Grant Extension:

- Maintain funding of Early Kindergarten Transition (with enhanced literacy focus);
- Maintain funding of Summer Acceleration Academy for identified 1st-3rd grade students at 9 sites

High-Dosage Tutoring

Allowable Expense Category #4

Current State:

- Launched High Dosage Tutoring in 2021-22 (ESSER funded);
- Expanded tutoring model 2022-23 yielding promising results (ESSER funded);
- Paused implementation in Nov 2023 due to teachers' strike and budget uncertainty

Grant Extension:

- Develop resources and supports to implement High Dosage Tutoring embedded in the school day (through WIN Block) as well as after school
- Fund High Dosage Tutoring supports for after school tutoring for 2nd and 3rd grade students

Hiring

Allowable Expense Category #5

Current State:

- School-based instructional coaches at each K-5 school (generalists);
- 38 school-based interventionists;
- 1 Director of K-5 English Language Arts & Social Studies

Grant Extension:

- 6 school-based Early Literacy Coaches to provide 1:1 bridge to practice coaching in Science of Reading K-3 classrooms;
- 7 additional school-based interventionists;
- 1 Early Literacy Specialist to support cadre of Early Literacy Coaches

Grant Budget (2023 -25)-- link here

Investment	FY24-FY25 (Total: $6,697,684)
PreK Phonological Awareness Curriculum & PD	$126,320
Year-Long Science of Reading PD (~20 schools)	$2,008,000
Wit & Wisdom Unpacking/Internalization sessions	$195,364
Early Literacy Coaches (~6, school-based)	$750,000
Early Literacy Specialist (1, central)	$150,000
Early Literacy Interventionists (7, school-based)	$840,000
Early Kindergarten Transition (18 sites/summer)	$650,000
Summer Acceleration Academy (450 students/summer)	$650,000
High-Dosage Tutoring	$1,000,000
Indirect Costs	$328,000

Application Guidance: *Early Literacy Success School District Grants*

Part I: Grant Overview & Program Details for the Jumpstart Biennium 23-25

Introduction
- Aligning to Integrated Guidance
- The Role of Oregon's Early Literacy Framework

Allowable Uses of Funding

Funding
- Eligibility
- Consortia
- Allocations & Claims
- Matching Funds

Overview of the Application Process

Application Requirements

School Board or Governing Body Approval

Meaningful Reporting

Prioritization

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Revision Summary: Version 1.1 - Updated 10/23/2023

Page	Revision Summary
9-10, 19, 26-30, 34, 50-53	Updated language in guidance, Application Question, Evaluation Criteria, and Assurances clarifying what is required of allowable use planning, reporting, and implementation.
13	Typo corrected in the Allocation & Claims table. Date for timeline of funding corrected.
27	Clarifying language added about professional development and coaching reporting.
32	Updated language to clarify communication versus engagement for the communication plan.

Part I: Grant Overview & Program Details for the Jumpstart Biennium 23-25

Introduction

In 2023, through the leadership of Governor Kotek, the Oregon Legislature established early literacy as a top priority. In creating the Early Literacy Success Initiative, they identified four goals:

1. Increase early literacy for children from birth to third grade;
2. Reduce literacy academic disparities for student groups that have historically experienced academic disparities;
3. Increase support to parents and guardians to enable them to be partners in the development of their children's literacy skills and knowledge; and
4. Increase access to early literacy learning through support that is research-aligned, culturally responsive, student-centered and family-centered.

These goals will be accomplished through four programs: the Early Literacy Success School District Grants, the Early Literacy Success Community Grants, the Early Literacy Success Tribal Grants, and the Birth through Five Literacy Plan.

This guidance focuses on the Early Literacy Success School District Grants.

Roles and Authority for the Early Literacy Success School District Grants

Legislature: The requirements of the grants were established in the Early Literacy Success Initiative legislation (House Bill 3198) passed by the legislature and signed into law by Governor Kotek.

State Board of Education: The bill requires the State Board of Education to develop rules in specific sections to add clarity to the policy. The State Board of Education's authority is constrained to fit within the scope of the bill and it cannot alter the contents of the bill or the requirements it establishes.

Oregon Department of Education: ODE has the authority to administer the grants, monitor and support grantees, and report on implementation. ODE's authority is tied to statutory authority, administrative rules, and grant administration.

Stated simply, the requirements for the Early Literacy Success School District Grants were established by the legislature and the Oregon Department of Education is functioning in an administrative role to communicate those requirements and support districts in meeting them.

The overall requirements for the Early Literacy Success School District Grants are that applicants must:

- **Develop and submit an early literacy plan** which includes:
    - Four-year goals for improving early literacy outcomes for students *(not required for the Jumpstart biennium.)*
    - A review of their early literacy program[1], including their early literacy curriculum[1].
    - A student growth assessment to measure student progress in early literacy, disaggregated by student groups that have historically experienced academic disparities[2].
    - A description of how they will provide:
        - "professional development and coaching"[2] to teachers and administrators;
        - extended learning[2] by teachers or qualified tutors[2]; and
        - high-dosage tutoring[2] by qualified tutors (in addition to instruction, two or more times each week over at least a 10-week period).
- **Provide an inventory** of early literacy assessments, curriculum, and other instructional tools and materials.[2]
- **Provide a plan to communicate** with school districts, elementary schools[2] of the school district, families of the school district, and members of the school district community.
- **Match funding** at 25% (except for applicants <50 ADMw).
- **Report on required elements**, including but not limited to:
    - student participation in extended learning and tutoring (disaggregated),
    - staff participation in professional development (disaggregated),
    - updates to the inventory,
    - the curricula in use, and
    - fidelity of use of materials submitted in the inventory.
- **Generally, ensure that allowable uses and required activities use researched-aligned literacy strategies**, meaning they are literacy-focused, culturally responsive and relevant to diverse learners, and based on the long-term research derived from the science of reading and writing, specifically:
    - The teaching of phonemic awareness, phonics, fluency, vocabulary and comprehension through explicit and systematic instruction, which is
    - Differentiated to meet the needs of individual learners through developmentally appropriate practices.[2]

[1] See Appendix A for the definitions of these important terms

[2] See Appendix A for the definitions of these important terms.

The requirements above are more fully explained in the rest of this document, specifically how they pertain to the application and planning process for the first biennium of the grant, or the "Jumpstart Biennium" as described below. The Application (in Smartsheet) will open December 1st and closes on January 8th.

Document Purpose & Scope

This document provides district and charter school applicants with information to help inform planning for the grant. Part I contains information to support strategic and operational planning. Part II contains explanations, definitions, and requirements for applying as well as detailed requirements for each allowable use. For the purposes of this document, "applicant" refers to districts and eligible public charter schools[3] (see Part I: Eligibility).

Jumpstart Biennium (2023-2025)

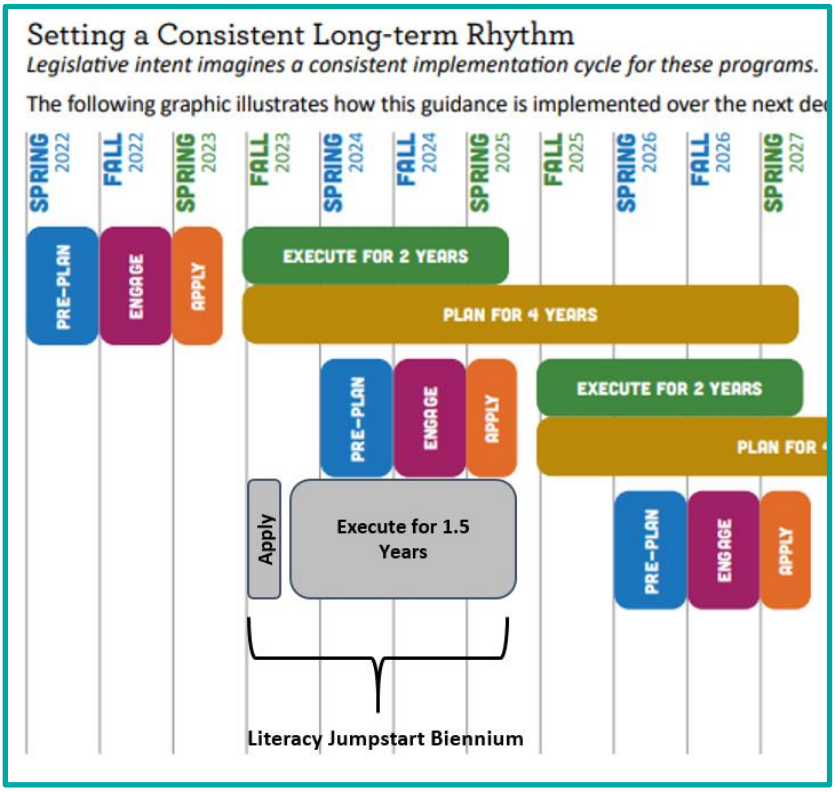
The Early Literacy Success Initiative passed at the end of the 2023 session and went into effect immediately when Governor Kotek signed it on August 2nd, 2023. The timeline for districts to build a plan and apply for funds is very fast. As a result, the first biennium of implementation--and especially the first year--serves as a jumpstart for districts, a "Jumpstart Biennium." To that end, the application and application process for the Jumpstart Biennium:

- Serve as an on-ramp for districts beginning to implement early literacy changes and provide space for collective statewide learning, adjustment, and growth.
- Provides clarity while honoring a longer, thoughtful timeline to develop more specificity through public engagement and input, including through the permanent rule making process with the State Board of Education.
- Allows for time and space for community engagement and input on district early literacy plans and mid- to long-term strategy, while honoring the urgency of the moment and timeline set forth in the legislation.
- Accommodates the business and programmatic need of districts beginning a new grant partway through a school year and biennium, laying the groundwork for alignment with Integrated Guidance ultimately.

The Jumpstart Biennium may feel different for grantees than future bienniums. This application cycle is a baseline for practices and planning. As we move into future bienniums, early literacy programming will be more mature and progress towards goals will be well underway--as this occurs, the expectations for future applications and district plans will likely be more rigorous as well. State Board permanent rulemaking will also factor into the evolution of the evaluation criteria and requirements.

[3] See Appendix A for the definition of this important term.

Image 1. Jumpstart Biennium superimposed on the Integrated Guidance timeline. Click here for full alt text.



Aligning to Integrated Guidance

The Early Literacy Success School District Grants were designed to align with "Aligning for Student Success: Integrated Guidance for Six ODE Initiatives." Application and reporting for the Early Literacy Success School District Grants will be fully integrated in March of 2025. Throughout the Jumpstart Biennium, applicants should include planning for these grants as part of their Integrated Guidance planning efforts in anticipation of that alignment date.

The Role of Oregon's Early Literacy Framework

Oregon's Early Literacy Framework sets a vision for research-aligned, culturally responsive early literacy instruction. It is an anchor resource for districts planning for their Early Literacy Success School District Grants and is the basis of the required program review, determining local strengths and areas of need (see Part II: Program Review). In addition, through the Framework, applicants can build a clearer vision of how the investments from the Early Literacy Success School District Grants might look and sound in action.

Definitions & Helpful Terms

A few of the most overarching definitions and terms follow with a full list included in Appendix A: Definitions and Helpful Terms.

Definitions

The Early Literacy Success School District Grant legislation defines "research-aligned literacy strategies" as strategies that are:

- literacy focused; culturally responsive and relevant to diverse learners; based on long-term research derived from the science of reading and writing; and apply instructional practices that are developmentally appropriate and specifically designed for students with disabilities and students who are English language learners.

Additionally, the "science of reading and writing" is defined as the:

- convergence of findings from research on reading and writing processes, development and instruction; and
- teaching of phonemic awareness, phonics, fluency, vocabulary and comprehension through explicit and systematic instruction that can be differentiated to meet the needs of individual learners through developmentally appropriate practices.

Helpful Terms

A a few of the additional terms for applicants include:

- "Early literacy program" should be considered as the entirety of the curriculum, assessments, instructional materials, practices, systems, staffing, and structures in place to support comprehensive early literacy across the district.
- "Professional development" for this grant can be considered similarly to its definition as articulated in the Oregon Department of Education's Integrated Guidance: *learning opportunities that support educators and administrators in instructional strategies for equity-centered, research-aligned, and culturally responsive literacy instruction that considers the context of each district, may elevate critical topics in system change strategies for early literacy, and support educators in leveraging high-quality, research-aligned instructional materials and curriculum to serve all students.*
- "Coaching" - Where this law names "coaching" it should be understood as an array of practices that support teachers through regular feedback and practice, formally or informally, to support implementation of research-aligned literacy practices and student learning.

Where definitions have not yet been specified through permanent rule making, the Framework provides direction for activities and ideas relevant to the grant program. Definitions will also be clarified through the permanent rulemaking process for future applications.

Oregon's Early Literacy Framework serves as a connection between these definitions and how they operationalize in the allowable uses of grant funds. It supports district planning by informing answers to questions such as:

- What does "researched-aligned" look like in literacy instruction?
- What does it mean for assessments, curriculum, and instruction to be "culturally responsive" and to serve students who are emergent bilingual or experiencing disabilities?
- What is the "convergence of findings from research on reading and writing"?
- How do we make choices about our grant activities that are aligned to the language and vision of the legislation?

Allowable Uses of Funding

The Early Literacy Success School District Grants allow funding of the following research-aligned activities:

- Adoption and implementation of curricula;
- Employment of literacy specialists, coaches, or interventionists;
- Professional development and coaching;
- Extended learning programs; and
- High-dosage tutoring.

These activities provide opportunities to actualize the ideas, practices, and concepts in Oregon's Early Literacy Framework.

One of the grant application requirements is that applicants must submit a plan to provide and ultimately report on professional development and coaching, extended learning programs, and high-dosage tutoring. The information shared in planning and reporting is about an applicant's overall literacy implementation and is not narrowed just to this new fund source. Applicants may use other fund sources to operationalize these activities and will report on the status of implementation regardless of fund source

For the Jumpstart Biennium, applicants describe their plan to implement professional development and coaching, extended learning programs, and high-dosage tutoring. If applicants are not yet able to implement all three activities, applicants must submit a rationale and describe how they will plan to do so in the future.

For additional information and examples, see the Early Literacy Success School District Grant FAQ.

The details of each of these allowable uses are described in Part II of this guidance, in the section of the application where the planning of that allowable use is most relevant, as shown in the table below:

Allowable Use[4]	Section within Part II of Guidance
Adoption and implementation of curricula	Detailed Literacy Inventory and Budget Instructions: *Budget*
Employment of literacy specialists, coaches, or interventionists.	Detailed Literacy Inventory and Budget Instructions: *Budget*
Professional development and coaching*	Detailed Application Requirements Instructions: *Professional Development & Coaching*
Extended learning programs*	Detailed Application Requirements Instructions: *Extended Programs*
High-dosage tutoring*	Detailed Application Requirements Instructions: *High-dosage tutoring*

Note: Reporting will be required on each category of allowable use, including the use of matching funds, even if funding is not directed for each allowable use. Example: A recipient gets $85K for the biennium and directs all investment into one of the allowable use areas. Reporting will still include updates related to any activities with other fund sources in the other areas, even if not investing dollars from this initiative into that area.

[4] It should be noted that the scope and definitions for many of the allowable uses require additional specificity and clarification. This guidance provides recommendations for applicants to support planning in the Jumpstart Biennium, recognizing that further clarification will come through the permanent rulemaking process for future implementation.

Administrative Costs

A grant recipient may use funds for administrative costs, including indirect costs, directly related to allowed expenditures as provided in the grant agreement. Administrative costs are limited to 5 percent of the total expenditures. Administrative costs may be put towards costs associated with applying.

Allowable Grade Levels

The grant funds must be used to support elementary grades, which are defined as any grade from pre-kindergarten[5] through 3rd grade. There is an allowance for funds to support literacy in 4th grade and 5th grade, which comes with additional requirements and limitations (see Part 1: Matching Funds and Part II: Matching Funds). Applicants may focus on one grade level, though applying and reporting requires information to be provided for kindergarten-3rd grade and pre-kindergarten, 4th grade, and 5th grade as applicable.

Funding

This section provides program details related to funding, eligibility, and considerations for how applicants may collaborate in an effort to be efficient in applying and maximize impact on students through shared programmatic efforts.

Eligibility

Any school district or public charter school with students in pre-kindergarten through grade three may apply for this noncompetitive grant. Virtual public charter schools are not eligible for Early Literacy Success School District Grants.

Consortia

Any district or charter school that applied as an Aligned Program Consortium,[6] must apply in that same consortium for the Early Literacy Success School District Grants. A charter that is sponsored by a district is not considered an Aligned Program Consortium and will need to apply on their own.

Aligned Program Consortium members will:

[5] See Appendix A for the definition of this important term..

[6] As defined under Oregon Department of Education's Aligning for Student Success: Integrated Guidance for Six ODE Initiatives.

- submit one application
- provide an amended Memorandum of Understanding (MOU) to include Early Literacy Success School District Grants,
- receive one grant agreement, and
- report on the Early Literacy Success School Grant program implementation as one grantee.

MOU

An amended Memorandum of Understanding (MOU) to include the Early Literacy Success School District Grants must be revised and signed by all eligible members[7] of the consortium to:

- define consortium operations as it relates to Early Literacy, and
- articulate the reporting structure as it relates to Early Literacy.

This amended MOU will be uploaded as an additional attachment required as part of the submission for the Early Literacy Success School District Grant application.

Please keep in mind that:

- A single joint application from an Aligned Program Consortium for the Early Literacy Success School District Grants *must be approved by each partnering school district's or applicant's governing board* and meet all other application requirements.

Collaboration

It is important to understand the differences between participating in an Aligned Program Consortium and collaborating. Those in an Aligned Program Consortium formally combine their allocations under one grant agreement with one lead organization ultimately responsible for all deliverables and expenditures under the grant. However, if the applicants are not a part of an Aligned Program Consortium this biennium, the Oregon Department of Education encourages applicants to collaborate with other applicants in their regions and/or their ESD partners. Through collaborative efforts, grantees can pool resources together through contracts, agreements, or other means, while each grantee remains independently responsible for submitting an application and receives their own grant agreement and is independently responsible for all grant deliverables and expenditures.

[7] If a member of the Aligned Program Consortium is not eligible to receive Early Literacy Success School District Grant funds, they will be excluded from plans and expenditures.

Allocations & Claims

The following table provides a state-level picture of the funding for the Early Literacy Success School District Grants. Preliminary allocations for each district, school, or eligible grantee are provided on the Early Literacy Success Initiative website.

Statewide Total for the 23-25 Jumpstart Biennium	Allocation Calculation	Allocation Method	Administrative Costs	Timeline for Spending
$90,567,594.00	Based on Second Period Extended ADMw; calculated yearly	Disbursement	Limited to 5 percent of the total expenditures	For the Jumpstart Biennium - October 1, 2023- Sept 30, 2025. Funds roll from Year One to Year Two, unless an applicant does not apply.[8]

As indicated on the table above, these are formula grants based on Second Period Extended ADMw. In addition to the formula, a funding floor supporting Oregon's smallest districts was set at approximately $85,000 for the Jumpstart Biennium.

The Early Literacy Success School District Grants are disbursement grants, thereby allowing grantees to claim a percentage of funds in advance of expenditures. Taking into account the administrative burden of grantees to continuously submit claims in EGMS, the Oregon Department of Education proposes all fiscal agents submit their claims during the following designated windows:

Claim Window Year 1, 2023-2024	Amount of Claim
March 1 - March 31, 2024[9]	65% of allocation
April 1 - April 30, 2024	35% of allocation (up to 100%)

[8] A Universal Summer Extension was approved in temporary rules and anticipated in permanent rules.

[9] Claims may be made as soon as the grant agreement is fully executed.

Claim Window Year 2, 2024-2025	Amount of Claim
July 1-July 30, 2024[10]	25% of allocation
October 1 - October 31, 2024	25% of allocation (up to 50%)
January 1 - January 31, 2025	25% of allocation (up to 75%)
April 1 - April 30, 2025	25% of allocation (up to 100%)

For the Jumpstart Biennium, grantees are allowed to backdate expenditures to October 1, 2023, ahead of grant agreements being fully executed.

Any allocated funds that are not used by a grant recipient at the end of the biennium will be returned to the Statewide Education Initiatives Account. Grant recipients must initiate a Fiscal Return to the Oregon Department of Education when their fourth quarter report is complete.

Matching Funds

The Early Literacy Success School District Grants require a match of 25% of each district's total allocation. This match can be from any fund source. Fund sources can include Federal Title Funds, State School Funds, or any other funding source available to the applicant.

In Support of Small & Rural Districts

For districts with an ADMw <50, the 25% match and any additional matches for 4th/5th grade expenditures will be waived.

Applicants are not limited to spending matching funds on the allowable uses described above, though are highly encouraged to do so. Matching funds for the Jumpstart Biennium, pending permanent rule making, can be used broadly to support literacy across pre-kindergarten through 5th grade.

[10] Claims may be made as soon as the grant agreement is fully executed.

For the Jumpstart Biennium, there is an allowance to spend funds supporting 4th and 5th grade students. This allows applicants to consider the strengths and needs of multilingual students, students experiencing disabilities, students whose learning was impacted by school closures during COVID, and other students who may need additional support in later grades as their early literacy develops. This allowance is unlikely to continue beyond the Jumpstart Biennium.

Grantees are limited on how much of their allocation can be used to support 4th and 5th grade students and there is an additional match required.

- **Limitation:** Up to 20% of a district's overall allocation can be spent on supporting 4th and 5th grades in the first year, and up to 10% in the second year. This allowance is only made for the Jumpstart Biennium (2023-2025).

- **Match:** Any funds up to the amounts named above must be matched. Similar to the overall 25% match, these match requirements can come from any fund source. The match requirement for 4th and/or 5th grade expenditures is the same as the limitation: 20% in 2023-2024 and 10% in 2024-2025.

  The overall 25% match on the total allocation is *inclusive* of the 4th and/or 5th grade match requirement. For example, if a district uses the full 20% limitation supporting 4th and/or 5th grades in the first year and provides the 25% match for the total allocation as required, the 20% match for 4th/5th grade is fulfilled; there is no additional matching requirement.

The following table offers a visual of the limitations and match requirements described above:

	Match Requirement	Limitation
Overall Allocation	25% of the overall allocation	
4th & 5th Grade 2023-2024[11]	Met by the 25% match requirement	20% Limitation
4th & 5th Grade 2024-2025[12]	Met by the 25% match requirement	10% Limitation

[11] Grantees are not *required* to spend funds on 4th and 5th grade literacy.
[12] Grantees are not *required* to spend funds on 4th and 5th grade literacy.

Overview of the Application Process

The requirements for the grant application (described in the next section) have been incorporated into six resources for applicants:

I. Oregon's Early Literacy Framework and the Early Literacy Playbook provide the content to engage in deep learning and frame the big picture of effective early literacy.
II. The Program Review Tool guides applicants through applying the Framework to their given setting and includes eight questions that will be required in the Application.
III. The Application Planning Template is a practical tool in which an applicant lays out what they will be required to submit alongside the Inventory and Budget.
IV. The Literacy Inventory and Budget includes the template for the inventory required by the legislation and provides pre-populated budget cells that help to plan for allowable expenses. This will be required as an attachment in the Application.
V. This **Guidance** document helps summarize the legislation and lays out how the grant program works, while providing clarity in what will be expected and reviewed.
VI. The **Application** holds all of the questions in the Template as well as the questions in the Program Review Tool and will be the location for uploading the Literacy Inventory and Budget. It comes via Smartsheet on **December 1st (and closes on January 8th)** and will align with the Integrated Guidance tools and reporting infrastructure.

The questions in the Application Planning Template will be submitted by copying them into the Application (in Smartsheet). Similarly, to complete the Program Review Tool questions in the Application, applicants will need to complete the Program Review Tool then copy them into the Application. The Literacy Inventory and Budget is separate because it contains additional application elements that are best represented in a table format.

An Important Note about Tribal Consultation

Honoring the sovereignty of Native American and tribal students, families, communities, and Nations in Oregon is central to effective planning and outreach. In the 2025-27 biennium, the Early Literacy Success School District Grants will become a part of Integrated Guidance and applicants will be expected to engage Native American and/or tribal students as focal student groups; in some cases, applicants will also required to engage in formal Tribal consultation processes as outlined in the ODE Tribal Consultation Toolkit. Information about Oregon's nine federally recognized tribes is on the Oregon Tribal Website's page.

Application Requirements

To be eligible for an Early Literacy Success School District Grant, a district must submit an application that includes specific components. The table below shows how these requirements will be submitted.

Required Components of Application	How Each Component is Submitted
1. A **Early Literacy Plan**, containing:	
○ Four-year goals (not applicable for the Jumpstart Biennium)	Not applicable this biennium
○ A review of the applicant's early literacy program	Program Review Tool (questions 1-8) that will be entered in the Application
○ A review of the applicant's early literacy curriculum	Inventory in the Literacy Inventory and Budget that will be uploaded into the Application

Required Components of Application	How Each Component is Submitted
○ A student growth assessment for all students, disaggregated by student groups that have historically experienced academic disparities.	Inventory in the Literacy Inventory and Budget that will be uploaded into the Application Student Growth Assessment question in the Application Planning Template and the Application
○ A description of how the applicant will provide professional development and coaching, extended learning programs, and high-dosage tutoring.	Professional Development and Coaching, Extended Learning Programs, and High-Dosage Tutoring questions in the Application Planning Template and the Application
2. An **Inventory** which must be accurate and up-to-date, including literacy assessments, tools, curricula and digital resources used to support literacy in the applicant's early elementary grades.	Inventory in the Literacy Inventory and Budget that will be uploaded into the Application
3. A **Communication Plan** for efforts to support engagement between school districts, elementary schools of the school district, families, and members of the school district community.	Communication Plan question in the Application Planning Template and the Application
4. Submission of board minutes as evidence that the Early Literacy Plan was **presented and approved by the applicant's school board** or governing body, at an open meeting, with opportunity for public comment (this cannot be a consent agenda item).	Board minutes uploaded into the Application Planning Template and the Application
Identification of **matching funds**, as described in later sections.	Matching Funds question in the Application

Three Important Points of Clarification

- For the Jumpstart Biennium, applicants describe their plan to implement professional development and coaching, extended learning programs, and high-dosage tutoring. If applicants are not yet able to implement all three activities, applicants must submit a rationale and describe how they will plan to do so in the future.
- The Program Review Tool provides the criteria by which applicants must review their early literacy program.
- For the Jumpstart Biennium, the Application and Literacy Inventory and Budget serve as a district's Early Literacy Plan.

School Board or Governing Body Approval

Applications must be presented to and approved by the school district board or the governing body of the public charter school at an open meeting with opportunity for public comment.

As evidence of this requirement, applicants must submit a copy of the board minutes when this presentation and approval occurred.

For the Jumpstart Biennium, applicants will have through February 28th, 2024 to submit these board minutes; however, the review of applications will not be complete until the board minutes are received.

Meaningful Reporting

Quarterly Reporting

Reporting will be completed through a quarterly report submission, where grantees will detail their spending on the activities in their plan. This reporting will be submitted via Smartsheet, and will align with the Integrated Quarterly report to the maximum extent possible. Detailed guidance for this quarterly report will be released at a later date; however, grantees should be prepared to include the expenses for each budgeted activity.

For the Jumpstart Biennium, the quarterly reports are due on the following dates:

Due Date	Reporting Period	Included in the Report
April 30, 2024	Quarter 2 & Quarter 3 (October 1, 2023 - March 30, 2024)	Expenditure Report
November 30, 2024	Quarter 4 (April 1, 2024 - September 30, 2024)	Expenditure Report AND Annual Report, inclusive of an inventory of literacy assessments and curricula, and the participation rates in extended learning programs, high-dosage tutoring, and professional development and/or coaching
October 31, 2024	Quarter 1 (July 1, 2024 - September 30, 2024)	Budget Update to actual allocation.
January 31st, 2025	Quarter 1 & Quarter 2 (July 1, 2024 - December 31, 2024)	Expenditure Report
April 30, 2025	Quarter 3 (January 1, 2025 - March 30, 2025)	Expenditure Report
November 30, 2025	Quarter 4 (April 1, 2025 - September 30, 2025)	Expenditure Report AND Annual Report, inclusive of an inventory of literacy assessments and curricula, and the participation rates in extended learning programs, high-dosage tutoring, and professional development and/or coaching

Annual Reporting

Grantees are required to submit an annual report. As with the quarterly report, the annual report will be submitted via Smartsheet, and will align with the Integrated Annual Report to the maximum extent possible.[13] The annual report will include:

- The grantee's progress toward achieving the goals established in their Early Literacy Success Plan[14];
- An inventory of literacy assessments, tools, curricula and digital resources used by the grantee;
    - Evidence that the literacy assessments, tools, curricula, and digital resources in the inventory are used with fidelity to research-aligned literacy strategies;
    - Evidence that teachers and administrators are provided with professional development for using and implementing (with fidelity and research-aligned literacy strategies (the literacy assessments, tools, curricula, and digital resources in the inventory;
- The number and percentage of teachers for early elementary grades receiving professional development and coaching *disaggregated by grade level*;
- The number and percentage of students participating in early literacy extended learning programs and their outcomes disaggregated by student group and by grade level;
- The number and percentage of students participating in high-dosage tutoring and their outcomes disaggregated by student group and by grade level; and
- The curricula being used by the grantee.

The annual report offers a chance to review and reflect on the whole of what has been learned and any impact. It is also an opportunity to share updates with students, parents, and community.

[13] The Oregon Department of Education plans to have grantees use the same Integrated Reporting Dashboard from the start of this initiative.

[14] Waived for the Jumpstart Biennium (2023-2025).

Prioritization

As permanent rules are developed with the State Board of Education, the statute says, "to the greatest extent practicable, prioritize schools with the lowest rates of proficiency in literacy and assist in the operational alignment of grant programs and improvement strategies administered by the Department of Education." It also calls for aligning implementation with improvement strategies developed under the Integrated Guidance, including the SIA and continuous improvement planning.

Applicants are encouraged to consider this focus in determining how to utilize their funds in the Jumpstart Biennium with awareness of more detailed guidance likely to follow permanent rulemaking over the remainder of this school year.

Part II: Planning & Applying for the Jumpstart Biennium 23-25

Detailed Application Planning Instructions

This section provides instructions for completing each section of the Application (within Smartsheet) and the Application Planning Template. It is intended to be used while either is being completed.

Each section below corresponds to a question in the Application and includes, where applicable, some or all of the following elements:

- **Application Item(s)** corresponding to that section.
- **Evaluation Criteria** that will be used to evaluate the responses to the item.
- **Reporting requirements** from the bill so applicants will be able plan for and anticipate what will be required to report.
- **Notes** highlighting important information for decision-making related to that item, including exceptions.
- **Recommendations** for how to plan for each element of the grant activities and requirements.
- **Definitions and helpful terms** to provide clarity of what is required for each item.

1. Program Review

Item	Description
Application Items	Complete questions 1-8 for the Program Review Tool. (Reflection questions in Appendix A of the tool, "Readiness for Implementation", are optional.)
Evaluation Criteria	Program review includes a reflection for each section with evidence of clear reflection and connection to indicators.

The Early Literacy Success School District Grant requires a review of the early literacy program, including the English Language Arts (ELA) curricula used in elementary schools of the applicant, using criteria established by the Oregon Department of Education.

"Early literacy program" should be considered as the entirety of the curriculum, assessments, instructional materials, practices, systems, staffing, and structures in place to support comprehensive early literacy across the district. A review of a district's early literacy curriculum is captured in the Inventory section of the application. However, the curriculum should be taken into consideration when conducting the program review.

The Program Review Tool provides the criteria by which applicants must review their early literacy program. This tool articulates indicators of a research-aligned and culturally responsive literacy program and readiness for implementation based on each section of Oregon's Early Literacy Framework and the Early Literacy Playbook. The Program Review Tool is developed for applicants to help them think deeply into the design of their efforts and should be completed before the Application Planning Template, Application, or Literacy Inventory and Budget.

Applicants need to review the entirety of the early literacy program using the indicators provided in the tool, which are derived from Oregon's Early Literacy Framework. The Program Review Tool is designed not as a quantitative measure, but a holistic reflection guide related to each section of the Framework. Applicants have discretion in determining how they conduct their program review.

This portion of the application requires a short (up to 250 word) response related to each of eight sections of the program review tool. The questions in the appendix of the Program Review Tool are aligned with the Early Literacy Playbook and are optional, but encouraged.

2. Professional Development and Coaching

Item	Description
Application Item	Describe how you will provide professional development and coaching in research-aligned literacy strategies to teachers and administrators to improve early literacy instruction. Include how you will provide professional development to teachers and administrators on using and implementing literacy assessments, tools, curricula, and digital resources with fidelity to research-aligned literacy strategies. If you are not yet able to implement professional development and coaching, you must submit a rationale and describe how you plan to do so in the future.
Evaluation Criteria	The description of how the applicant will provide professional development and coaching in research-aligned strategies includes: • the research-aligned literacy strategies that the professional development and coaching will focus on (required); • the target audience (including roles) for the professional development and coaching (required); and • the literacy assessments, tools, curricula or digital resource(s) the professional development will focus on (as applicable). If the applicant is not yet able to implement professional development and coaching, applicants have submitted a rationale and description of how they plan to do so in the future.
Annual Reporting Requirement[15] (November 30th, 2024)	• Evidence that teachers and administrators are provided with professional development plans for using and implementing, with fidelity to research-aligned literacy strategies, the literacy assessments, tools, curricula, and digital resources in the inventory. • The number and percentage of teachers for early elementary grades receiving professional development and coaching disaggregated by grade level.

[15] See Part 1: Meaningful Reporting section for additional detail.

Note: One of the grant application requirements is that applicants must submit a plan to provide and ultimately report on professional development and coaching. If applicants are not yet able to implement professional development and coaching, applicants must submit a rationale and describe how they plan to do so in the future.

Note: The information shared in planning and reporting is about an applicant's overall literacy implementation and is not narrowed just to this new fund source. Applicants may use other fund sources to operationalize this activity and will report on the status of implementation regardless of fund source.

Districts will report on professional development and coaching as a single reporting category for the following purposes:

- implementing curriculum and other instructional materials with fidelity (reporting for both teachers and admin)
- research-aligned literacy strategies (reporting for teachers only

For additional information, see Part I: Allowable Uses of Funding (pg. 8)

Note: While professional development specific to supporting fidelity to curriculum and other instructional materials is not a requirement for application, it is a required reporting category.

Recommendation: Use the Oregon's Early Literacy Framework and the definitions provided in Appendix A: Definitions and Helpful Terms when determining whether or not professional development and coaching meet the research-aligned standard.

Recommendation: When designing professional development and coaching consider including activities that:

- Are "sustained (not stand-alone, one-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused."[16]
- Are aligned to high-quality instructional materials.
- Are leveraged to impact core instruction for all students and when applicable, to support high quality tutoring and intervention/acceleration instruction.
- Include specific outcomes on what educators will know and be able to do as a result of the learning.
- Include measures of effectiveness to determine if the learning was effective.
- Are planned to consider teacher time.

[16] As described in the Every Student Succeeds Act.

Recommendation: When planning professional development and coaching, consider the following questions:

- What is the need the professional development or coaching is trying to address? Why that area?
- What did our program review illuminate?
- What research-aligned strategies are our focus?
- What educator knowledge, skills, and practice are we hoping to support? How will that directly impact students' literacy learning and well-being?
- What would we expect to see change as a result of this professional development and coaching? What in Oregon's Early Literacy Framework can we identify that coaching and professional development will lead to?
- What conditions for adult learning must we ensure so that professional development and coaching are successful?
- How will we know if the professional development and coaching was effective?
- Who will provide oversight for the implementation, monitoring and evaluation of the PD and coaching?

3. Extended Learning Programs

Item	Description
Application Item	Describe how you will provide extended learning programs that use research-aligned literacy strategies and that are made available by licensed teachers or by qualified tutors. If you are not yet able to implement extended learning programs, you must submit a rationale and describe how you plan to do so in the future.
Evaluation Criteria	The description of how the applicant will provide extended learning programs that use research-aligned literacy strategies and that are made available by licensed teachers or by qualified tutors includes both: • a description of how literacy is included as the focus of the program, and • who will provide the extended learning and their qualifications •

	If the applicant is not yet able to implement extended learning programs, applicants have submitted a rationale and description of how they plan to do so in the future.
Annual Reporting Requirement[17] (November 30th, 2024)	The number and percentage of students participating in early literacy extended learning programs, at the school and the school district level, with their outcomes disaggregated by student group and grade level.

Note: One of the grant application requirements is that applicants must submit a plan to provide and ultimately report on extended learning programs. If applicants are not yet able to implement extended learning programs, applicants must submit a rationale and describe how they plan to do so in the future.

Note: The information shared in planning and reporting is about an applicant's overall literacy implementation and is not narrowed just to this new fund source. Applicants may use other fund sources to operationalize this activity and will report on the status of implementation regardless of fund source.

For additional information, see Part I: Allowable Uses of Funding (pg. 8)

The scope and further clarifications of extended learning programs will be addressed through the permanent rulemaking process for future applications. Currently, extended programs need not be limited to summer programming as described above, but must still meet the research-aligned, grade level, and qualified educator quality standards.

Applicants should also consider equity implications of extended learning programs, such as access, scheduling, and well-rounded summer and after-school opportunities. For more information on high-quality afterschool and summer programs, please visit the Oregon Department of Education's Summer Learning Webpage.

[17] See Part 1: Meaningful Reporting.

4. High-Dosage Tutoring

Item	Description
Application Item	Describe how you will provide high-dosage tutoring that integrates reading and writing and that is delivered by a qualified tutor using developmentally appropriate practices. If you are not yet able to implement high-dosage tutoring, you must submit a rationale and describe how you plan to do so in the future.
Evaluation Criteria	The description of how the applicant will provide high-dosage tutoring that integrates reading and writing and that is delivered by a qualified tutor using developmentally appropriate practices includes all four details: • the domains of language[18] addressed (at least reading and writing); • who will provide the high dosage tutoring and their qualifications; • duration and frequency; and • how the tutoring is developmentally appropriate, including how it is responsive to student need. If the applicant is not yet able to implement high-dosage tutoring, applicants have submitted a rationale and a description of how they plan to do so in the future.
Annual Reporting Requirement[19] (November 30th, 2024)	The number and percentage of students participating in high-dosage tutoring, with their outcomes disaggregated by student group and grade level.

Note: One of the grant application requirements is that applicants must submit a plan to provide and ultimately report on high-dosage tutoring. If applicants are not yet able to implement high-dosage tutoring, applicants must submit a rationale and describe how they will plan to do so in the future.

[18] Reading, Writing, Speaking, and Listening.

[19] See Part 1: Meaningful Reporting.

Note: The information shared in planning and reporting is about an applicant's overall literacy implementation and is not narrowed just to this new fund source. Applicants may use other fund sources to operationalize this activity and will report on the status of implementation regardless of fund source.

For additional information, see Part I: Allowable Uses of Funding (pg. 8)

The scope (such as a required group size) and other details of these definitions will be further clarified through the permanent rulemaking process for future implementation.

Recommendation: Effective and impactful high-dosage tutoring programs:[20]

- have tutors that are well-trained and supported, or are teachers, retired teachers, or teaching candidates;
- have tutors that have time for planning and collaboration with classroom teachers;
- tutors use high-quality instructional materials in high-frequency sessions (offer tutoring at least three times per week, for 30 minutes per session) with three or fewer students in each session;
- align with an evidence-based curriculum;
- occur at school during the school day whenever possible;
- include instruction that is supplemental and focused on acceleration, not remediation;
- are built into the school day and engages teachers and caregivers; and
- use data to inform and individualize instruction and continuously improve program design.

[20] https://www.edworkingpapers.com/ai20-267

5. Student Growth Assessment

Item	Description
Application Item(s)	If you do not have a current student growth assessment that allows for data to be disaggregated by student groups who have historically experienced academic disparities, describe how you will provide one. (It must allow for data to be disaggregated by student groups that have historically experienced academic disparities.)
Evaluation Criteria	A student growth assessment for literacy is submitted in the Inventory. If not, a description is provided of how a student growth assessment will be obtained and administered **Note:** The "disaggregation of data" requirement for this application requirement is evaluated through an assurance.

The grant application requires a student growth assessment for all students for which data is disaggregated by student groups that have historically experienced academic disparities. If a district does not yet have a student growth assessment for literacy or uses one that has not yet been disaggregated as described above, include a description of the plans for obtaining a new student growth assessment.

Applicants need not submit student data for the application, only information about the student growth assessment in use for the purposes of measuring student growth in literacy.

Information about the student growth assessment is collected in two places: as a description in the Application Planning Template (and Application), if applicable, and in the Inventory tab of the Literacy Inventory and Budget. It is included with other inventory items (see Part II: Inventory) and is indicated with a "Yes" entry under the "Is this your student growth assessment?" column.

6. Communication Plan

Item	Description
Application Items	What communication strategies will be used to communicate with: • other school districts? • elementary schools in the school district? • families of the school district? • members of the school district community?
Evaluation Criteria	At least one communication strategy for each community group is provided: • School districts; • Elementary schools of the school district; • Families of the school district; and • Members of the school district community

Applicants need only select the communication strategies they plan to use as they communicate and execute the early literacy plan. The communication efforts themselves need not be completed before the application is submitted.

Note: Every family deserves to know their district's approach and early literacy strategy. The communication plan described above is a minimum requirement for this application related to, but distinct from, deep community engagement. As applicants engage communities for Integrated Guidance, they should include the development and continuous improvement of their early literacy approach and strategy into those efforts throughout the Jumpstart Biennium.

7. Matching Funds

Item	Description
Application Item	Name the fund source(s) for the 25% match. If applicable, is any part of your match going towards 4th and/or 5th grade expenditures?
Evaluation Criteria	At least one source to match 25% of the total allocation is named and at least one category is selected for its use. If applicable, a fund source is named for the 4th and/or 5th grade match.

Applicants are not limited to spending matching funds on the allowable uses described above, though are highly encouraged to do so. Matching funds for the Jumpstart Biennium, pending permanent rule making, can be used broadly to support literacy across grades pre-kindergarten-fifth grade.

For this part of the application, name the fund source(s) for the 25% match. If applicable, name the fund source(s) for the matching 4th and/or 5th grade expenditures.

Also indicate which category best describes how the match funds will be spent.

Note: For districts with an ADMw <50, the 25% match will be waived pending temporary rule adoption by the State Board of Education. This includes additional matches for 4th or 5th grade expenditures.

8. Assurances

Item	Description
Evaluation Criteria	The applicant has verified all of the required assurances.

Early Literacy Success School District Grant - Specific Assurances

By checking the following boxes, the applicant agrees that they:

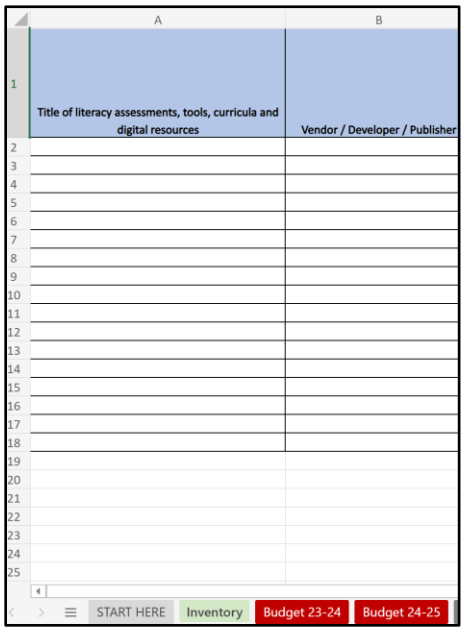
- ☐ Have reviewed their early literacy programs to identify areas of alignment with Oregon's Early Literacy Framework: A Strong Foundation for Readers and Writers (K-5) and the applicant's work will align with the definitions included in the Early Literacy Success Initiative*
- ☐ Have reviewed the reporting requirements in Section 6 (2) of the Early Literacy Success Initiative and included in the Early Literacy Success School District Grants Application Guidance. *
- ☐ Use literacy assessments, tools, curricula and digital resources that are reflected in the inventory and that they are based on research-aligned literacy strategies and are formative, diagnostic and culturally responsive; and if not, have indicated planned changes to ensure this requirement is met.*
- ☐ Will provide professional development and coaching in research-aligned literacy strategies to teachers and administrators in early elementary grades to improve early literacy instruction; and if not, have provided a rationale and description of how they will plan to do so in the future.*
- ☐ Will provide extended learning programs that use research-aligned literacy strategies to students in early elementary grades by licensed teachers or by qualified tutors; and if not, have provided a rationale and description of how they will plan to do so in the future.*
- ☐ Will provide high-dosage tutoring to students in early elementary grades that integrates reading and writing and that is delivered by a qualified tutor using developmentally appropriate practices; and if not, have provided a rationale and description of how they will plan to do so in the future.*
- ☐ Have a student growth assessment (or have described that they will obtain one) that produces data that can be disaggregated by student groups who have historically experienced academic disparities (as defined in the Early Literacy Success Initiative).*

Overarching Assurances

- ☐ By checking this box, the applicant agrees to comply with all applicable state and federal civil rights laws, to the effect that no person shall be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity on the basis of race, color, national origin, sex, sexual orientation, marital status, gender identity, religion, age, or disability.*

Detailed Literacy Inventory and Budget Instructions

This section provides instructions for completing each section of the Literacy Inventory and Budget. It is intended to be used while the Literacy Inventory and Budget is being completed.



Each section below corresponds to a tab on the Literacy Inventory and Budget and includes, where applicable, some or all of the following elements:

- **Application Item(s)** corresponding to that section.
- **Evaluation Criteria** that will be used to evaluate the responses to the item.
- **Reporting requirements** from the bill so applicants will be able plan for and anticipate what will be required to report.
- **Notes** highlighting important information for decision-making related to that item, including exceptions.
- Recommendations for how to plan for each element of the grant activities and requirements.
- Definitions and helpful terms to provide clarity of what is required for each item.

9. Inventory

Item	Description
Application Item	Complete the Inventory (table).
Evaluation Criteria	Application includes a core (or basal)[21] ELA curriculum for kindergarten-3rd grade identified in the Inventory. If applicable, inventory includes curriculum for pre-kindergarten. Application includes a core (or basal) ELA curriculum for 4th grade and/or and/or 5th grade identified in the Inventory, if funds are budgeted for 4th/5th grade. For districts, only: The adoption date of the core curriculum is on or after February 2020. If no, there is a description explaining anticipated changes and anticipated date of new adoption. For charters, only: A review or evaluation process of the core curriculum using the state criteria adopted in 2020 is indicated in the Inventory. If no, description is provided explaining when and how a review using the criteria will occur or intent to use curriculum from the SBE list. For any material types other than core/basal curriculum, all applicable information is complete (Title, Vendor, Type, Grades, Date of Adoption, Print or Digital) If applicable, there is a description of any planned changes in order to ensure an item in the inventory will meet the research-aligned criteria in the future. A student growth assessment for literacy is submitted in the Inventory. If not, a description is provided of how a student growth assessment will be obtained and administered. **Note:** The "disaggregation of data" requirement for this application requirement is evaluated through an assurance.

[21] See Appendix A for the definition of these important terms.

Item	Description
Annual Reporting Requirement[22] (November 30th, 2024)	• Inventory of literacy assessments, tools, curricula and digital resources used by the school district or charter to support literacy. • Evidence that the literacy assessments, tools, curricula, and digital resources are used with fidelity to research-aligned literacy strategies. • Curricula being used by the school district or public charter school.

The application requires an accurate, up-to-date inventory of all literacy assessments, tools, curricula and digital resources used to support literacy in early elementary grades.

Applicants must ensure that the literacy assessments, tools, curricula and digital resources of the inventory are based on research-aligned literacy strategies, culturally responsive and, where applicable, formative and diagnostic. If, however, applicants identify they are using literacy assessments, tools, curricula, and/or digital resources that do not meet this standard, these should still be submitted. The applicant must provide a description of any planned changes to ensure that the standard is met in the future in the last column of the Inventory.

Note: The Inventory includes only materials and curriculum that are currently being used by the applicant. Future or planned purchases, or monies being budgeted for that allowable use, should be entered in the Budget tab, and described in the Notes column on the Inventory tab.

Research-Aligned Materials

The following recommendations support applicants in determining whether or not instructional materials required for the inventory meet the research-aligned standard described in the Definitions & Helpful Terms (pg.7) for the purposes of this grant, only. This determination will be further clarified through the permanent rulemaking process for future applications.

- **Oregon's State Board Adopted K-2 and K-3 ELA Adoption Criteria** are required for the adoption of core or basal curriculum and can be used as a tool to evaluate other instructional materials. Applicants should use the criteria adopted by the State Board of Education most recently in 2020.

[22] See Part 1: Meaningful Reporting.

- **Oregon's Early Literacy Framework** includes additional information to inform evaluation and use of assessments, tools, and other instructional materials.

Grades

Applicants must include materials used for:

- Grades kindergarten-3rd grade; and
- Pre-kindergarten, 4th grade, and 5th grade, if applicable.

Applicants must include materials in the inventory for grades kindergarten through 3rd grade even if grant funds are not budgeted for those grade levels. For example, if a district is putting grant funds towards 3rd grade only, they must still submit curricula and materials for kindergarten, 1st grade, 2nd grade, 3rd grade, and pre-kindergarten (if applicable).

Scope of Inventory

The following definitions are recommendations to support applicants in determining the scope of what to include in the inventory for the purposes of this grant, only. These definitions will be further clarified through the permanent rulemaking process for future applications.

- **Literacy curriculum** - Any instructional materials used in practice and/or formally adopted by the local school board for core or basal instruction.

- **Core or basal instructional materials** - Instructional materials that are intended to be a substantial and ongoing component of literacy instruction. These might include adaptive or personalized programs, digital, or print materials. Applicants are required to adopt basal instructional materials in order to teach the academic content standards for English Language Arts.

- **Literacy Tools and Digital Resources** - Any supplemental materials, devices, programs, or curriculum used as either core or supplemental to students' literacy instruction. This includes intervention, acceleration, tutoring, or supplemental materials that are used to a substantial degree across elementary schools in student literacy instruction and in addition to the core curriculum.

- **Literacy Assessments** - Summative, benchmark, diagnostic, interim assessments, and purchased systems of formative assessment practices used to measure student learning across any or all of the four domains of literacy. For definitions, see pages 26-35 of The Right Assessment for the Right Purpose.

Date of Adoption

- For core or basal curriculum, "Date of Adoption" is the date on which the materials were adopted by the local school board.
- For all other materials, tools, or assessments, "Date of Adoption" is the date on which the district began its use.

Plans for Updating

If the content in the applicant's inventory does not yet meet the "research-aligned" standard, complete the prompt in the last column of the inventor ("Please describe any planned changes or updates for materials that are not research-aligned.")

Note: If the adoption date for an applicant's core or basal curriculum is before 2020, or if an independent adoption did not use the State Board of Education Adoption Criteria for ELA, a description of plans for updating is required in the last column of the Inventory.

10. Budget 23-24/24-25

Item	Description
Evaluation Criteria	Two years of budget tabs are complete. No more than 20% of the 23-24 budget is allocated to 4th and/or 5th grade, if applicable. No more than 10% of the 24-25 budget is allocated to 4th and/or 5th grade, if applicable. Proposed investment descriptions align with the associated allowable use category selected. Any FTE type submitted is one of: - Literacy specialist - Interventionist - Coach No more than 5% of total allocation is budgeted for administrative (or

Item	Description

	indirect) costs.
	
	For each budget tab, the total budgeted amount does not exceed the total allocation.
	
	Each activity on both budget tabs:
	- Connects to an allowable use
	- Has a description of the Proposed Investment
	- Specifies:
	  - FTE, if applicable
	  - FTE Type, if applicable
	  - Appropriate allowable use code
	  - 4th/5th Expenditure, if applicable
	  - A budget amount
	
	Any proposed changes indicated in the Inventory are reflected in the budget, if applicable.
	a) This is not applicable if:
	  i) The applicant description names a different funding source to address the change
	  ii) There are no proposed changes.

Quarterly Reporting Requirement[23]	Provide actual expenditures and plan changes, as necessary.

The budget tabs are separated into 23-24 and 24-25 as these grants are annual grants, and it is important to track expenditures discreetly between each year of the biennium. Both tabs will need to be completed as part of this application.

These budget tabs are designed for applicants to articulate specific investments using their Early Literacy Success School District Grant funds to support the overall aims of their early literacy plan.

The top three rows (indicated in gray) are automatically populated from other sections, or sources of information; these include the following cells:

- Total Allocation
- Total Budgeted Amounts
- Unbudgeted

[23] See Part 1: Meaningful Reporting.

While completing the expenditures, review these three rows and their autocalculations as a planning support.

All expenditures must be aligned to the allowable uses in Section 3 of the Early Literacy Success Initiative.

Applicants are limited on how much of their allocation they can use to support 4th and 5th grade learning. Only 20% of a district's overall allocation can be spent on supporting 4th and 5th grades in the first year, and only 10% in the second year.

The following table offers a visual of the limitations for 4th and 5th grade expenditures by year:

School Year	Limitation
2023-2024[24]	20% Limitation
2024-2025[25]	10% Limitation

Application Item	Grant Allowable Use Category

From the drop-down menu, select the Grant Allowable Use Category that most closely aligns with the investment. Your options are:

- Professional Development & Coaching
- Extended Learning Programs
- High-Dosage Tutoring
- Purchasing Curricula & Materials
- Hiring

Three allowable uses (professional development & coaching, high-dosage tutoring, and extended learning) were described as narratives in previous application items. The remaining two allowable uses (purchasing curricula & materials and hiring) are included in the budget and do not require a narrative description.

[24] Applicants are not *required* to spend funds on 4th and 5th grade literacy.
[25] Applicants are not *required* to spend funds on 4th and 5th grade literacy.

Purchasing Curricula & Materials

Grant funds may be used for the adoption of curricula that uses research-aligned literacy strategies and the implementation of that curricula. Funding for this allowable use may be used to:

- Purchase curricula and materials that are culturally relevant
- Provide professional development and time for teachers and administrators to attend training related to the curricula (described further in section professional development and coaching)

The scope (such as the scope of "materials") and other details of these definitions will be further clarified through the permanent rulemaking process for future implementation. The purchase of a student growth assessment is an allowable use (see Part II: Student Growth Assessment).

The following recommendations support applicants in determining whether or not instructional materials required for the inventory meet the research-aligned standard described in the Definitions & Helpful Terms (pg.7) for the purposes of this grant, only. This determination will be further clarified through the permanent rulemaking process for future applications.

- **Oregon's State Board approved** Adoption Criteria for ELA Instructional Materials offer a strong framework for applicants to evaluate instructional materials as being research-aligned and culturally responsive. Additional resources on high-quality instructional materials can be found on Oregon Department of Education's High-Quality Instructional Materials webpage.
- **Oregon's Early Literacy Framework** includes additional information to inform evaluation and use of assessments, tools, and other instructional materials.

Hiring: Employment of Literacy Specialists, Interventionists, and Coaches

Funds for the employment of literacy specialists, coaches or interventionists are an allowable use of these grant funds. The scope (such as the definition of each of the roles named above) and other details of this allowable use will be further clarified through the permanent rulemaking process for future implementation.

Application Item	Proposed Investments

Provide a brief description of the proposed investment. For example, "Provide PD to K-1 teachers on new writing curriculum," or "Hire Literacy Coaches." Applicants should consider how literacy specialists, coaches, and interventionists support the implementation of the other allowable uses and how their roles will have a direct impact on student learning and teacher practice.

Application Item	FTE & FTE Type

If there is FTE associated with the investment, indicate how much FTE and the Type of FTE from the dropdown that most closely aligns to the investment.

Application Item	Allowable Use Code

Select the more granular allowable use code connected to the investment. Options for Allowable Use Code follow:

Allowable Use Code	Description
CRCM	Purchase Culturally Relevant Curricula & Materials
CTPD	Curricula Training & Professional Development
PDC	Professional Development and Coaching
1:1HDT	1:1 High Dosage Tutoring
SGHDT	Small Group High Dosage Tutoring
ELPH	Extended Learning Programs - Home-based Summer Reading
ELPSS	Extended Learning Programs - Intensive Summer School
ELPO	Extended Learning Programs - Other

Application Item	Object Code

Select the appropriate object code connected to the investment.

Application Item	4th or 5th Grade Expenditure

If applicants are choosing to invest in 4th or 5th grade, add those expenditures as individual investments so the Oregon Department of Education can accurately calculate expenditures to ensure adherence to the 20% limitation for 2023-24 and 10% for 2024-25.

Application Item	Literacy Budget

Add the dollar amount that is budgeted from the Early Literacy Success School District Grant for the specific investment. When the budget is finished, the sum of this column should equal the applicant's total allocation for each year.

Application Item	Employment of Literacy Specialists, Interventionists, and Coaches

Funds for the employment of literacy specialists, coaches or interventionists are an allowable use of funds. The scope (such as the definition of each of the roles named above) and other details of this allowable use will be further clarified through the permanent rulemaking process for future implementation.

Applicants should consider how literacy specialists, coaches, and interventionists support the implementation of the other allowable uses and how their roles will have a direct impact on student learning and teacher practice.

Appendix A: Definitions and Helpful Terms

Definitions

The following definitions come from the Early Literacy Success Initiative:

- "Early elementary grades" means any grade from pre-kindergarten through grade three.

- "Elementary school" means a school of a school district, or a public charter school, with students in early elementary grades.

- "Extended learning programs" are programs that use research-aligned literacy strategies and that are made available to students in early elementary grades by licensed teachers or by qualified tutors. Extended learning programs may include, but are not limited to:
    - Home-based summer reading activities for students who need additional support and enrichment; and
    - An intensive summer school program for students who need the most additional support and who receive at least 60 hours of direct literacy instruction by an instructional assistant or a licensed teacher trained in research-aligned literacy strategies.

- "High-dosage tutoring" means one-on-one tutoring or tutoring in small groups, as determined by rule of the State Board of Education, that:
    - Is provided in addition to daily instruction;
    - Is provided two or more times each week over at least a 10-week period; and
    - Uses a research-aligned tutoring model that is administered in a culturally responsive manner and that is combined with the training necessary for tutors to implement the model effectively.

- "Pre-kindergarten" means a preschool or pre-kindergarten program that is:
    - Provided by a school district or public charter school; or
    - Delivered in partnership between a school district and another organization.

- "Preschool" means a high-quality program that serves children at least three years of age but not older than five years of age.

- "Public charter school" means a public charter school that: (a) Is established under ORS chapter 338; and (b) Is not a virtual public charter school, as defined in ORS 338.005.

- "Qualified tutor" means an individual who is trained to implement a program providing high-dosage tutoring.

- "Research-aligned literacy strategies" means strategies that:
    - Are literacy focused;
    - Are culturally responsive and relevant to diverse learners; (c) Are based on long-term research derived from the science of reading and writing; and (d) Apply instructional practices that are developmentally appropriate and specifically designed for students with disabilities and students who are English language learners.

- "Science of reading and writing" means:
    - The convergence of findings from research on reading and writing processes, development and instruction; and
    - The teaching of phonemic awareness, phonics, fluency, vocabulary and comprehension through explicit and systematic instruction that can be differentiated to meet the needs of individual learners through developmentally appropriate practices.

- "Student groups that have historically experienced academic disparities" means:
    - Economically disadvantaged students, as determined under rules adopted by the State Board of Education;
    - Students from racial or ethnic groups that have historically experienced academic disparities, as determined under rules adopted by the State Board of Education;
    - Students with disabilities;
    - Students who are English language learners;
    - Students who are foster children, as defined in ORS 30.297; (f) Students who are homeless, as determined under rules adopted by the State Board of Education;
    - Students who attend an elementary school that:
        - Is identified for comprehensive support and improvement or for targeted support and improvement under the federal Every Student Succeeds Act (P.L. 114-95, 129 Stat. 1802); or
        - Qualifies for assistance under Title I of the federal Elementary and Secondary Education Act of 1965; or

- Any other student groups that have historically experienced academic disparities, as determined under rules adopted by the State Board of Education by rule.

Helpful Terms

Additional terms developed to support applicants. Note that these and other definitions will be further clarified through the permanent rulemaking process for future implementation.

- "Coaching" - Where this law names "coaching" it should be understood as an array of practices that support teachers through regular feedback and practice, formally or informally, to support implementation of research-aligned literacy practices and student learning.

- "Core or basal instructional materials" are instructional materials that are intended to be a substantial and ongoing component of literacy instruction. These might include adaptive or personalized programs, digital, or print materials. Applicants are required to adopt basal instructional materials in order to teach the academic content standards for English Language Arts.

- "Developmentally appropriate"[26] can be thought of as "an approach to teaching grounded in the research of how children develop and learn and in what is known about effective early education … developmentally appropriate practice involves teachers meeting young children where they are (by stage of development), both as individuals and as part of a group." The National Association for the Education of Young Children also identifies three core considerations of developmentally appropriate practice:
  - knowledge of child development and learning,
  - knowledge of children as individuals, and
  - knowledge of children's cultures.

- "Early literacy program" should be considered as the entirety of the curriculum, assessments, instructional materials, practices, systems, staffing, and structures in place to support comprehensive early literacy across the district.

- "Literacy Assessments" can be considered summative, benchmark, diagnostic, interim assessments, and purchased systems of formative assessment practices used to measure student learning across any or all of the four domains of literacy. For definitions, see pages 26-35 of The Right Assessment for the Right Purpose.

[26] Oregon's Early Learning & Kindergarten Guidelines

- "Literacy curriculum" can be considered any instructional materials used in practice and/or formally adopted by the local school board for core or basal instruction.

- "Literacy Tools and Digital Resources" can be considered any supplemental materials, devices, programs, or curriculum used as either core or supplemental to students' literacy instruction. This includes intervention, acceleration, tutoring, or supplemental materials that are used to a substantial degree across elementary schools in student literacy instruction and in addition to the core curriculum.

- "Professional development" for this grant can be considered similarly to its definition as articulated in the Oregon Department of Education's Integrated Guidance: learning opportunities that support educators and administrators in instructional strategies for equity-centered, research-aligned, and culturally responsive literacy instruction that considers the context of each district, may elevate critical topics in system change strategies for early literacy, and support educators in leveraging high-quality, research-aligned instructional materials and curriculum to serve all students.

Appendix B: Evaluation Criteria

This appendix is intended to be transparent with how applications will be reviewed by the Oregon Department of Education starting in January 2024. Applicants can choose to use this as a form of self-assessment, but it is not required. Multiple reviewers will read and evaluate each application and their attachments.

Intake Checklist

Required Attachments	Yes	No
1. Board Approval Meeting Minutes		
2. Literacy Inventory and Budget		
3. Amended MOU (for those in an Aligned Program Consortia)		
Completion Check	**Yes**	**No**
1. Are all questions on the application answered?		
2. Have all assurances been verified?		

Program Review

For All Applicants	Meets	Does Not Meet
Program review includes a reflection for each section with evidence of clear reflection and connection to indicators.		

Descriptions of Professional Development & Coaching, Extended Learning, and High-Dosage Tutoring

For All Applicants	Meets	Does Not Meet
The description of how the applicant will provide professional development and coaching in research-aligned strategies includes: • the research-aligned literacy strategies that the professional development and coaching will focus on (required); • the target audience (including roles) for the professional development and coaching (required); and • the literacy assessments, tools, curricula or digital resource(s) the professional development will focus on (as applicable). If the applicant is not yet able to implement professional development and coaching, applicants have submitted a rationale and description of how they plan to do so in the future.		
The description of how the applicant will provide extended learning programs that use research-aligned literacy strategies and that are made available by licensed teachers or by qualified tutors includes both: • a description of how literacy is included as the focus of the program, and • who will provide the extended learning and their qualifications. If the applicant is not yet able to implement extended learning programs, applicants have submitted a rationale and description of how they plan to do so in the future.		
The description of how the applicant will provide high-		

For All Applicants	Meets	Does Not Meet
dosage tutoring that integrates reading and writing and that is delivered by a qualified tutor using developmentally appropriate practices includes all four details: • the domains of language[27] addressed (at least reading and writing); • who will provide the high dosage tutoring and their qualifications; • duration and frequency; and • how the tutoring is developmentally appropriate, including how it is responsive to student need. If the applicant is not yet able to implement high-dosage tutoring, applicants have submitted a rationale and a description of how they plan to do so in the future.		

Student Growth Assessment

For All Applicants	Meets	Does Not Meet
A student growth assessment for literacy is submitted in the Inventory. If not, a description is provided of how a student growth assessment will be obtained and administered **Note:** The "disaggregation of data" requirement for this application requirement is evaluated through an assurance.		

[27] Reading, Writing, Speaking, and Listening.

Communication Plan

For All Applicants	Meets	Does Not Meet
At least one communication strategy for each community group is provided: • School districts; • Elementary schools of the school district; • Families of the school district; and • Members of the school district community		

Matching Funds

For All Applicants	Meets	Does Not Meet
At least one source to match 25% of the total allocation is named and at least one category is selected for its use. If applicable, a fund source is named for the 4th and/or 5th grade match.		

Inventory & Curriculum Review

For All Applicants	Meets	Does Not Meet
Application includes a core (or basal) ELA curriculum for grades K-3 identified in the Inventory. If applicable, inventory includes curriculum for pre-kindergarten.		
Application includes a core (or basal) ELA curriculum for grades 4 and/or 5 identified in the Inventory, if funds are budgeted for 4th/5th grade.		
For districts, only: The adoption date of the core curriculum is on or after February 2020. If no, there is a description explaining anticipated changes and anticipated date of new adoption		

For All Applicants	Meets	Does Not Meet
For charters, only: A review or evaluation process of the core curriculum using the state criteria adopted in 2020 is indicated in the Inventory. If no, description is provided explaining when and how a review using the criteria will occur or intent to use curriculum from the SBE list.		
For any material types other than core/basal curriculum, all applicable information is complete (Title, Vendor, Type, Grades, Date of Adoption, Print or Digital)		
If applicable, there is a description of any planned changes in order to ensure an item in the inventory will meet the research-aligned criteria in the future.		
A student growth assessment for literacy is submitted in the Inventory. If not, a description is provided of how a student growth assessment will be obtained and administered **Note:** The "disaggregation of data" requirement for this application requirement is evaluated through an assurance.		

Budget (Including Proposed Hiring and/or Content)

For All Applicants	Meets	Does Not Meet
Two years of budget tabs are complete.		
No more than 20% of the 23-24 budget is allocated to 4th and/or 5th grade, if applicable.		
No more than 10% of the 24-25 budget is allocated to 4th and/or 5th grade, if applicable.		
Proposed investment descriptions align with the		

For All Applicants	Meets	Does Not Meet
associated allowable use category selected.		
No more than 5% of total allocation is budgeted for administrative (or indirect) costs.		
For each budget tab, the total budgeted amount does not exceed the total allocation.		

Each activity on both budget tabs:
- Connects to an allowable use
- Has a description of the Proposed Investment
- Specifies:
  - FTE, if applicable
  - FTE Type, if applicable
  - Appropriate allowable use code
  - 4th/5th Expenditure, if applicable
  - A budget amount		

Any proposed changes indicated in the Inventory are reflected in the budget, if applicable. This is not applicable if: i) The applicant description names a different funding source to address the change ii) There are no proposed changes.		

LETRS Implementation & Impacts in Multnomah County

Prepared by:
Pacific Research and Evaluation, LLC
October 2023

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Executive Summary

In late 2021, Portland Public School District, in partnership with the Multnomah Education Service District (MESD), submitted a proposal to the Oregon Department of Education suggesting the use of GEER-II dollars to fund an independent evaluation of LETRS implementation and outcomes across the five Multnomah County school districts during the 2022-2023 school year. Ultimately, the study would aim to provide information that supports state-level decisions about whether and how to invest in LETRS training statewide.

Over the course of two years, participants from five Multnomah County school districts engaged in the Language Essentials for Teachers of Reading and Spelling (LETRS) professional learning program for early childhood educators, which is focused on early literacy and language foundations. The five districts investing in LETRS training include Portland Public Schools (PPS), Reynolds School District, David Douglas School District (DDSD), Parkrose School District, and Centennial School District. In partnership with the Multnomah Education Service District (MESD), PPS received funding in 2022 to support implementation of LETRS across these five districts, in addition to funds from the Oregon Department of Education for an independent study of LETRS implementation and outcomes. The independent study was completed by Pacific Research and Evaluation (PRE) and included educator surveys, educator focus groups, administrator interviews, and points of contact interviews, as well as an assessment of the impact of LETRS on teacher and student outcomes in the 2022-2023 school year. A summary of the findings is presented below and covers the topic of implementation and context, as well as the five levels of Guskey's model for evaluating professional learning programs: Participants' Reactions (Level 1); Participants' Learning (Level 2); Organizational Support and Change (Level 3); Participants' Use of New Knowledge and Skills (Level 4); and Student Learning Outcomes (Level 5).

Implementation and Context

A majority of LETRS participants across the five districts were classroom teachers and typically instructed kindergarten through fifth grade. Participants most often became involved in LETRS to enhance knowledge of and develop foundational skills in reading instruction, to meet students' needs/better equip students to learn to read, to support readers who need extra support, and to understand the science of reading. Of those participating, nearly ninety percent had completed Volume 1 of LETRS training.

Level 1: Participants' Reactions

Reactions to the LETRS training were generally positive. Participants reported that they enjoyed the training and found it more useful and relevant than other literacy-related professional development opportunities. Participants explained that the training goes beyond typical reading curricula for educators by providing more in-depth knowledge around the science of reading, phonemic awareness, and brain development. Participants also appreciated the research-based content and its applicability.

Level 2: Participants' Learning

LETRS participants reported that the training had increased both their knowledge of and their skill with literacy instruction, which led to enhanced skills and application in the classroom. A deeper understanding of the science of learning allowed educators to identify gaps in resources and curriculum and fill those

gaps more effectively. Educators perceive that the LETRS training has given them a better understanding of the science of reading and has increased their skills more than other literacy-related training they had completed.

Level 3: Organizational Support and Change

Some districts were supporting educators by providing monetary compensation or protected time to complete LETRS training. Centennial, PPS, and Reynolds were offering financial support, while Reynolds also provided dedicated time to focus on training and homework. Districts also supported educators by providing materials needed to complete the training and materials to implement it in the classroom. Further, some districts supported educators through coaching, TOSAs, and learning specialists. The most common barrier to LETRS participation was a lack of compensation and the time needed to complete the program. Many educators had to commit non-contract hours to complete the program, and the time commitment led to attrition in some cases.

Level 4: Use of New Knowledge and Skills

LETRS participants reported that the LETRS training had changed their instructional practices and positively impacted how they carry out their job; they also indicated that they were able to put their LETRS training to use right away in their instructional practices. Administrators observed that LETRS trained teachers are able to identify the specific needs of individual students to determine what they can do more precisely to help, while participants noted that the training had positively impacted their ability to serve students from historically underserved subgroups. A lack of time for material and curriculum preparation made transferring of LETRS information to education practices difficult for educators.

Level 5: Student Learning Outcomes

Educators across districts perceive that LETRS training has positively impacted the literacy outcomes of students. Participants also generally felt that the combination of the literacy curriculum in their district and their application of LETRS training was positively impacting student outcomes. Literacy assessment scores were examined by comparing results for students with LETRS-trained teachers to those with teachers not trained in LETRS. Some of the findings were promising even with many teachers still in the early stages of their LETRS training. Specifically, Reynolds School District and David Douglas School District both showed promising findings with students of LETRS trained teachers showing higher rates of reading at grade level than a comparison group. DDSD showed particularly promising findings as detailed below:

- When considering grades K-5, students of LETRS trained teachers were **1.71 times more likely** to have a Spring reading composite score at or above benchmark compared to students of non-LETRS trained teachers.
- When considering ELL students in grades K-5, students of LETRS trained teachers were **2.67 times more likely** to have a Spring reading composite score at or above benchmark compared to ELL students of non-LETRS trained teachers.
- When considering HU students in grade K-5, students of LETRS trained teachers were 1.**51 times more likely** to have a Spring reading composite score at or above benchmark compared to ELL students of non-LETRS trained teachers.

Introduction

Language Essentials for Teachers of Reading and Spelling (LETRS) is a professional learning program for early childhood educators and administrators focused on early literacy and language foundations. LETRS is offered by Lexia Learning, a company focused on literacy education. While other science of reading training programs are offered by other companies, those programs vary in density, length, and model. Over a two-year period, LETRS participants engage in online units, face-to-face sessions, readings, and dedicated time to practice applying skills in the classroom, with learning measured by quizzes, tests, and document submission. Within Multnomah County, five districts have begun investing in LETRS training, including Portland Public Schools (PPS), Reynolds School District (RSD), David Douglas School District (DDSD), Parkrose School District (PSD), and Centennial School District (CSD). In late 2021, Portland Public Schools, in partnership with the Multnomah Education Service District (MESD), submitted a proposal to the Oregon Department of Education requesting the use of GEER-II dollars to fund an independent evaluation of LETRS implementation and outcomes across the five named districts during the 2022-2023 school year. Ultimately, the study would aim to provide information that supports state-level decisions about whether and how to invest in LETRS training statewide.

Pacific Research and Evaluation (PRE) was selected through a competitive bid process to complete the independent study. In addition to a literature review on the impacts of LETRS training in similarly situated districts who have utilized LETRS for a longer period of time, the study was designed to include formative evaluation to assess program implementation across the five identified districts in Multnomah County and summative evaluation to assess the impact of LETRS on teacher and student outcomes in the 2022-2023 school year. A critical factor in the evaluation methodology is that LETRS training is designed to take up to two years, and four of the five districts included did not yet have any educators who had fully completed LETRS training as of the midpoint of the 2021-2022 school year. As such, student achievement outcomes will be considered to the extent feasible, but the primary focal points of the study will be program implementation and teacher-, school-, and district-level outcomes.

The purpose of this project is to study and learn from different models of LETRS implementation and support across five districts in Multnomah County to better understand the conditions and supports required to ensure that LETRS training results in the consistent, quality implementation of research-based teacher practices and, most importantly, improved student reading outcomes for our historically underserved students. This study is being designed to (1) support collaboration and data-based project planning within and across the participating districts and (2) inform the Oregon Department of Education as to whether and how greater statewide investment in LETRS training could lead to improved student outcomes in reading across our state. Given the important benchmark of 3rd grade reading, it proposed that this study focus specifically on LETRS training of educators supporting K-2nd grade students and student outcomes in this grade band. This is the primary focus of this report but other elementary grades are included where applicable.

The first aspect of the research study was to complete a comprehensive literature review. The purpose of this comprehensive review was to summarize and interpret the current body of literature related to the

utilization, implementation, and impact of LETRS training. This literature review provided information and background for the formative and summative evaluation of LETRS across the five identified school districts in MESD and supported the contextualization of findings in this report. To increase relevance and applicability to the five districts included in this study, this review focused to the extent possible on literature produced in the past decade and involving schools in urban locations. Where available, this review highlighted the findings and conclusions drawn from peer-reviewed empirical studies. A copy of this literature review can be found in Appendix A of this report.

Methods

Educator Fall and Spring Survey

A survey was conducted with educators from each district who had completed any part of the LETRS training. The survey was administered at two timepoints (Fall 2022 [N=139]; Spring 2023 [N=187]) to shed light on educator experiences and perceptions as they progressed through the LETRS program. In the Fall of 2022, 139 educators who met the study criteria[1] participated in this survey. When the survey was readministered in the Spring of 2023, 187 educators who met the study criteria responded. Note that survey participants were allowed to skip questions, and therefore the number of respondents represented in the findings throughout this report vary by item.

Of the 139 educators who responded to the survey in the Fall, the largest proportion worked within Reynolds School District (29.5%), followed closely by PPS (28.8%). In the Spring, PPS educators (45.5%) were the largest group of respondents. Table 1 displays the breakdown of educator survey participation by district at each timepoint.

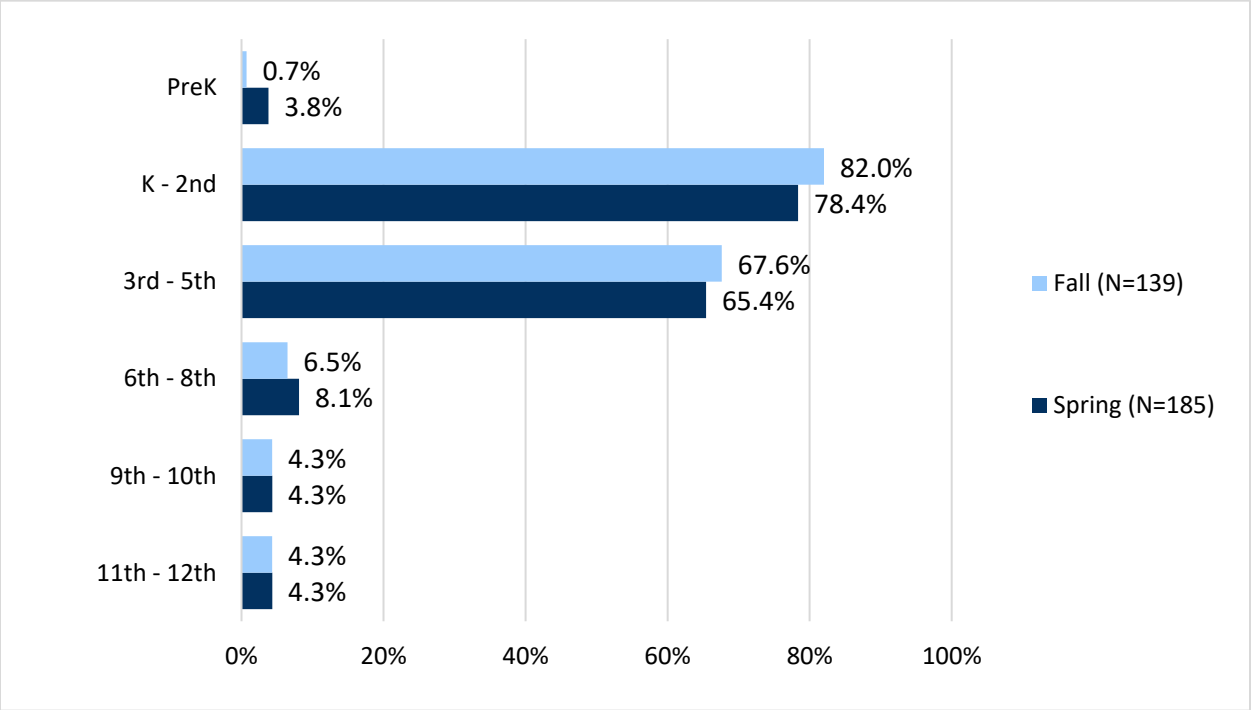
Table 1. Educator Survey - School District

District	Fall Survey (N=139)	Spring Survey (N=187)
Centennial SD	16.6%	10.2%
David Douglas SD	20.9%	15.0%
Parkrose SD	4.3%	3.7%
PPS	28.8%	45.5%
Reynolds SD	29.5%	25.7%

[1] Only survey responses from educators who worked with students in the kindergarten through fifth grade range and had participated in any LETRS training were included in this aspect of the study.

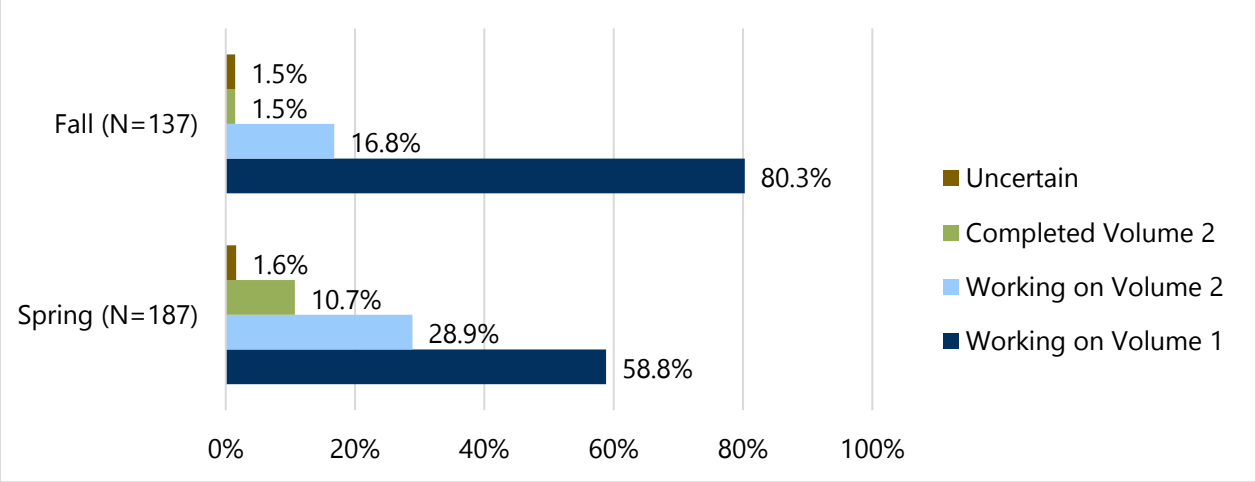
All educators included in this study worked with students in the kindergarten through fifth grade range. Many educators worked with students in multiple grade levels, including some who worked with middle and high school students in addition to elementary students. At both survey timepoints (Fall 2022 and Spring 2023), the highest majority of educators were focused on students in the kindergarten through second grade level. Nearly half of the educators who responded to this item (at either timepoint) selected more than one of the grade level options listed in Figure 1.

Figure 1. Educator Survey - Grade Levels Worked With



As of the Spring of 2023, educators had made varying levels of progress in their LETRS training. While most educators were still working on LETRS Volume 1, more educators had progressed into or completed Volume 2 by Spring 2023 as shown in Figure 2.

Figure 2. Educator Survey - Progress in LETRS



Supplemental Study Survey

In Spring 2023, a survey of PPS educators was administered to assess educators' knowledge and perceptions regarding teaching developing readers. Participants included LETRS trained teachers (N=150), and a control group of teachers without any LETRS training (N=111). More information on the methods used for this study is included in the supplemental study section, beginning on page 66.

Focus Groups and Interviews

Twenty-six educators from across the five target school districts participated in focus groups or interviews conducted in the Spring of 2023. As Table 2 displays, most of these educators were classroom teachers (n=15), and the district with the most educator representation was PPS (n=13).

Table 2. Educator Focus Groups and Interviews - District and Role

District / Role	Participant Count
Centennial *Classroom Teacher (1)* *Coach (2)* *Speech-Language Pathologist (1)*	4
David Douglas *Classroom Teacher (3)* *Specialist/Interventionist (1)*	4
Parkrose *Classroom Teacher (2)* *Specialist/Interventionist (1)*	3
PPS *Classroom Teacher (7)* *Specialist/Interventionist (4)* *Coach (1)* *Speech-Language Pathologist (1)*	13
Reynolds *Classroom Teacher (2)*	2
Grand Total	**26**

Nine administrators representing four of the target school districts participated in interviews in the Summer of 2023 (see Table 3). Most of these administrators were principals (n=6) at schools implementing LETRS professional development. In order to protect their anonymity, the roles of the three non-principal interviewees are not shared in this report.

Table 3. Administrator Interviews - District and Role

District / Role	Participant Count
David Douglas *School Principal (1)*	1
Parkrose *School Principal (2)*	2
PPS *School Principal (2)* *Other Administrator (1)*	3
Reynolds *School Principal (1)* *Other Administrator (2)*	3
Grand Total	**9**

Finally, six district key points of contact were interviewed in the Spring of 2023, including two PPS representatives, and one representative from each of the four other districts.

Lexia Participation and Pretest/Posttest Data

The LETRS learning systems platform, Lexia, was used to track educators' progress on LETRS training as well as their Pretest and Posttest scores. Across the five target Multnomah County school districts, the total number of LETRS licenses associated with this project was 1,094.

Table 4. District Licenses

District	Total Licenses
Centennial	53
David Douglas	64
Parkrose	28
PPS	631
Reynolds	318
Grand Total	**1,094**

Student Assessment Data

Districts provided student achievement data from the 2022-2023 school year to shed light on the potential early student outcome impacts of the LETRS training program in Multnomah County schools. Specifically, achievement was examined by analyzing data from district literacy screeners which varied by districts and included: DIBELS, Acadience, iReady reading, and STAR assessment data. Additional details regarding these assessments and the design of the study are included in the final section of this report focused on student achievement findings. Data were provided for students of LETRS trained teachers as well as a comparison sample of students of teachers who did not participate in the LETRS training. Only students in the kindergarten through fifth grade with assessment data available from both Fall 2022 and

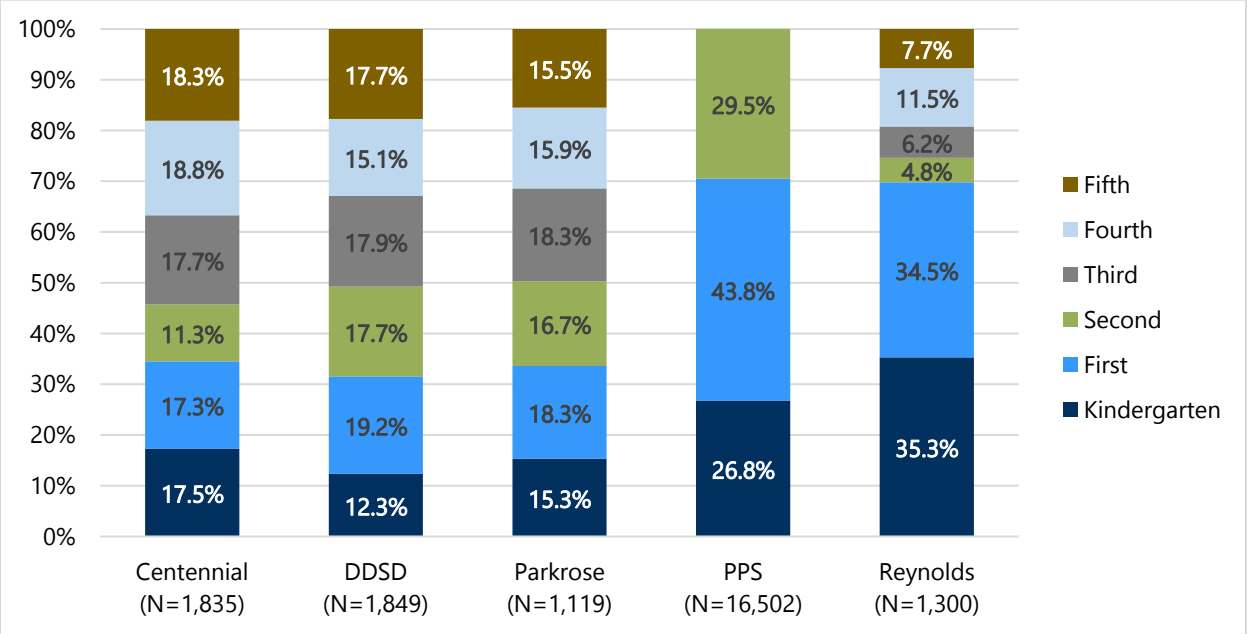
Spring 2023 timepoints were included in our analyses. Table 5 displays the number of students that are represented in the student achievement data treatment and comparison groups for each district.

Table 5. Number of students with assessment data for each district

District	Treatment	Comparison	Total
Centennial	389	1,446	1,835
David Douglas	362	1,487	1,849
Parkrose	252	867	1,119
PPS	2,195	14,307	16,502
Reynolds	1,051	249	1,300
Grand Total	4,249	18,356	22,605

The majority of student assessment data came from students in kindergarten and first grade for PPS and Reynolds, as shown in Figure 3, while the data were more evenly distributed across Centennial, DDSD, and Parkrose.

Figure 3. Grade level of students with assessment data for each district



The tables to follow will display the demographic characteristics of the treatment groups students. The gender identity of treatment groups students represented in student assessment data is displayed in Table 6. Districts varied in the extent to which they provided information about the gender of students

included in student assessment data. Therefore, the percentages in the table below are based only on available data from each district (i.e., the number of students noted in the leftmost column of Table 6).

Table 6. Student gender represented in assessment data for each district

District	Male	Female	Non Binary
Centennial (N=407)	51.8%	48.2%	0.0%
David Douglas (N=362)	50.0%	46.1%	0.0%
Parkrose (N=252)	52.8%	46.8%	0.0%
PPS (N=2,195)	48.8%	50.9%	0.3%
Reynolds (N=189)	52.9%	47.1%	0%

Districts also varied in the extent to which the race/ethnicity of students was provided in combination with student assessment data. Table 7 displays the racial/ethnic representation of students included in each districts' student assessment data to the extent it was provided (see the number of students noted in the leftmost column).

Table 7. Student racial/ethnic identity represented in assessment data for each district

District	Asian	Black	Hispanic	Native American /Alaskan Native	Native Hawaiian/ Pacific Islander	White	Multiple
Centennial (N=2,051)	14.4%	8.2%	28.8%	0.5%	2.8%	37.3%	8.0%
David Douglas (N=1,849)	13.6%	12.2%	25.8%	0.5%	2.5%	30.6%	9.4%
Parkrose (N=252)	11.5%	19.8%	27.8%	1.6%	2.8%	51.2%	13.1
PPS (N=2,195)	13.0%	9.9%	15.9%	0.8%	1.4%	44.9%	14.1%
Reynolds (N=188)	3.2%	3.7%	56.4%	0.5%	1.1%	28.2%	6.9%

Findings

The findings and discussion sections below are organized by the key research questions determined at the onset of this study. The first section of research questions focuses on the process districts used to implement LETRS, and the remaining five sections focus on the five levels of Guskey's[2] model for evaluating professional learning programs: Participants' Reactions (Level 1); Participants' Learning (Level 2); Organizational Support and Change (Level 3); Participants' Use of New Knowledge and Skills (Level 4); and Student Learning Outcomes (Level 5). Next, findings are presented from the supplemental study of

[2] Guskey, T. R. (2000). *Evaluating professional development.* Thousand Oaks, CA: Corwin.

teacher knowledge and beliefs. This report concludes with a summary section highlighting key findings and evaluation insights.

Implementation and Context

Which educators received LETRS training?

According to both the Fall and the Spring surveys, the majority of the educators across all five districts who had begun or completed their LETRS training were classroom teachers. Educators who selected the "Other" option for their role included English language development teachers, speech language pathologists, special education teachers, reading interventionists, Title I teachers, an occupational therapist, and a school psychologist.

Table 8. Educator Survey - Role

Role	Fall Survey (N=139)	Spring Survey (N=187)
Classroom Teacher	60.4%	66.8%
Instructional Specialist	13.0%	12.3%
TOSA	8.6%	2.7%
Coach	5.8%	7.5%
Specialist	2.2%	1.1%
Principal	0.7%	1.1%
Other Administrator	0.7%	1.1%
Other role than listed here	8.6%	7.0%

Interview and focus group participants confirmed the survey findings with participants across the districts representing a range of positions, including classroom teachers, virtual teachers, instructional coaches, speech-language pathology specialists, and administrators. Of the administrators who participated in interviews, the majority had participated in introductory LETRS training specific to administrators. Points of contact interviewees from PPS and Reynolds mentioned that they had ELD and SPED teachers involved, Centennial noted that learning specialists and coaches participated, and DDSD added that coaches participated in their district.

Across all districts, the majority (86.6%) of educators who had begun or completed their LETRS training by Spring of 2023 shared that the highest degree or level of school they had completed was a master's degree (see Table 9). The eight educators whose highest degree was not a master's or a bachelor's degree indicated that they held doctorate degrees, professional degrees, and high school diplomas (or the equivalent).

Table 9. Highest Degree Earned

Degree Type	Participant Count
Master's degree	161
Bachelor's degree	17
Other	8
Grand Total	**186**

Almost all educators (94.0%) surveyed at the Spring timepoint had earned a college degree that was specific to the field of education. Just over half of those educators had attended college within the last ten years (50.8%), while about a third (33.9%) had most recently attended college between eleven and twenty years ago (see Table 10).

Table 10. Most Recent College Attendance

Year Range	Participant Count
2013 - 2023	93
2003 – 2012	62
1993 – 2002	24
1983 - 1992	4
Grand Total	**183**

According to points of contact interviewees, a majority of those involved in LETRS were kindergarten through fifth grade teachers. Districts also typically had a few middle school and high school teachers involved as well as a couple of administrators.

Survey respondents shared why they decided to participate in LETRS training. At both the Spring and Fall timepoints, respondents across all districts most commonly indicated they became involved in LETRS to enhance knowledge of and develop foundational skills in reading instruction, to meet students' needs/better equip students to learn to read, to support readers who need extra support, and to understand the science of reading. Further, interviewees noted that some educators became involved in LETRS after they heard positive reactions from their colleagues who participated early in implementation.

To what extent did participating educators complete all components of the LETRS program?

As of June 2023, across all five districts nearly ninety percent (89.1%) of licensed educators had completed Volume 1 of the LETRS training (as indicated by having taken the Volume 1 Posttest). The district with the highest LETRS completion rate (indicated by having taken the Volume 2 Posttest), was Reynolds (see Table 11).

Table 11. District Volume 1 and Volume 2 Test Completion Rates (Lexia Data)

District	Total Licenses	Took Vol. 1 Pretest	Took Vol. 1 Posttest	Took Vol. 2 Pretest	Took Vol. 2 Posttest
Centennial	53	49 (92.5%)	19 (35.8%)	10 (18.9%)	5 (9.4%)
David Douglas	64	60 (93.8%)	25 (39.1%)	9 (14.1%)	1 (1.6%)
Parkrose	28	23 (82.1%)	7 (25.0%)	7 (25.0%)	3 (10.7%)
PPS	631	545 (86.4%)	317 (50.2%)	185 (29.3%)	118 (18.7%)
Reynolds	318	298 (93.7%)	139 (43.7%)	101 (31.8%)	81 (25.5%)
Grand Total	**1,094**	**975 (89.1%)**	**507 (46.3%)**	**312 (28.5%)**	**208 (19.0%)**

The two-year time commitment required to complete the LETRS program is longer than most training programs and resulted in participants committing nights and weekends to complete the training, according to points of contact interviewees; the program time commitment led to attrition for some districts, which can be seen in Table 11 above. Teacher focus group participants added that educators valued the knowledge they could pull at any stage throughout their LETRS participation, despite varying levels of program completion.

Which curricular resources and balanced assessment systems did districts use in conjunction with LETRS implementation?

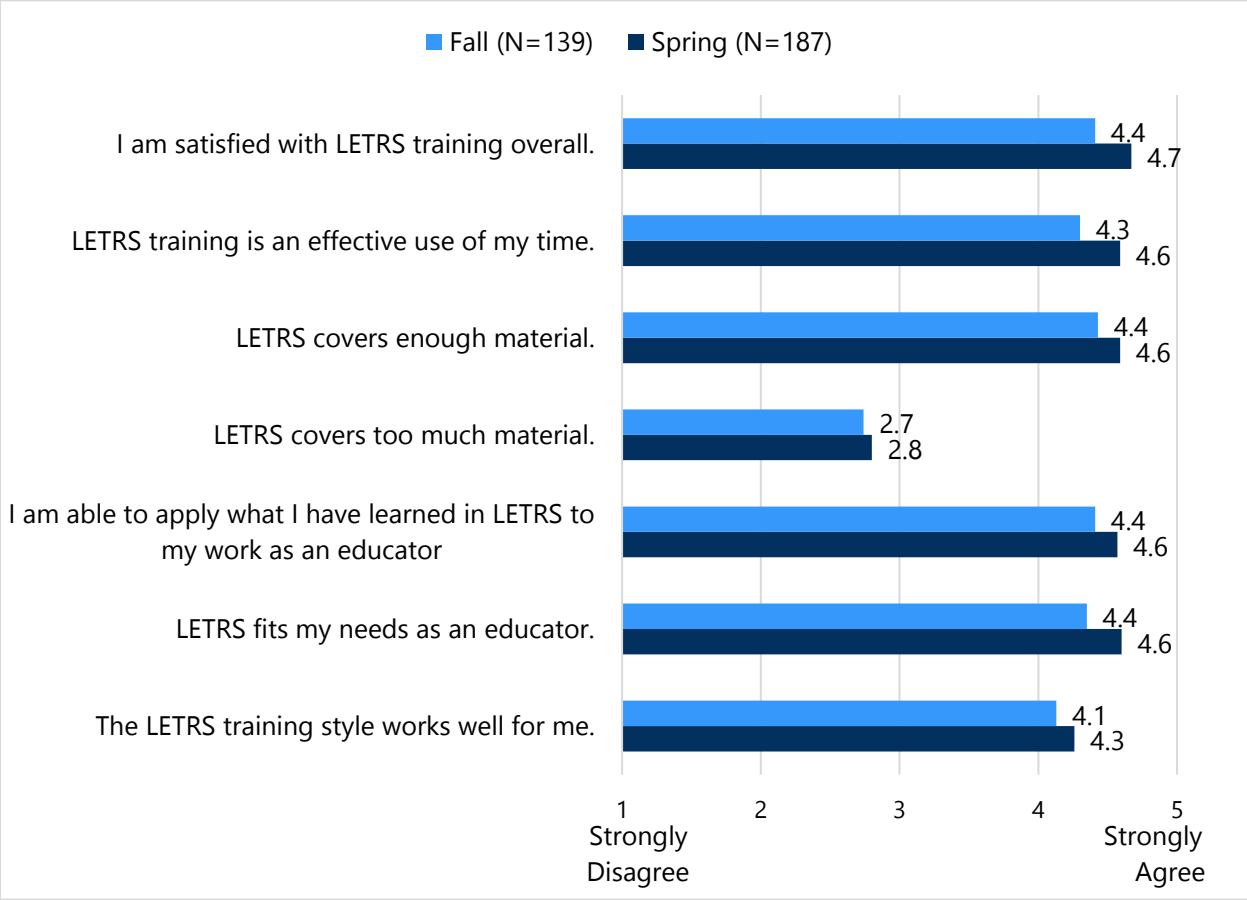
According to administrators, districts utilized a variety of curricular resources. Some districts utilized multiple curricula, with variation by grade. Curricula utilized included: 95 Percent Group, Heggerty Phonemic Awareness, Fundations, Geodes Reading Curriculum, Wit & Wisdom, Houghton Mifflin Harcourt (HMH) Curriculum, OpenCurriculum, Odell Education, ECRI, StudySync, Curriculum Associates iReady, and Amplicy. It is important to note that the 2022-2023 school year was a curriculum adoption year in Oregon and these were all newly adopted literacy curriculum. Regardless of the curriculum in place, points of contact indicated that LETRS was in alignment with these tools and many noted they were adopted because of this alignment. Some points of contact also mentioned the literacy screeners that their districts which included DIBELS, Acadience, STAR Reading, and iReady Reading.

LEVEL 1: Participants' Reactions

What were educators' reactions after participating in LETRS training? To what extent did educators like the training and find it useful?

Surveyed educators expressed positive perceptions regarding many aspects of their LETRS training, according to both the Fall and the Spring surveys. Figure 4 displays educators' average agreement ratings at each timepoint regarding a series of statements that are indicative of the extent to which educators liked the training and found it useful. All items were highly rated (with averages over 4 on a 5-point scale), with the exception of the statement "LETRS covers too much material," which received closer to a neutral level of agreement. Also, averages for all items were slightly higher at the Spring 2023 timepoint compared to the Fall 2022 timepoint.

Figure 4. Educator Reactions – Satisfaction with and Usefulness of LETRS [3]



[3] Due to participants skipping items, Ns vary slightly for the specific items listed in Figure 4. To save space and increase readability, the Ns reported in the legend of Figure 4 represent the highest number of responses to any of the listed item. This same format is used throughout this report whenever multiple items appear in a Figure together.

In focus groups and interviews, teachers, instructional coaches, and speech-language specialists provided feedback reinforcing the positive reactions demonstrated in survey findings. Many of these educators found that the content in the training allowed them to develop a better understanding of foundational principles regarding the science of reading and literacy and appreciated the quality and multiple modalities of interactive training materials. Some teachers noted that they could relate much of the training content to their current classroom curriculum due to the applicability of concepts and activities implemented throughout the LETRS units. Further, they appreciated the flexibility with which they could complete the LETRS training; however, some noted that they would have benefitted from additional opportunities to take training modules during contracted hours (e.g., district-funded staff development days) rather than relying on time after school or on weekends.

> *"I appreciated being able to go at my own speed within reason and adhere to the [LETRS] schedule when I could. I thought that the presenters and online quizzes were well done and the Bridge2Practice was classroom applicable."*
>
> *– PPS Teacher*

> *"I am noticing that the foundational skills in our [school] curriculum are aligned to the phonics lessons that were in the LETRS training, so I am enjoying that."*
>
> *– DDSD Teacher*

> *"I like how there are different instructional models and that it is engaging. The videos help break down the heavy workload and a lot of the materials are applicable and easy to do in the classroom."*
>
> *– PPS Teacher*

Administrators shared positive feedback similar to that of educators. Their feedback reinforced that educators were developing new ways of thinking about reading instruction by learning about the science of reading. Further, points of contact described the LETRS PD as "useful" and "practical." An administrator from PPS echoed educator feedback that they could utilize the PD immediately: "[Educators] learn something new they didn't learn when they were in college. It's new learning but practical learning that they can then take and use in their classroom right away." Further, administrators observed that LETRS training tools were successful with students. A Centennial administrator made the additional point that understanding the theory has catalyzed teacher buy-in at their district.

> *"I have heard lots of educators at various stages of their careers say that this has really helped them understand how students learn to read in ways that they never fully understood before and has helped them think about how to use their curricular resources more skillfully."*
>
> *– PPS Administrator*

> *"I think they found it incredibly helpful in terms of just really being able to develop an understanding of the why behind some of the things they were already doing."*
>
> *– Parkrose SD Administrator*

> *"I think they felt like it really got to the core of the basics of the brain, the science behind it, and how we learn to read. I think that was fascinating and teachers were genuinely curious about that."*
>
> *– PPS Administrator*

Administrators also acknowledged the LETRS training workload, highlighting the intensity of the LETRS training as an overwhelming factor for some participants. Points of contact similarly noted that the PD is a lengthy time commitment with a lot of work required of participants. Points of contact interviewees further explained that the time requirement led to attrition of participants in DDSD and PPS.

Across all districts, surveyed educators discussing what they liked most about the training confirmed they appreciated the research-based, science of reading content and the content's applicability. Educators also emphasized the usefulness of the multi-modal, self-paced training format. Overall, educators' responses remained consistent from the Fall to the Spring survey. In the Fall, however, they also highlighted the comprehensiveness of the training as an aspect of LETRS they liked. In the Spring, PPS educators shared appreciations for the support from the trainers and the training resources (e.g., the manual).

> *"There are many modes to interact with and apply the content. The independent learning is complemented by interactive webinars, where we can ask questions and strengthen/deepen/extend what we have learned."*
>
> *– PPS Educator*

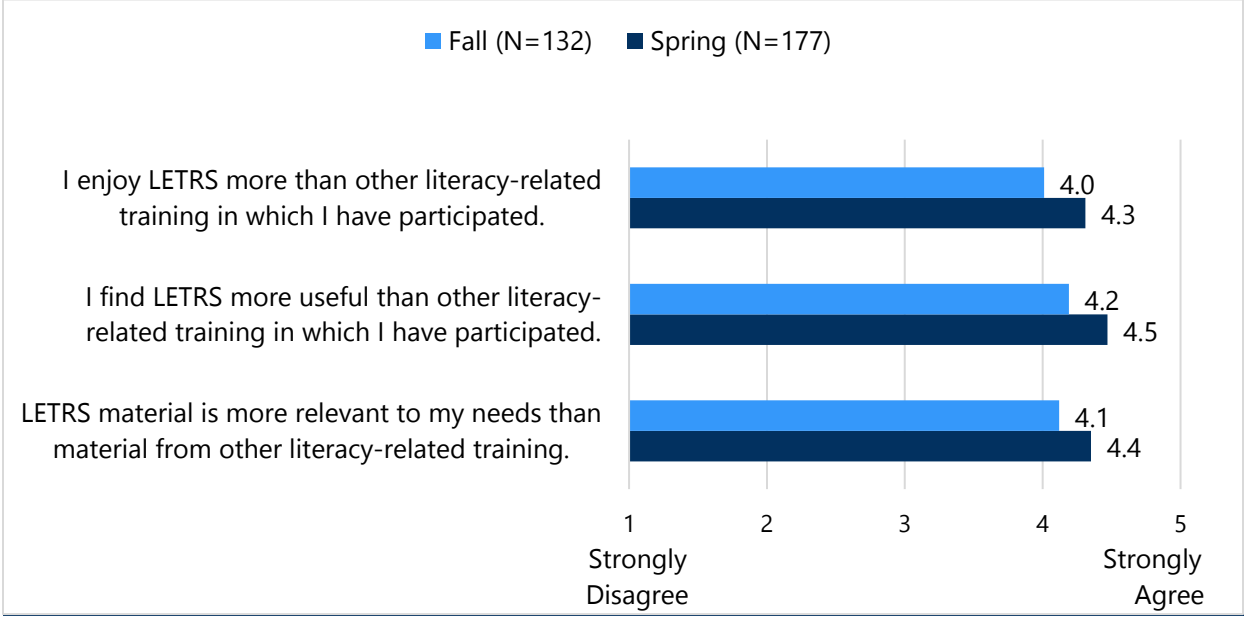
> *"I love the scope of the material. It is comprehensive and detailed, and very valuable."*
>
> *– Parkrose Educator*

> *"Skilled presenters and a really great resource book and activities."*
>
> *– PPS Administrator*

How did educators perceive enjoyment and utility of LETRS training differed from other literacy-related trainings?

According to both Fall and Spring surveys, educators agreed that they not only enjoyed the LETRS training more but found it more useful and relevant compared to other literacy-related training. As shown in Figure 5, educators' agreement was slightly higher on average at the latter (Spring) timepoint.

Figure 5. Educator Reactions – LETRS Compared to Other Trainings



Similarly, administrators agreed that LETRS goes beyond typical reading curricula for educators by providing more in-depth knowledge around the science of reading, phonemic awareness, and brain development. Relatedly, administrators noted that the lengthy commitment required by LETRS training differs from other literacy-related trainings.

> *"I think LETRS is providing a deeper knowledge of literacy that is not something we gain from basic curriculum training or instruction. In college we all had the big five reading instructional philosophy and understanding, but that was surface level when compared to the deeper understanding that LETRS provides."*
>
> *– DDSD Administrator*

> *"They are enjoying what they are getting out of it, but it can be overwhelming to do your full-time job plus all of the time that it takes in order to fully grasp the LETRS training."*
>
> *– Reynolds Administrator*

Educators in focus groups and interviews also felt the LETRS program was more comprehensive than other literacy training. They appreciated learning about student-centered learning experiences based on the foundational principles of the science of reading and noted that LETRS provided them with knowledge in these areas that went beyond prior training experiences. Further, some shared that the in-depth approach of LETRS training gave them the confidence to implement activities from the training in their classrooms; whereas, previous training opportunities had been time-constrained and less descriptive.

> *"Over the years, a lot of the training opportunities that I have had have shown how to run small reading groups or how to use diagnostic tolls to keep student records. In LETRS, however, it starts with understanding how kids learn to read and write, and then builds around how students access their learning. It is more student-centered."*
>
> *– PPS Teacher*

> *"The LETRS training is very intensive. The time that LETRS takes allows the program to have depth, whereas other professional development that we have had during district-directed training sessions do not have the time to go as deep."*
>
> *– Parkrose Teacher*

> *"The LETRS training wasn't too much to where it felt like busy work, but enough to where teachers felt confident to implement it in the classroom. I liked the Bridge2Practice in a sense that it encouraged me to instantly incorporate what I was learning in LETRS to my classroom."*
>
> *– Parkrose Teacher*

When comparing the LETRS PD to other PD opportunities, a DDSD administrator echoed other data sources, stating that the LETRS training differed from others in that it was "far more in-depth." Administrators from Centennial, DDSD, and PPS offered the additional feedback that participants described LETRS training as the "best" or "most impactful" PD they had ever attended.

> *"Time and time again, teachers are saying it's the most impactful professional learning course they have taken."*
>
> *– DDSD Administrator*

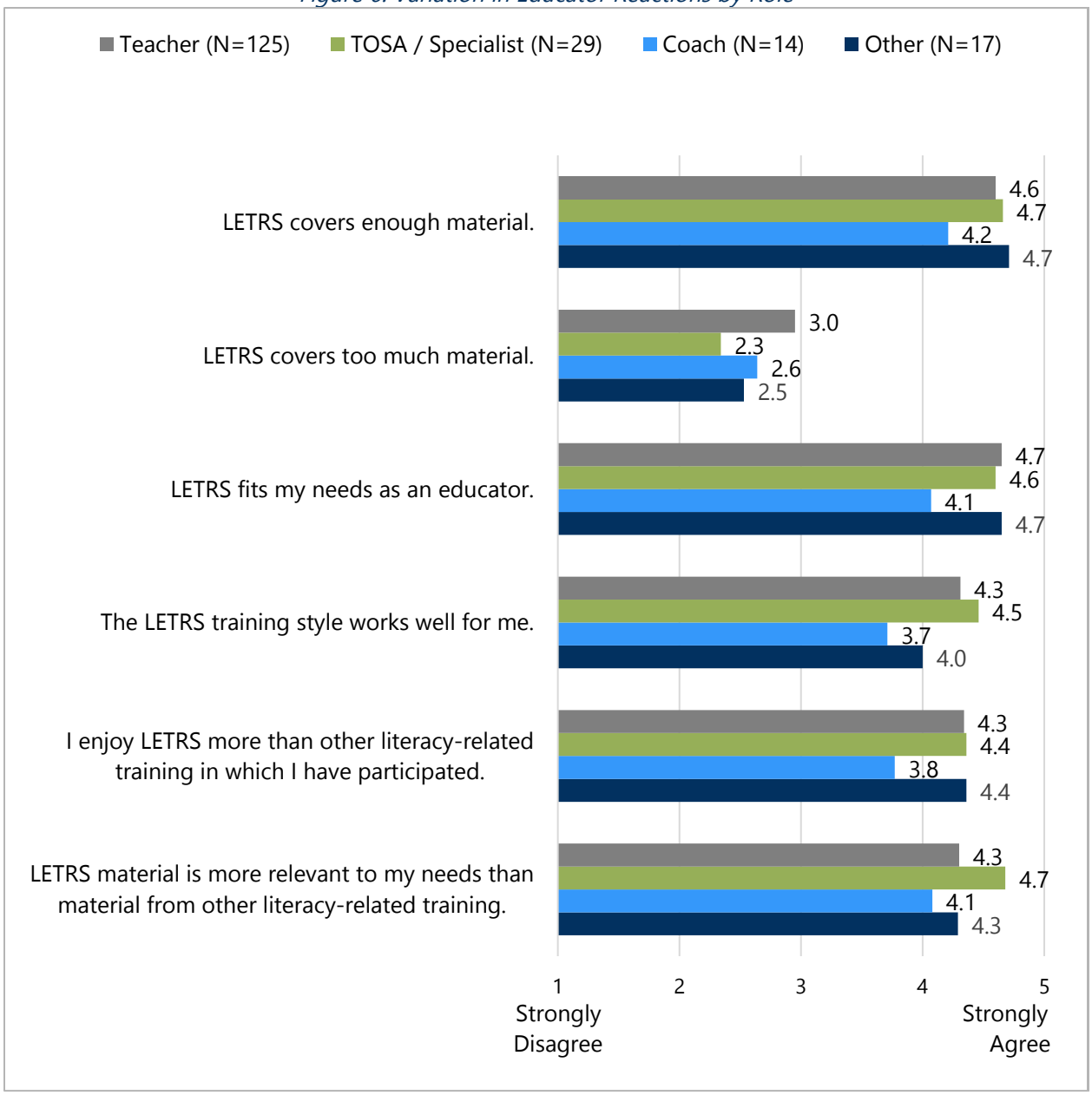
In contrast, two teachers from Reynolds School District shared experiences with a program, Success for All, which they felt was more intensive than the LETRS training. They indicated that, while they found the LETRS program to be similar, they preferred the Success for All program and its use of positive coaching, in which professionals from the program provided faculty with intentional monthly opportunities for mentorship and collaboration.

Did reactions differ by educator type?

Educators in a variety of roles responded similarly to survey items regarding their reactions to the LETRS training. Because the Spring survey was administered more recently and at a time when educators were further along in their LETRS training, Spring survey data, rather than Fall survey data, was used to examine differences in responses based on role (note that combining data from the two timepoints was not possible because many of the same participants responded to both surveys). Also, due to small number of participants in certain roles, some roles were grouped together for the purposes of comparison, resulting in the following comparison categories: Teacher; TOSA / Specialist (including instructional specialist); Coach; and Other. The category labeled Other includes principals and other administrators, as well as participants who indicated on the survey that their role was something other than the options available.

Figure 6 displays the results of items that were found to have at least half a point (0.5 on a 5-point scale) of variation in responses based on educator type. Findings revealed that, compared to educators in other roles, coaches tended to have somewhat lower levels of agreement with statements indicative of how much they liked LETRS and found it useful. Additionally, compared to other educators, TOSAs and specialists expressed the strongest agreement that the LETRS training material was more relevant to their needs compared to material from other literacy-related training.

Figure 6. Variation in Educator Reactions by Role



LEVEL 2: Participants' Learning

There is clear evidence of participant learning in the Lexia pretest and posttest scores from each volume. LETRS participants from all school districts improved their Average Vol. 1 score and Average Vol. 2 score on the posttest when compared to the pretest.

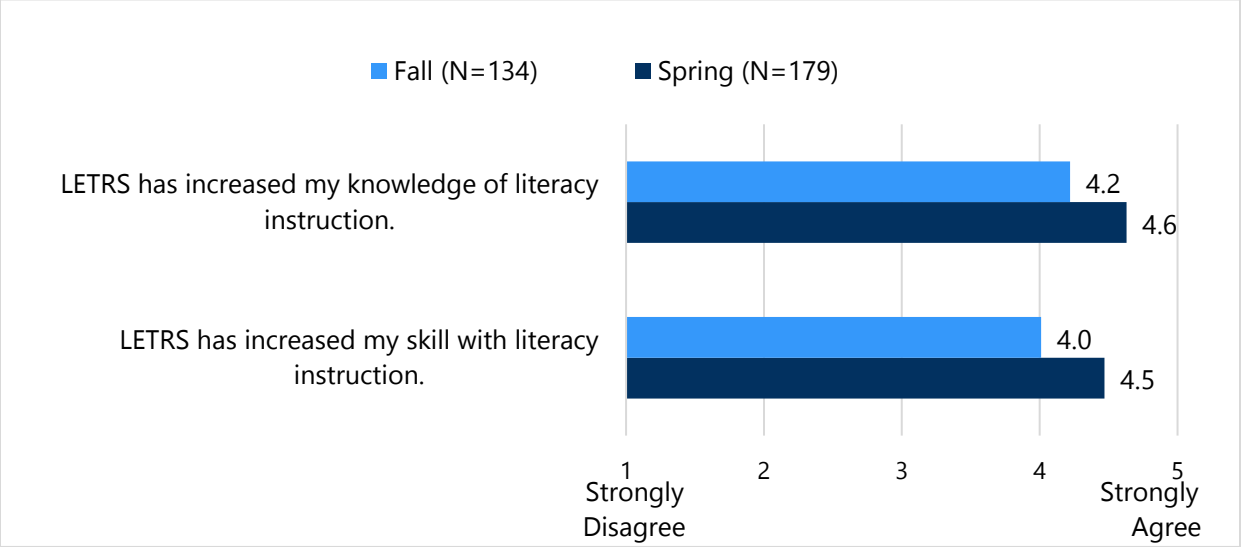
Table 12. Lexia pretest and posttest scores from each volume

District	Average Vol. 1 Pretest Score	Average Vol. 1 Posttest Score	Average Vol. 2 Pretest Score	Average Vol. 2 Posttest Score
Centennial	65% (n = 49)	95% (n = 19)	84% (n = 10)	96% (n = 5)
DDSD	64% (n = 60)	90% (n = 25)	79% (n = 9)	88% (n = 1)
Parkrose	66% (n = 23)	93% (n = 7)	79% (n = 7)	94% (n = 3)
PPS	63% (n = 545)	89% (n = 317)	80% (n = 185)	94% (n = 118)
Reynolds	56% (n = 298)	92% (n = 139)	77% (n = 101)	96% (n = 81)

To what extent did educators perceive their knowledge and skills were impacted by participating in LETRS training?

Educators surveyed at both the Fall and the Spring timepoints expressed that LETRS had increased both their knowledge of and their skill with literacy instruction, as Figure 7 illustrates. Encouragingly, this sentiment was even stronger at the Spring timepoint compared to the Fall timepoint, indicating that as educators progressed through the LETRS training they felt more strongly that their knowledge and skills had increased.

Figure 7. Participants' Learning – Knowledge and Skill



Classroom teachers, reading specialists, and academic coaches who participated in the focus groups agreed that the LETRS program increased their application of literacy knowledge and skills in the classroom. Administrators added that LETRS participants' direct application to the classroom helped to reinforce their deep understanding and value gained from the LETRS training. For example, an administrator at DDSD noticed LETRS participants showed more confidence in their teaching and were making more adjustments to their instruction in the moment.

> *"Now, I think more about the specific components of learning how to read. For example, I understand more about consonant and vowel articulation, which I am able to include in my lessons with students. My knowledge of morphology and vocabulary instruction has deepened; so much learning has happened for me."*
>
> *– Parkrose Teacher*

> *"The direct application piece of learning and then directly connecting to applying in the classroom has been really helpful."*
>
> *– Parkrose Administrator*

Administrators also noted that teachers' deeper understanding of the science of reading has allowed them to identify gaps in resources and curriculum and fill in those gaps more effectively. One administrator noted that LETRS has helped teachers to break down the components of literacy to identify the specific needs of students to address gaps more effectively in their literacy skills development. Teachers, reading specialists, and academic coaches supported this sentiment, indicating that they felt as though they were better able to prioritize classroom activities to add to their curriculum following their participation in LETRS due to the program's evidence-based strategies.

"LETRS has helped me look at the [reading intervention] programs that I am currently using to teach to see what their strengths are and be able to supplement their learning wherever there are holes."

– PPS Teacher

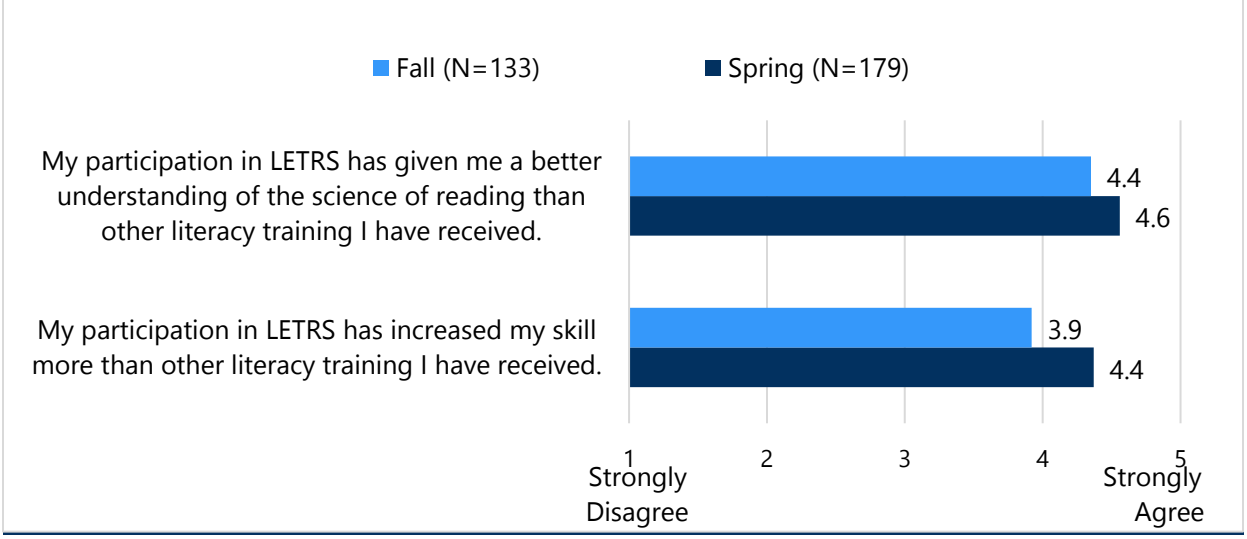
"No materials are going to be perfect and have everything. Having that background knowledge now around the science of reading through LETRS has really helped teachers to develop that critical lens in terms of looking at how can we use those tools and fill in the gaps."

– Parkrose Administrator

How did educators perceive learning from LETRS training differed from other literacy-related trainings?

The thorough nature of the LETRS training combined with the focus on science of reading were the primary factors differentiating it from other literacy training. Educators think the LETRS training has given them a better understanding of the science of reading and had increased their skills more than other literacy-related training they had completed (see Figure 8). Again, this finding was more pronounced at the Spring timepoint compared to the Fall timepoint, suggesting that the further educators got in their LETRS training the more they felt that the LETRS training outperformed other trainings in these ways.

Figure 8. Participants' Learning – LETRS vs. Other Trainings



At both timepoints, educators across school districts noted that LETRS is more in-depth and comprehensive, is based on the science of reading and associated research on the brain, and is generally superior to other literacy-related trainings they had participated in previously. Administrators and points of contact also felt that LETRS was more thorough than other literacy-related trainings due to its focus on the science of literacy. At the Spring timepoint, educators from PPS noted the immediate applicability of LETRS training to their instruction and highlighted how LETRS has helped them work with student

subgroups (i.e.,. students with Dyslexia, struggling readers, and ELL students). At the Spring timepoint, educators from Reynolds also emphasized how LETRS teaches phonemic awareness which was also emphasized in teacher focus groups with all districts.

Through the focus groups, educators commonly shared that they either had not received literacy-related training opportunities prior to their participation in LETRS or that their prior training did not provide them with enough background knowledge on the science of literacy.

> *"I had very little training before, and LETRS has been amazing because it seems very complete. I don't really have anything to compare it with because I didn't get any trainings and things like that, but it is very thorough, and I really enjoy it."*
>
> *– DDSD Teacher*

LEVEL 3: Organizational Support and Change

What supports did districts provide for educators engaging in LETRS training?

With regard to the type of support districts provided for LETRS training, a primary difference across districts was the compensation and protected time provided to complete the training. As shown in Table 13, participants from Centennial, PPS, and Reynolds received financial compensation for their participation in LETRS training, while Reynolds participants received dedicated time to focus on training and asynchronous LETRS homework through late school start time on Mondays and other days each month set aside for the work. Reynolds also attempted to offer two non-student contact days for training but faced obstacles when the planned PD fell on snow days. The findings in the table below were gathered via interviews and focus groups.

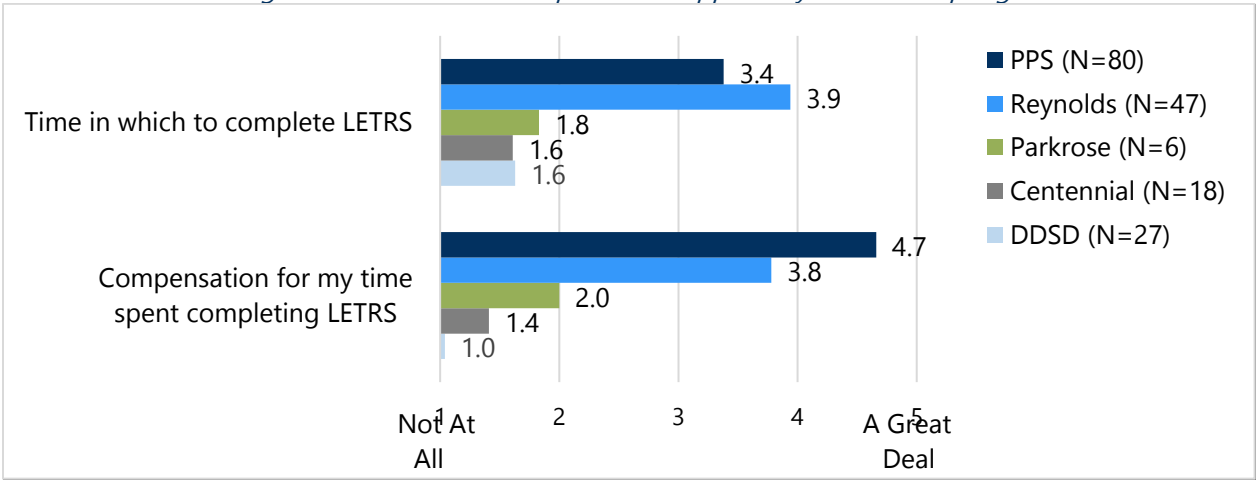
Table 13. Compensation and protected time provided to complete LETRS training

District	Received monetary compensation	Received protected time for LETRS training
Centennial	✓	
DDSD		
Parkrose		
PPS	✓	
Reynolds	✓	✓

Figure 9 displays LETRS participants' perceptions reported on the Spring survey of the support they received from their district in the form of financial compensation and protected time. Educators in the PPS

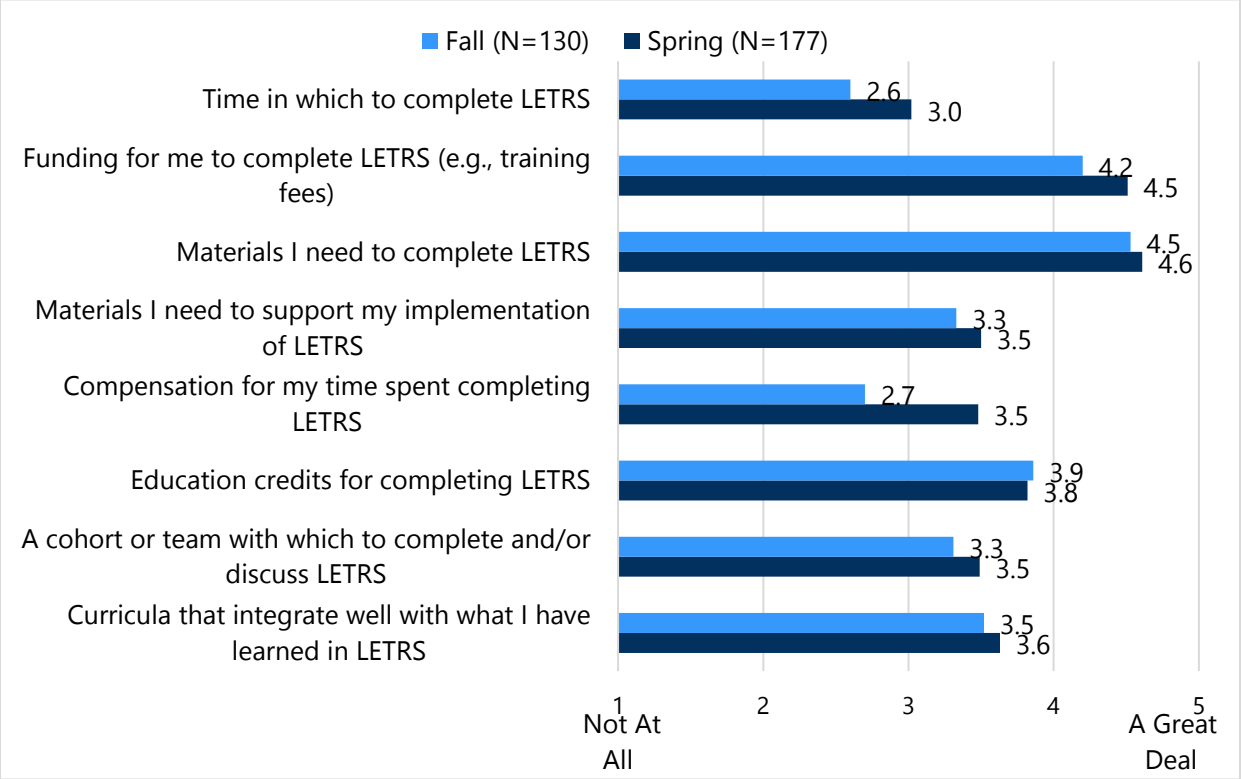
and the Reynolds school districts generally perceived more support from their districts related to time and compensation compared to educators in the other three districts, which can be expected given they are receiving this type of compensation.

Figure 9. Variation in Perceptions of Supports by District in Spring



Although there was a desire for additional support around time and compensation, Educators felt supported by their districts through funding and materials needed to complete their training. As shown in Figure 10, educators reported more support from districts in these (as well as other) areas at the Spring timepoint versus the Fall timepoint, potentially indicating that efforts by districts to support teachers grew stronger over the school year. At the Spring timepoint, educators from DDSD and Parkrose expressed appreciation for district-provided coaches and encouragement around participation.

Figure 10. Extent to which Districts Provided Supports Surrounding LETRS



Teacher focus group participants described additional supports that were helpful for making progress in LETRS. One teacher from PPS appreciated that they were able to easily access LETRS materials, as information was consolidated to one website. A few teachers across the five districts shared that they enjoyed LETRS Unit wrap-up sessions where they could discuss the training content with their colleagues. Administrators and points of contact added that participants from Centennial, DDSD, and Reynolds received support from coaches, which they noted was useful for implementation. Similarly, participants from PPS received support from TOSAs, while participants from DDSD received support from learning specialists.

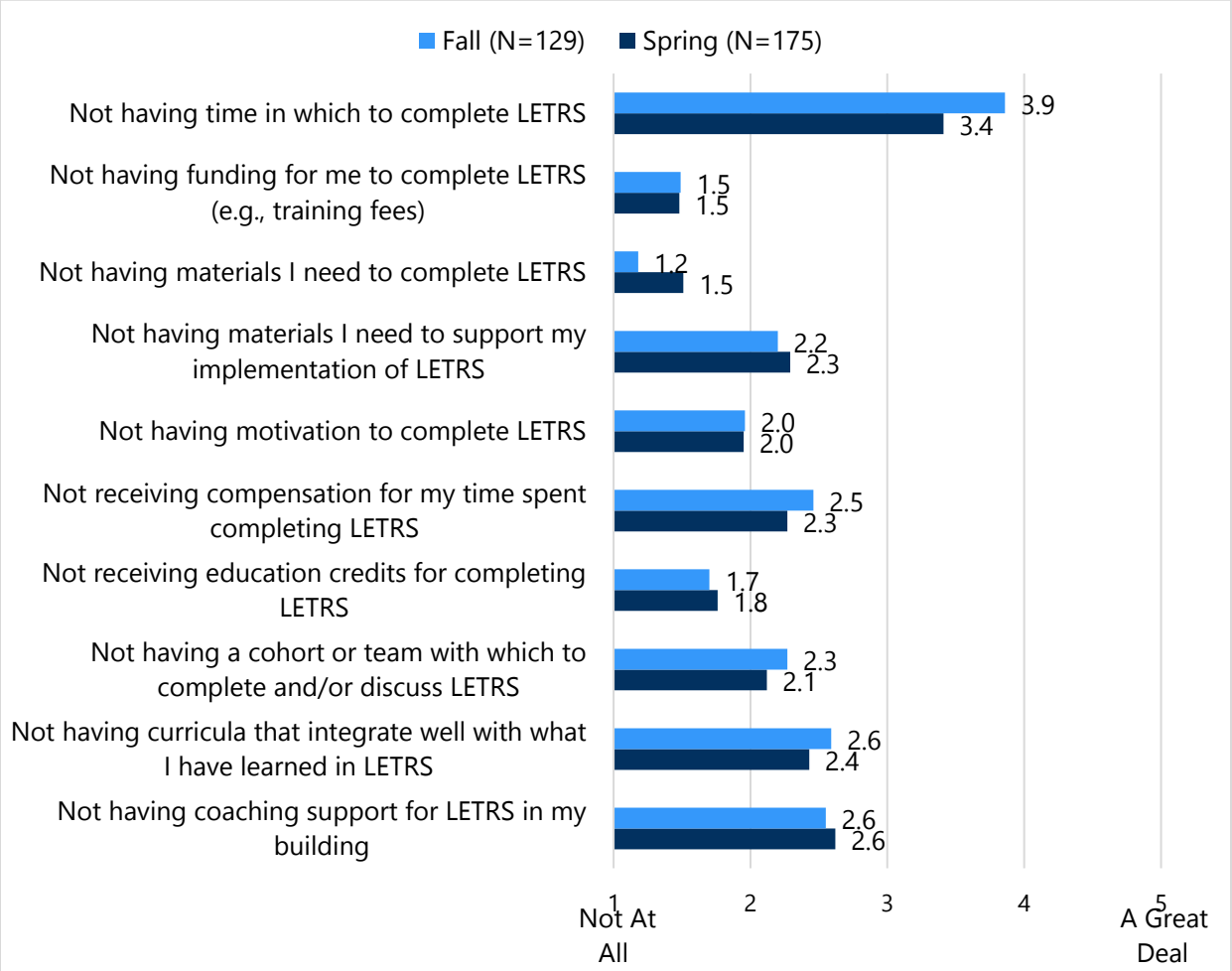
> *"I would say the building where LETRS was strongest is where we had solid coaching support because it helps people take risks. We had coaches modeling, as well as videoing themselves and teachers."*
>
> *– Centennial Administrator*

Along these lines, all district interviewed administrators agreed that they would like to continue to provide LETRS training to their educators along with a PLC, accountability group, or an accountability partner to increase endurance and application of the training. Finally, a DDSD administrator highlighted support from MESD, while a Centennial administrator spoke positively about support offered through learning walks.

Under which conditions and/or supports did educators perceive they were best able to complete LETRS training? What barriers influenced educators' completion of LETRS training?

The most common barriers are aligned with the themes from the section above regarding the lack of time and compensation to complete the training. The most challenging aspect of completing the LETRS training was a shortage of time to complete the training; this finding was more pronounced at the Fall timepoint than at the Spring timepoint (see Figure 11).

Figure 11. Extent to which Barriers Impacted LETRS Completion



Open ended survey responses also referenced time as the greatest barrier to their participation, as did nearly all focus group and interview participants. Due to the length of the program, points of contact and teachers noted that participants had to commit non-contract hours such as mornings before school, evenings, and weekends to complete the program. Further, educators from PPS indicated that, prior to their first Saturday LETRS training session, they were only given one week's notice, and some were unable to attend. While teachers valued the level of rich content provided to them through the LETRS training, they commonly shared that they would prefer to keep their weekends free to maintain a healthy work-life balance. As such, teacher focus group participants indicated they would like more time during the

workday to complete the training. Points of contact added that participants from Parkrose, PPS, and Reynolds requested release time for LETRS but that a substitute shortage made this difficult to offer.

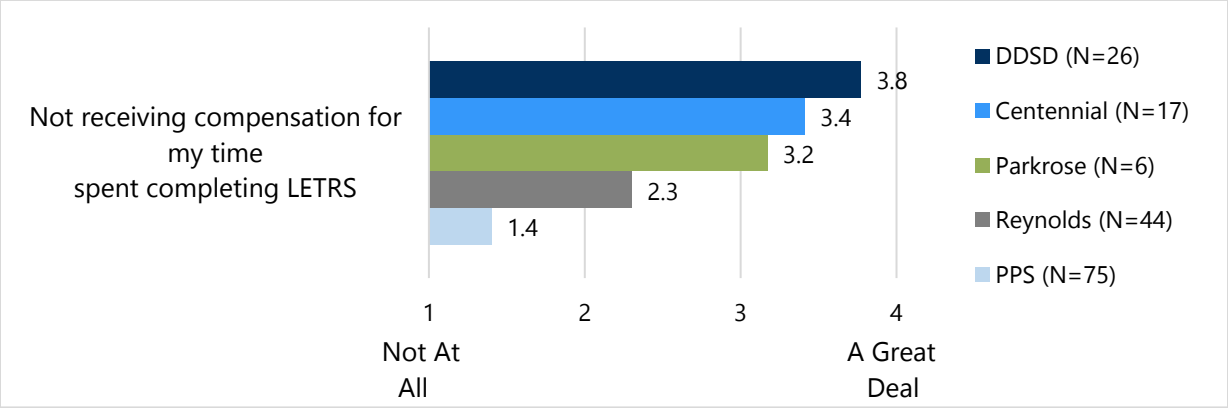
Points of contact added insight about time constraints, sharing that Centennial and DDSD were implementing new curriculum simultaneously with LETRS, which further limited available time for those participants. While PPS points of contact felt the training was too long for a learning opportunity outside of a university, DDSD and Reynolds points of contact questioned if the program could be shortened and still be as beneficial. One positive regarding the program length, according to the Reynolds and DDSD points of contacts, is that it generated excitement for the program as well as a sense of urgency.

Because the time program time commitment led to attrition in some cases, districts addressed this barrier—in addition to those offering financial compensation and protected time—using a few methods. For example, while PPS supported participants to stay on track with pacing guides, Centennial offered reminders. Further, Reynolds offered LETRS as a fast-paced, two-year program (the traditional length) and a slower-paced, four-year program to address time constraints; however, some participants in the four-year track are now interested in finishing faster.

> *"A lot of the teachers who are doing the slower pace [version of LETRS] struggle with completing it in the given timeline, because the district gives teachers one hour on Mondays to complete the training units. It is a real struggle to complete what they need to complete in the timeline that is wanted." -Reynolds Teacher*

As discussed in the previous section, districts had inconsistent experiences with compensation for time to complete the training. Figure 12 shows that a lack of compensation for time to complete the training was a key barrier to completion for DDSD, Parkrose, and Centennial, the latter of which received some financial compensation.

Figure 12. Variation in Perceptions of Barriers by District



Although PPS and Reynolds received compensation to participate in LETRS, points of contact from their district indicated that these participants—along with those from Parkrose—expressed interest in receiving a pay raise for completing the program; however, to receive a wage increase participants need to take the program for college credit, which poses some obstacles. Additionally, a few teachers from Parkrose noted

financial challenges, as they paid for their LETRS program upfront and, at the time of the focus group, were unsure whether they would be provided with tuition reimbursement for their participation.

> *"If the district had not provided the hourly pay, I would have liked to have done it, but would not have been able to commit to that many hours of unpaid work. I was paid, so I did it. One colleague expressed interest in completing Volume 2 of LETRS, but after hearing that the district would not pay for it, they decided to not do it. If people are not getting paid, they do not want to do it."*
>
> *– PPS Teacher*

Some teachers and administrators also noted barriers with participating in the LETRS program on their own, as opposed to going through the program with a cohort of colleagues from their school or engaging in PLCs. A few educators shared feelings of isolation or lack of recognition from their administration, due to being the only faculty member to participate in the training. Some expressed interest toward increased opportunities for collaboration or coaching, such as designated meeting times for LETRS participants to discuss the training content and homework, or opportunities for literacy training professionals to provide mentorship to those involved in the training. Administrators also suggested it would be beneficial to meet collectively as a school to review progress data and create a "team effort" mindset around the implementation of LETRS knowledge and track progress around meeting literacy goals as a school.

> *"I do not think that the district was able to dedicate time to see what I was learning about [from LETRS] or to create cohorts of people who were taking LETRS to collaborate. I think it would have been a richer experience if my administration had something where people who were doing LETRS program had some dedicated time to work together."*
>
> *-PPS Teacher*

PPS did not provide a cohort format or in-person sessions for LETRS training. PPS Administrators noted in interviews that this as a barrier to engagement and completion of LETRS and indicated that an accountability group or partner may lead to a better experience, endurance, and application of training. Parkrose, Reynolds, and DDSD administrators agreed that LETRS participants who were able to participate in the training with others, benefitted from going through the training with group support.

> *"I really do think it probably has worked best where people are in learning communities doing it together and where there's some kind of coaching or administrative support to support ongoing learning and bridge to practice."*
>
> *– PPS Administrator*

> *"Having conversation and being able to do the learning together and then apply it and come back together to talk about how it went; that type of thing was really beneficial. I think if you don't have a cohort or at least one other person that is doing it with you simultaneously, that could be a barrier."*
>
> *– Parkrose Administrator*

> *"I would definitely recommend LETRS so long as it's not in a vacuum. If teachers aren't talking about the learning and using some of that learning within another PLC or PD, I think that is a barrier."*
>
> *– PPS Administrator*

Teachers from PPS and Reynolds also shared that they could benefit from more support with integrating LETRS into their classroom instruction, while administrators requested walkthrough tools to help them identify LETRS implementation within classrooms. Along these lines, administrators would like a way to monitor the progress of training participants to enable them to provide touchpoints to trainees throughout the year. A few teachers shared in focus groups that they experienced difficulties with implementing activities from the LETRS program, as they were not provided with the materials (e.g., magnetic letters, felt squares) required for them. Some participants suggested that, in the future, teachers could be provided with material starter kits to aid in the initial rollout of activities from LETRS.

> *"Let's have a non-contact professional development day. Let's make sure that teachers have the support. Let's start ordering the magnetic tiles and make sure that teachers have access to the resources being referenced in the training."*
>
> *– Reynolds Teacher*

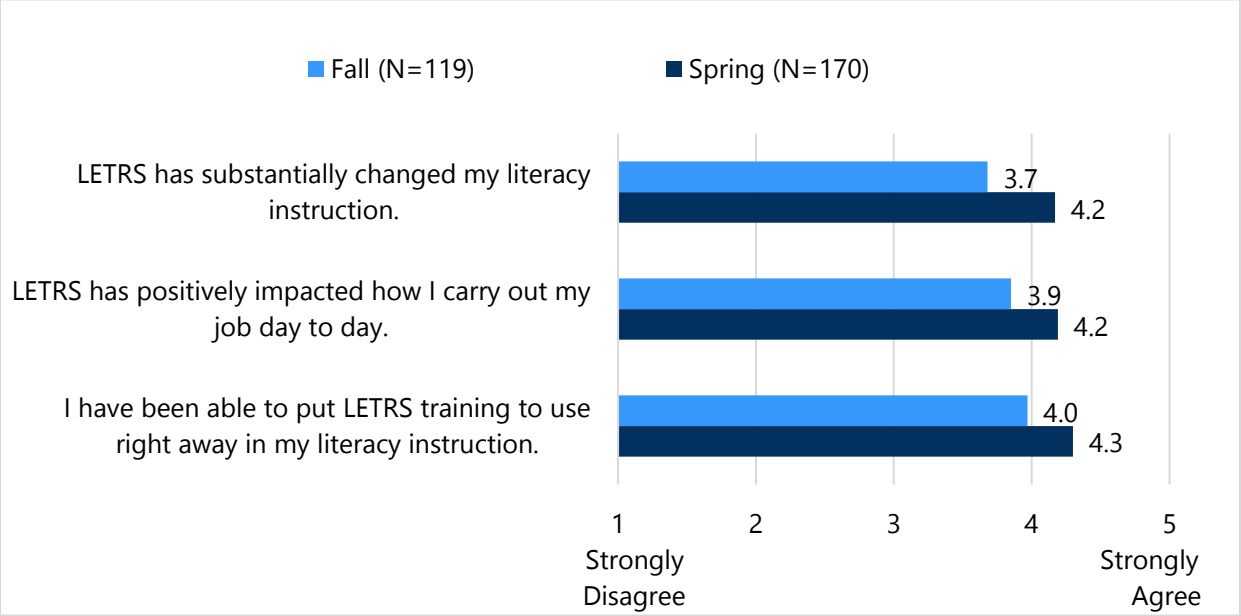
Finally, administrators requested a systematic way to showcase LETRS having a positive impact on students as a means to increase buy-in and interest in the training.

LEVEL 4: Use of New Knowledge and Skills

To what extent did educators report changes in their instruction based on LETRS training?

Overall, educators agreed that the LETRS training had changed their instructional practices and positively impacted how they carry out their job; they also agreed that they were able to put their LETRS training to use right away in their instructional practices (see Figure 13). Variation between Fall and Spring survey results suggests that as educators progressed through the LETRS training over the course of the 2022-2023 school year they felt more strongly that LETRS had impacted their literacy instruction.

Figure 13. Impact of LETRS training on Instructional Practices



In focus groups and interviews, educators across the five districts reported changes in the ways in which LETRS participants altered their curricular approach and mindset regarding teaching literacy. For example, one DDSD administrator shared how classroom teachers have developed greater confidence in assisting students through evidence-based literacy teaching resources.

> *"I do think I hear more confident language about all our kids deserving access to learn to read. I think LETRS is probably a part of that statement. Not that I think anyone would have ever said the opposite, but I think there were practices that demonstrated some of that inherent bias or predisposition. I feel there are more teachers who are saying "all kids can learn to read.'"*
>
> *– DDSD Administrator*

One administrator from Reynolds noted that teachers who participated in the LETRS training were moving toward an asset-based approach in their literacy instruction, as opposed to a deficit-based teaching approach, "With our instructional coaches, I could see a shift in their thinking through how they talked about the students. Rather than using deficit language, they would use more asset-based language and carry that into their coaching of teachers."

Administrators observed that LETRS trained teachers are able to identify the specific needs of individual students to determine what they can do more precisely to help. Prior to this deeper understanding, they were only noting the students' broad need and lacked clarity around how to address it. One DDSD administrator observed that teachers with strong application of LETRS are seeing big improvements with their students as a result of having a deeper understanding of phonemic awareness to develop early literacy in students.

> *"One teacher who really uses the curriculum and supplemental materials with intention and integrity, saw 83% of their first graders at or above typical growth for DIBELS. That is a 40% difference from their counterparts who are not in LETRS or don't have a strong understanding of the science of reading."*
>
> *– DDSD Administrator*

Classroom teachers expanded on this phenomenon, as focus group participants across the five districts expressed increased understanding and confidence in utilizing a well-developed and fine-tuned instructional toolbox to best understand the root of student learning challenges. One DDSD teacher shared, "When it comes to decoding a word, I now encourage students to take their time to chunk the word and to not just guess what it is. Before LETRS, I would just say the word to them, which was not helpful."

Further, classroom teachers who participated in focus groups noted increased confidence in prioritizing curricular resources that were evidence-based in their instruction. One indicated that they were forgoing any instructional practices that did not have any research or evidence behind them, due to the efficacy of evidence-based approaches found in LETRS.

> *"I have a better sense of what needs to be prioritized within our curriculum. I have always felt that I was not prepared to teach reading, especially small group reading. I feel so much more prepared now that I have this background knowledge from LETRS."*
>
> *– DDSD Teacher*

Finally, administrators from Centennial shared that LETRS participants started applying what they learned in staff meetings, trainings, and PLCs to help grow LETRS throughout the district.

What barriers did educators perceive in transferring learning from LETRS training to their educational practices?

Educators shared barriers to transfer of learning from the LETRS training to their classroom instruction. Across the Fall and Spring, respondents from Centennial, DDSD, PPS, and Reynolds expressed a lack of time for material and curriculum preparation, and classroom implementation. Further, they felt as though transferring knowledge was difficult, due to how much information is embedded within the training.

In focus groups and interviews, there were a few barriers that classroom teachers and reading specialists across the five districts experienced when transferring learning from the LETRS training to their instructional practices, including student buy-in, shifts in fundamental teaching principles, time spent incorporating LETRS into curriculum, and relevancy of LETRS to reading specialist roles. Those who shared feedback regarding student buy-in noted challenges with incorporating phonics principles in their lesson plans, as most students were reading or spelling at some level, despite having challenges with phonics. Since most students were able to read or spell, they often questioned why they were learning about foundations of literacy in their classes, yet teachers shared that students were more receptive to the LETRS inspired instructional approach following explanations of the science of reading.

One teacher from Centennial commented on shifting the fundamental teaching culture of encouraging students to move forward in their curriculum, regardless of whether that student felt ready to progress to a mastery approach that was encouraged in LETRS.

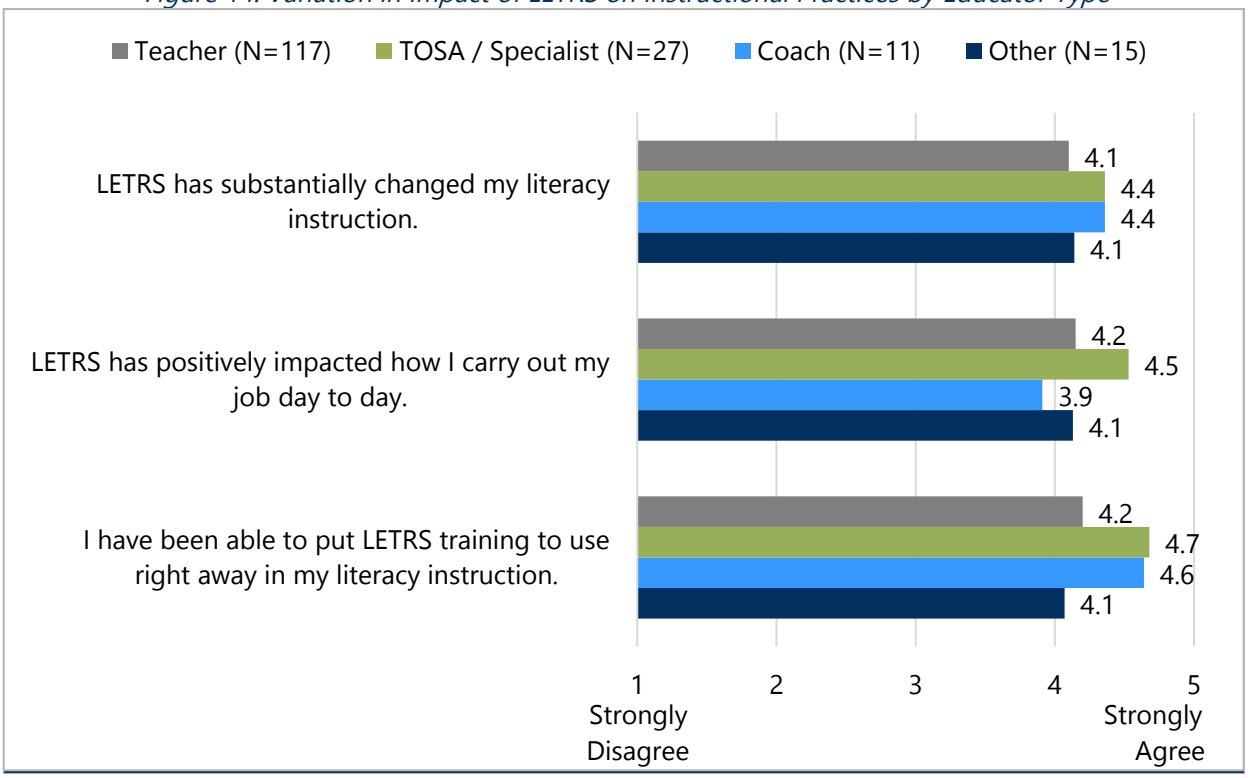
> *"A huge challenge I see is the expectation of teaching to mastery is a huge fundamental shift for many teachers. There has been a culture where expectations [in the classroom] do not require students to obtain mastery of content before moving ahead in the curriculum. We tell the students that they don't have to spell their words correctly or just to write something down, because we need to move on to the next chapter. That is education as a whole."*
>
> *-Centennial Teacher*

Some teachers and reading specialists expressed challenges with the time associated with incorporating LETRS into their curriculum. One teacher shared that they had incorporated a new literacy curriculum at their school in addition to their participation in LETRS, thus it was challenging to learn how to navigate the new curriculum while incorporating knowledge or activities found in LETRS. This barrier was addressed by a Parkrose administrator who expressed challenges with adopting a new curriculum and knowledge from LETRS simultaneously. Two reading specialists from PPS shared that they experienced barriers in applying their LETRS knowledge in their roles as they only worked with students on a short-term basis, as opposed to classroom teachers who worked with their students throughout most of their school day.

Did educators' use of knowledge and skills from LETRS training differ by type of educator?

According to Spring survey results (displayed in Figure 14), educators in various roles reported high levels of agreement when it came to their perceptions that LETRS had impacted their literacy instruction and how they carry out their job. On average, TOSAs and specialists (including instructional specialists) expressed stronger agreement that LETRS had positively impacted how they carry out their day-to-day jobs. TOSAs and specialists as well as coaches expressed stronger agreement that they had been able to put their LETRS training to use right away, compared to teachers and other types of educators.

Figure 14. Variation in Impact of LETRS on Instructional Practices by Educator Type



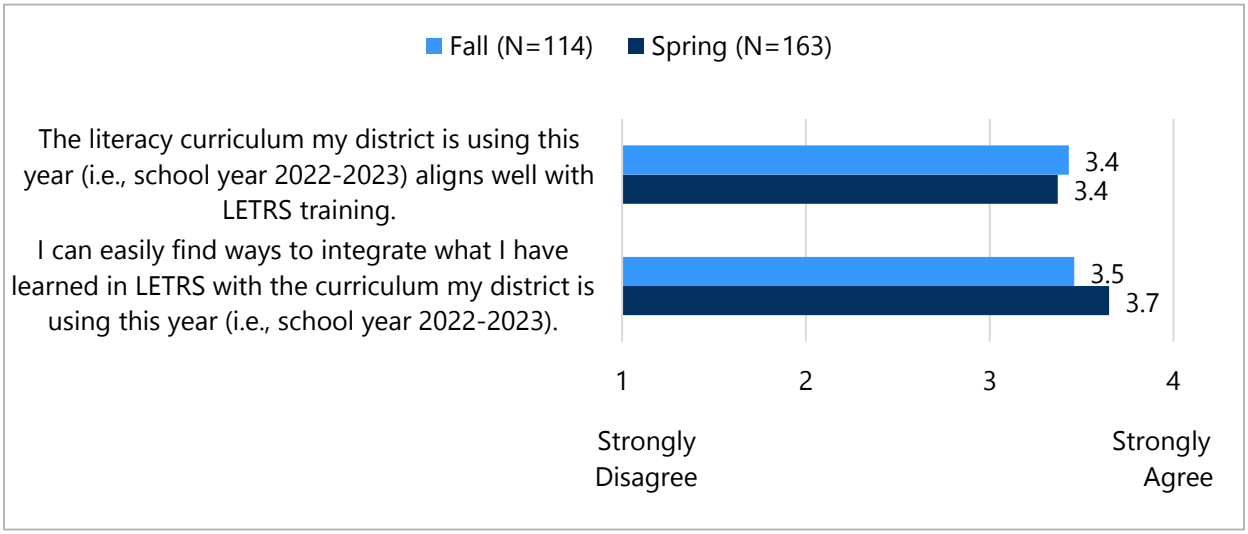
Under which conditions and/or supports did educators perceive they were best able to transfer learning from LETRS training to their educational practices?

Spring survey respondents from Centennial provided open-ended feedback regarding resources and experiences that have helped them transfer their learning from LETRS into their classrooms, in which a variety of themes were noted. Some felt that their own efforts and differentiation skills were the most beneficial factors, while others highlighted the videos provided by the training and the training's emphasis on foundational literacy principles, such as phonics. Coaching, collaboration, and learning walks also facilitated the transfer of learning from LETRS training to the classroom according to administrators from PPS, Centennial, DDSD, and Parkrose. A Reynolds administrator mentioned plans to offer PLCs in the upcoming school year to support transfer of learning in their district.

How did educators perceive curricular resources and balanced assessment systems districts used in conjunction with LETRS implementation impacted their ability to transfer learning from LETRS training to their educational practices?

At both the Fall and the Spring timepoints, most educators shared that they agreed or strongly agreed that the literacy curriculum their district used during the 2022-2023 school year aligned well with the LETRS training. Educators also felt that they could easily find ways to integrate what they learned in LETRS with their district's current curriculum (see Figure 15).

Figure 15. Compatibility of LETRS with Curricular Resources



There were mixed reactions expressed in the focus groups regarding the utilization of curricular resources and balanced assessment systems used in conjunction with LETRS. In DDSD, two teachers shared conflicting commentary regarding the ECRI (Enhanced Core Reading Instruction) curriculum when paired with LETRS, in which one felt that they paired "beautifully" and the other felt as though ECRI was not as detailed as they were wanting.

> *"I think LETRS has paired beautifully with what we are doing in ECRI. All I need to do is use the strategies I have been learning in LETRS to fine tune things in the curriculum. It has been awesome."*
>
> *– DDSD Teacher*

Teachers who reported using the Fundations curriculum in conjunction with LETRS all shared positive feedback regarding the pairing, specifically as it related to the alignment of curriculum and course content from LETRS. Focus group participants from Reynolds who used the HMH curriculum reported alignment with LETRS as shared by one teacher: "We are doing HMH, which ties in well with LETRS. The way that our literacy curriculum is broken down has a section built for one classroom day of phonics and phonemic awareness and one day of writing."

How did educators perceive LETRS training impacted their ability to serve students from historically underserved student subgroups?

Educators were encouraged to reflect upon the ways in which their LETRS training impacted their ability to serve students from historically underserved groups. Educators from Parkrose, across the Fall and Spring, indicated that their training heightened their ability to identify and address skill gaps. In the Spring, respondents from DDSD, Parkrose, PPS, and Reynolds shared that their instruction in general shaped their

experiences in addressing barriers relevant for students from historically underserved backgrounds. Aside from these observations, educators across all five districts noted that it was too soon to tell any other impacts as they related to historically underserved student subgroups.

Qualitative data highlighted numerous ways in which LETRS training impacted educators' ability to serve students from historically underserved subgroups. Administrators and teachers spoke to increased preparation, awareness, and empowerment to support students' literacy goals following LETRS participation. One administrator from Reynolds shared that the classrooms led by teachers who participated in LETRS showed greater literacy growth when compared to other classrooms.

> *"We have 63% BIPOC students. We have more than 14 languages spoken. The teachers that really dug into LETRS had the highest growth in our school. I know there are many compounding factors around it, but all of them had good growth this year with their students."*
>
> *– Parkrose Administrator*

Classroom teachers and reading specialists across the five districts highlighted their increased confidence in using evidence-based strategies to target various literacy challenges experienced by a wide range of students. One teacher from Parkrose shared that increased access to and visibility of diagnostic tools provided by the LETRS program led to a better understanding of students' academic needs and increased transparency for student academic achievement. They shared, "LETRS is very straightforward with assessments and for our families who want to know why their child is not reading. There is an equity piece to this, especially for families who have not been treated correctly by the school system. The assessments take away the ability to be subjective about a student. It shows the family where the student is and what they know." Further, a teacher from PPS noted that they were better able to determine which students should be referred to special education programs, as LETRS provided examples of skills that needed to be met at each grade level.

> *"It has been helpful to identify which students need to be referred to special education. LETRS made it much easier to tell where each student's level of needs was when I had the necessary skills to assess."*
>
> *– PPS Teacher*

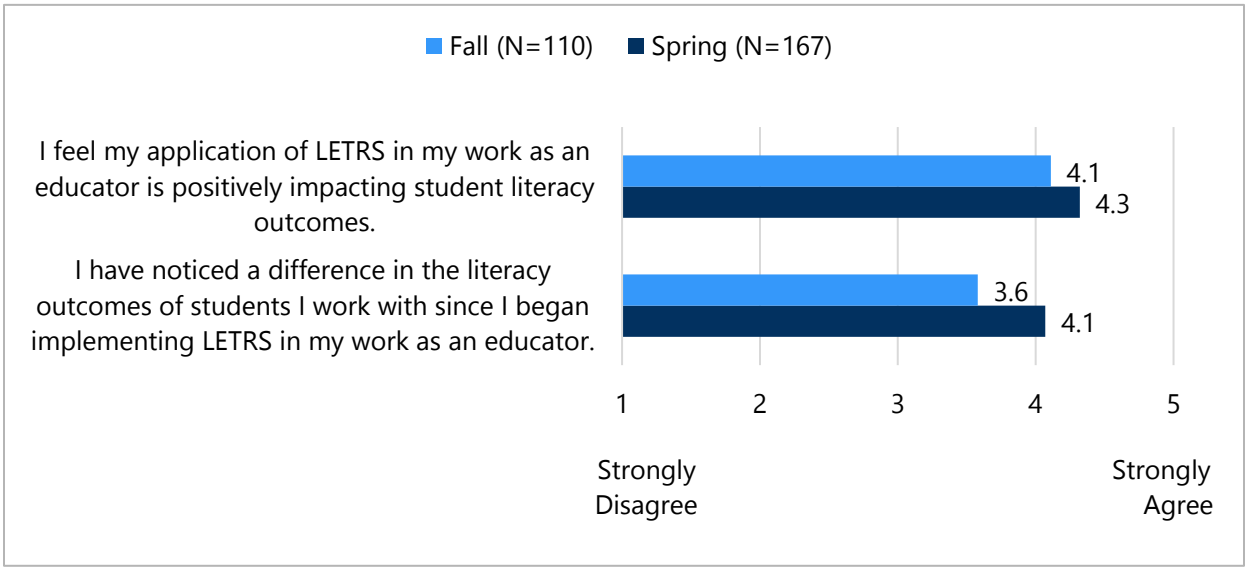
Qualitative data revealed a unique perspective, in which they noticed increased academic performance for ELD (English Language Development) students in LETRS classrooms, as teachers who participated in the training were provided with specific reading interventions necessary for ELD students.

LEVEL 5: Student Learning Outcomes

To what extent did educators perceive that student outcomes were impacted by LETRS training?

Educators perceive that their LETRS training has positively impacted the literacy outcomes of their students. This positive finding was especially pronounced at the Spring timepoint, when educators were further along in their LETRS training and when their students had spent more time receiving their instruction (see Figure 16).

Figure 16. Perceptions of LETRS Impact on Students' Literacy Outcomes

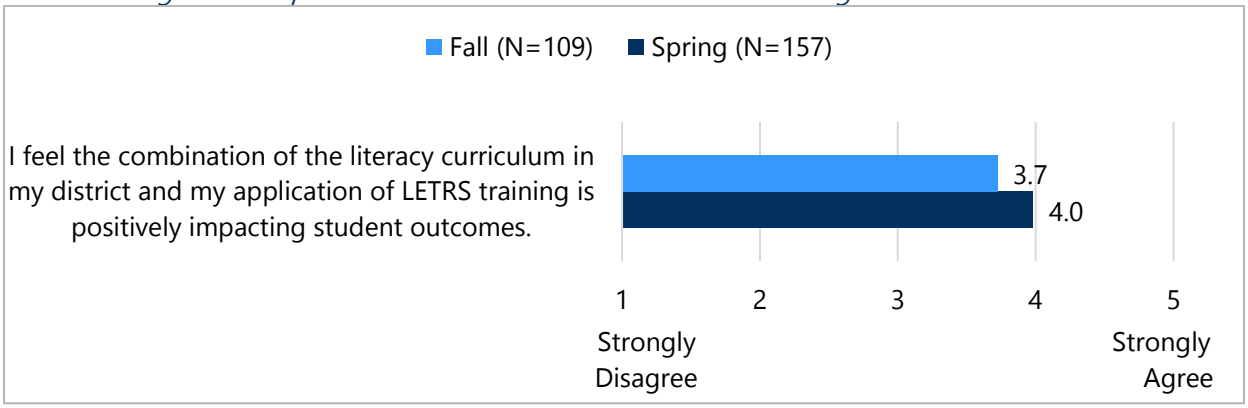


Teacher survey respondents from DDSD shared positive feedback regarding student outcomes that were impacted by their LETRS training. One teacher shared that student growth was "huge," while another reported higher Spring benchmark scores in their classroom. A DDSD administrator shared that preliminary data showed that a group of teachers working as a team are showing particularly strong outcomes for students, surmising that collaboration is a factor in this success. Similarly, a Centennial administrator has seen positive shifts in outcomes, with improvements most prevalent where there were coaches. According to a PPS administrator, MAP data are showing improvements, while a Parkrose administrator generally noted success and growth for students as well.

How did educators perceive curricular resources and balanced assessment systems districts used in conjunction with LETRS implementation impacted student outcomes from LETRS training?

Educators mostly agreed that the combination of their districts' literacy curriculum and their application of LETRS training was positively impacting student outcomes. As Figure 17 displays, educators reported slightly higher levels of agreement at the Spring timepoint compared to the Fall timepoint.

Figure 17. Impact of Curricular Resources and LETRS Training on Student Outcomes



Further, the following curricular resources and balanced assessment systems were shared by classroom teachers in focus groups and interviews:

- DIBELS
- Phonics screeners
- iReady reading diagnostic
- Magnetic Reading
- MAP Reading
- STAR assessment
- Informal assessment (e.g., encouraging students to read aloud to the educator)

Regarding the efficacy of curricular resources and balanced assessment systems in conjunction with the implementation of LETRS, there were mixed comments from educators in focus groups and interviews. Educators from DDSD shared that they found DIBELS to be an effective tool in progress monitoring, and two reading specialists from DDSD shared that the phonics screeners they used to inform instructional decisions were helpful. Across districts, a couple teachers expressed challenges with the iReady computer platform's data retrieval programs. They shared that the data management systems were more difficult to interpret, due to a lack of graphs and difficulties deciphering whether students were understanding the digital content or pressing on random computer keys.

One teacher from Parkrose noted that their school had adopted a new program, Magnetic Reading, for benchmark testing, but expressed a preference for their previous system, Acadience. They shared that they preferred the data management system implemented in the Acadience system, as it was easier to understand student growth.

> *"We use the iReady reading diagnostic and students do that on the computer three times a year. I don't love that because it is hard to know how valid the results are. For instance, younger students sometimes just click around on the computer and teachers are unable to know what students are responding to."*
>
> *– Parkrose Teacher*

> *"Time, I think. Just having the time to do LETRS-focused work and rolling it out in our classrooms."*
>
> *– PPS Teacher*

Despite the limited timeframe within which to monitor student outcomes, was there evidence of improved outcomes for students whose educators engaged in LETRS training?

Teacher focus group and interview participants who engaged in LETRS all shared positive feedback regarding student outcomes. Some noted that, at the time of the focus group or interview, they were anticipating continuous literacy growth among students in their classrooms. One teacher from DDSD highlighted student progress following their LETRS training, credited by increased district assessment scores and improvements in informal observations (e.g., students reading aloud to their teachers).

> *"We are moving. We are still not quite at grade level, but it is a big job. It takes time and we are doing it. Phonics has an equity piece to it and some of my most vulnerable learners have been doing well with the strategies from LETRS."*
>
> *– PPS Teacher*

One educator shared that, because of LETRS, they experienced a shift in mindset regarding the measurement of student progress. They shared,

> *"I have had a shift in that I might not see a payoff in six weeks, which is when we do our interventions. Sometimes if teachers see no growth at the end of six weeks, we think that there is a problem. Now, I am seeing the payoff of things that I did last year with my students, and I feel like I have more of an understanding of waiting for students to mature."*
>
> *– Parkrose Teacher*

Evidence from Student Achievement Data

The following sub-sections discuss student achievement outcomes for each district. Because of differences in the types of assessment used, and in pursuit of the most meaningful data insights, it was determined that districts' findings should be presented separately. A series of logistic regressions were conducted to explore potential differences in student achievement outcomes between treatment (i.e., students with LETRS trained teachers) and comparison (i.e., students with non LETRS-trained teachers) groups. For most districts, these tests did not reveal statistically significant findings.

For David Douglas School District, there was a significant effect of the LETRS training on student achievement for K-5 students. This significant finding was present when examining student achievement for English Language Learners and Historically Underserved Race/Ethnicities. Additional details regarding these promising findings are included the DDSD sections to follow.

A Note on the Use of Literacy Screeners for Evaluation Purposes

The data produced from the Literacy Screeners included in this section of the report are designed to help teachers identify children at risk for reading difficulties and determine the skills to target for instructional support. They are designed to be part of a feedback loop that operates within each classroom each year, serving as a tool for teachers to reevaluate their lesson plans and strategies. For this reason, assessments should be used as a descriptive tool rather than an evaluative tool. Since these screeners are the only assessment of early literacy skills, they are analyzed in this report for descriptive purposes, but we caution giving too much weight to the results.

Testing for Intervention Effects in Education

It is often challenging to see the impact of a teacher professional development program on student achievement outcomes in education. With this in mind, we encourage you to consider the following as you read this section:

- As presented at the beginning of each districts' section, many teachers had not yet completed the LETRS training.
- In educational intervention research, it is extremely rare to find evidence of student achievement outcomes associated with teacher professional development in less than 2 years.
- 2022-23 was a literacy curriculum adoption year in Oregon and all districts in this study adopted curriculum that is aligned with the Science of Reading. Although teachers from the comparison groups in our study were not LETRS trained, they were using curriculum designed to support teaching to the science of reading.

Centennial School District

Centennial School District used Acadience Reading, formerly DIBELS NEXT, and STAR Reading as its literacy screeners during the 2022-2023 school year. The impact of LETRS training on student achievement was assessed by examining Acadience and STAR data for students of LETRS trained teachers (treatment) compared to students with non-LETRS trained teachers (comparison). LETRS-trained teachers included any educator at Centennial who had started the training and could be at any stage. The table below shows the progress of Centennial educators and indicates that nearly three quarters of the 58 LETRS participants were on Volume 1 of the training.

Table 14. Centennial LETRS Participants' Progress on Training

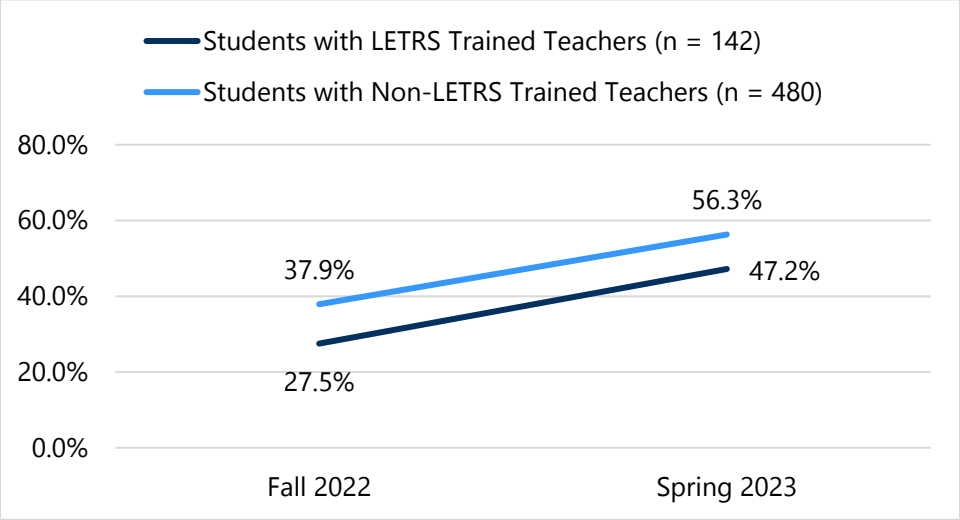
Progress	% (n)
On Volume 1	74.1% (n = 43)
On Volume 2	13.8% (n = 8)
Completed	12.1% (n = 7)

The Acadience assessment was completed by kindergarten and first grade students at Centennial. For this assessment, students' numeric scores were associated with four composite score categories: well below benchmark; below benchmark; at benchmark; and above benchmark. The percentage of students at or above benchmark on the Acadience Reading assessment were combined and compared at Fall and Spring timepoints for the two groups of students.

The STAR assessment was completed by third through fifth grade students at Centennial. Similarly, students could score in four categories on the STAR assessment: urgent intervention; intervention; on watch; and at/above benchmark. The percentage of students at/above benchmark on the STAR assessment are compared at Fall and Spring timepoints for the two groups of students as well.

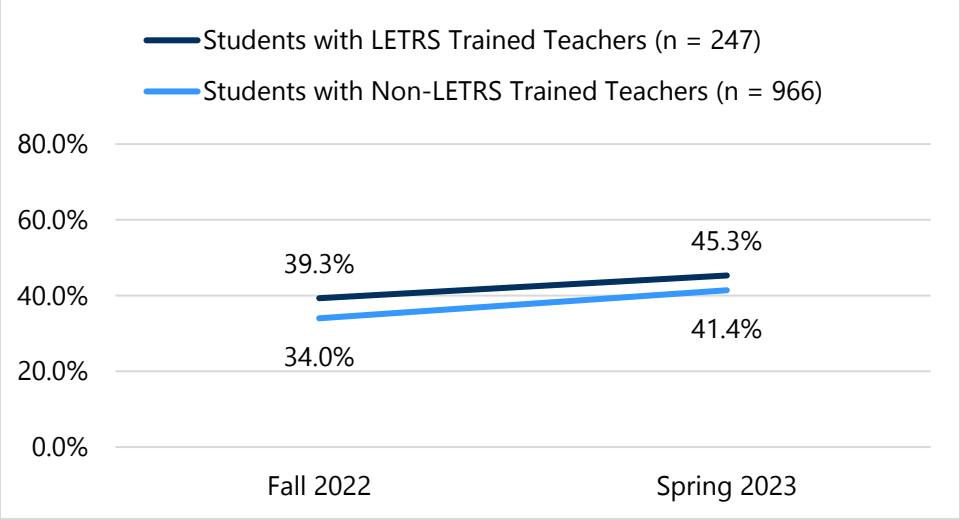
An analysis of Acadience and STAR assessment data did not provide evidence of an overall impact of LETRS training on student reading achievement in CSD. The figure below presents the percentage of K-2 Centennial students reading at or above grade level in the Fall and Spring. At both timepoints a higher percentage of K-2 students who did not have LETRS trained teachers scored at or above benchmark. (Figure 18).

Figure 18. Percentage of Centennial K-2 Students At or Above Benchmark on Acadience



Conversely, a higher percentage of 2-5 students with LETRS trained teachers scored at/above benchmark on the STAR assessment at both timepoints as shown in Figure 19.

Figure 19. Percentage of Centennial 2-5 Students At/Above Benchmark on STAR



When broken down by grade level, kindergarten and first grade students mirrored the larger K-2 trend with the comparison group showing a higher percentage of students reading at grade level or higher at both timepoints (See Figures 20 and 21).

Figure 20. Percentage of Centennial Kindergarten Students At or Above Benchmark on Acadience

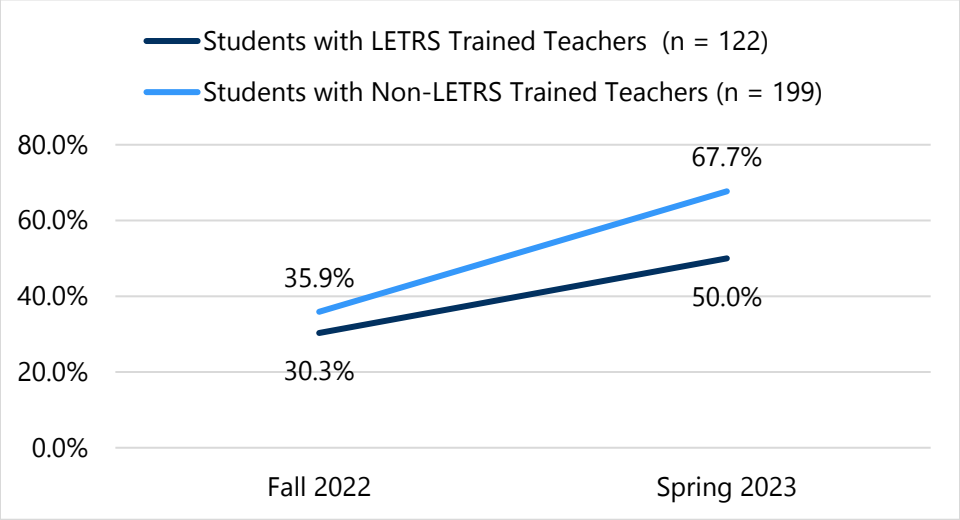
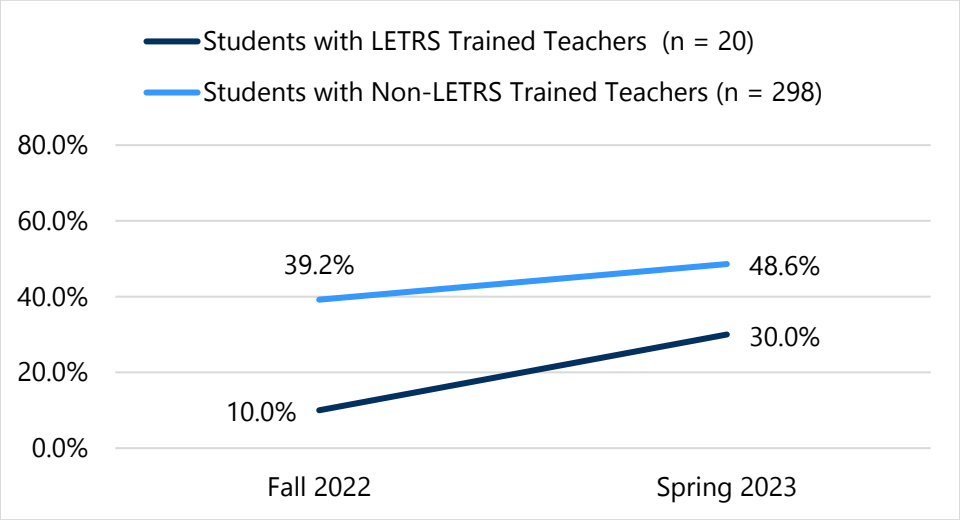


Figure 21. Percentage of Centennial 1st Grade Students At or Above Benchmark on Acadience



For second and third grade Centennial students, there was a slight increase from Fall to Spring in the number of students reading a grade level (Figure 22 and Figure 23).

Figure 22. Percentage of Centennial 2nd Grade Students At/Above Benchmark on STAR

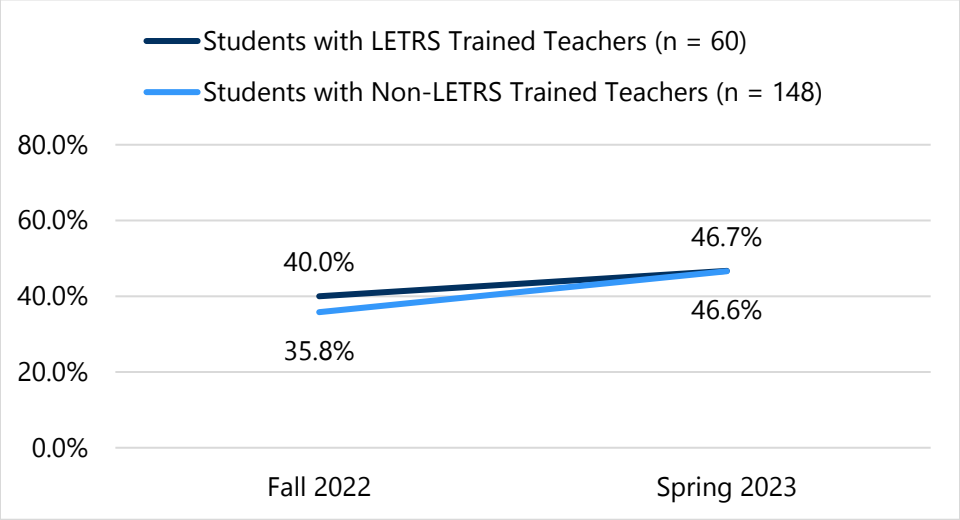
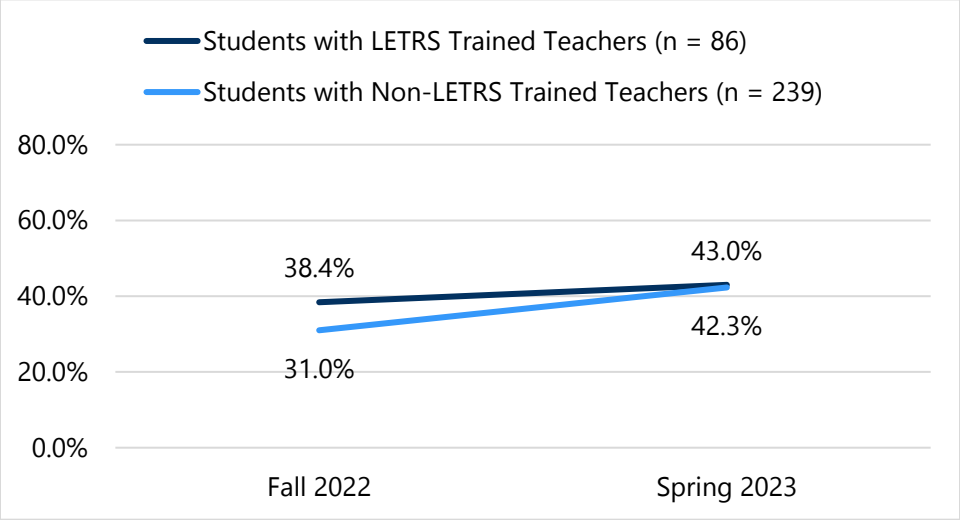


Figure 23. Percentage of Centennial 3rd Grade Students At/Above Benchmark on STAR



Fourth grade progress is presented below and shows that a higher number of students with LETRS trained teachers were at benchmark in the Fall and this continued into the Spring timepoint (Figure 24).

Figure 24. Percentage of Centennial 4th Grade Students At/Above Benchmark on STAR

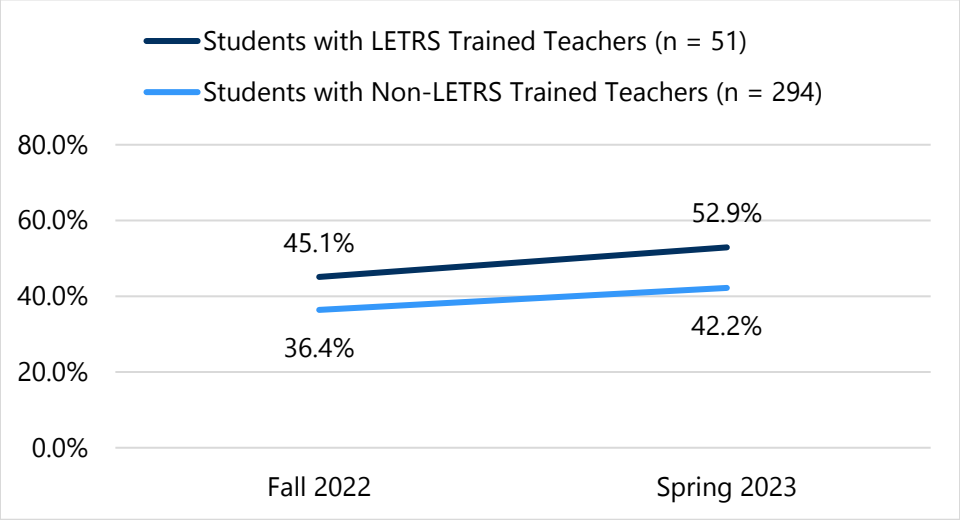
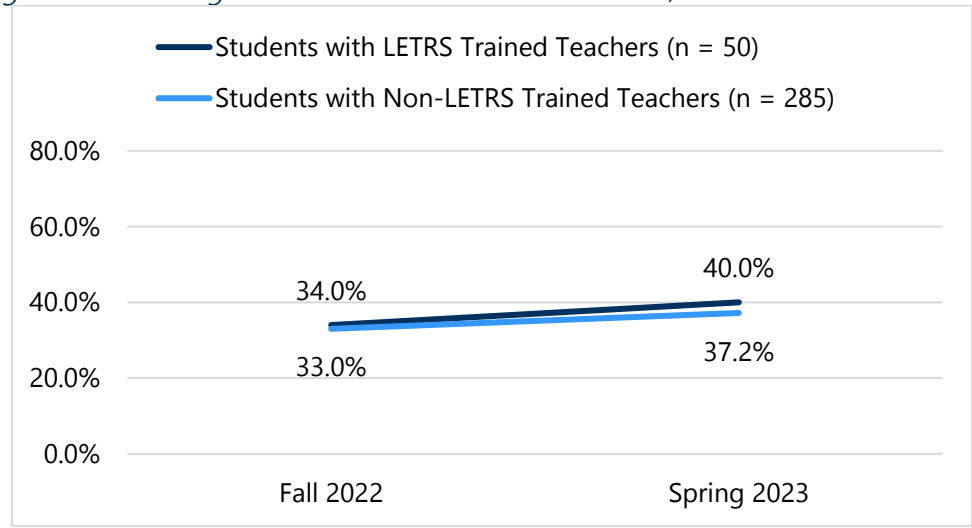


Figure 25 presents data from the STAR reading assessment and shows the rate of achieving a score of at/above benchmark on the STAR assessment was very similar at both timepoints regardless of whether students' teachers were LETRS trained or not.

Figure 25. Percentage of Centennial 5th Grade Students At/Above Benchmark on STAR



David Douglas School District

David Douglas School District used Acadience Reading, formerly DIBELS NEXT, as its primary literacy screener during the 2022-2023 school year. To examine the impact of LETRS training on student achievement, Acadience data were analyzed for students of LETRS trained teachers (treatment) compared to a group of students whose teacher did not participate in the LETRS training (comparison). LETRS-trained teachers included any educator at DDSD who had started the training and could be at any stage. The table below shows the progress of 64 DDSD educators and demonstrates that a large majority were on Volume 1 of the training.

Table 15. DDSD LETRS Participants' Progress on Training

Progress	% (n)
On Volume 1	85.9% (n = 55)
On Volume 2	12.5% (n = 8)
Completed	1.6% (n = 1)

Students' numeric scores were associated with four composite score categories: well below benchmark; below benchmark; at benchmark; and above benchmark. The percentage of students at or above benchmark on the Acadience Reading assessment were combined and compared at the two timepoints for the two groups of students.

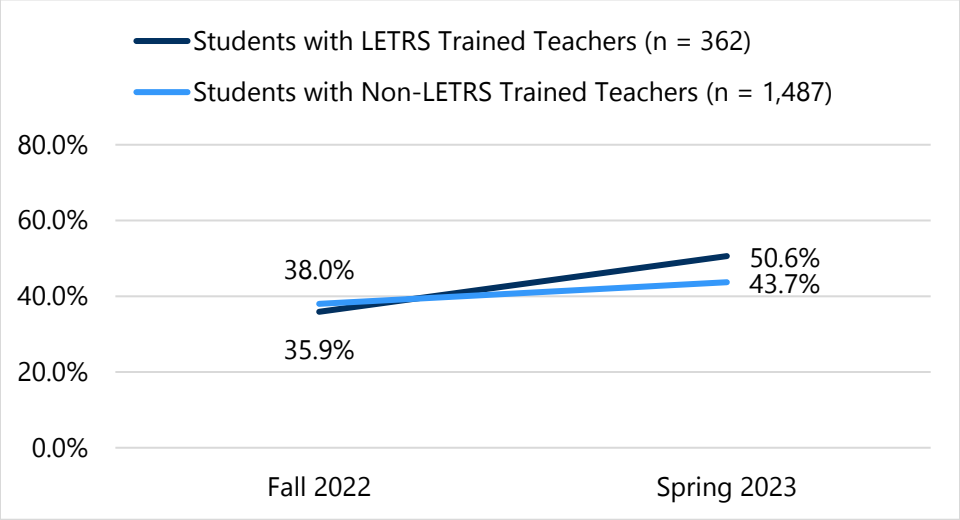
Significant Achievement Results for DDSD

A series of logistic regressions were conducted to explore potential differences in Acadience scores between treatment (i.e., students with LETRS trained teachers) and comparison (i.e., students with non LETRS-trained teachers) groups at Spring timepoints controlling for students' Fall Acadience scores. DDSD showed statistically significant findings for three of these analyses as detailed below:

- When considering grades K-5, students of LETRS trained teachers were **1.71 times more likely** to have a Spring reading composite score at or above benchmark compared to students of non-LETRS trained teachers.
- When considering ELL students in grades K-5, students of LETRS trained teachers were **2.67 times more likely** to have a Spring reading composite score at or above benchmark compared to ELL students of non-LETRS trained teachers.
- When considering Historically Underserved students in grade K-5, students of LETRS trained teachers were **1.51 times more likely** to have a Spring reading composite score at or above benchmark compared to HU students of non-LETRS trained teachers.

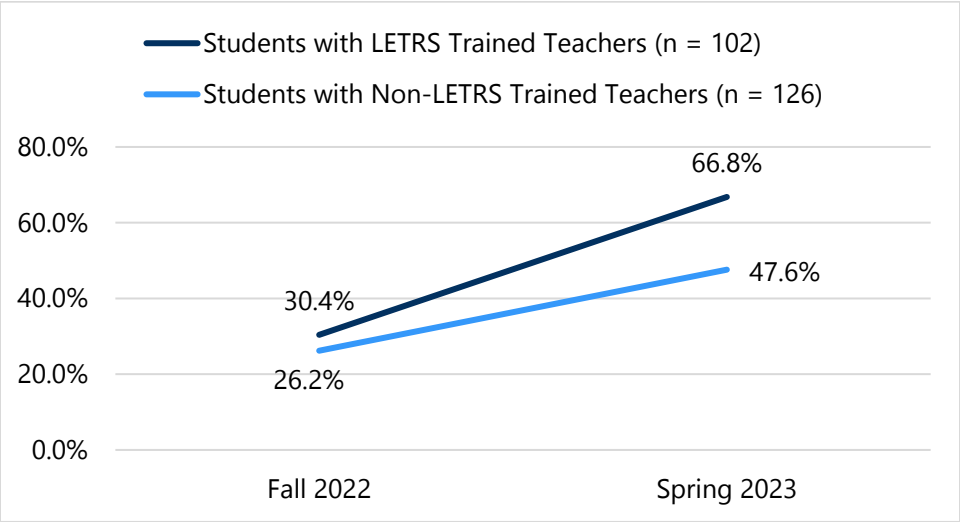
As shown below, the percentage of DDSD K-5 students performing at benchmark was roughly equal for LETRS trained vs. Non-LETRS trained teachers in the Fall and increased more for students of LETRS trained teachers than the comparison group by the Spring timepoint (Figure 26).

Figure 26. Percentage of DDSD K-5 Students At or Above Benchmark on Acadience



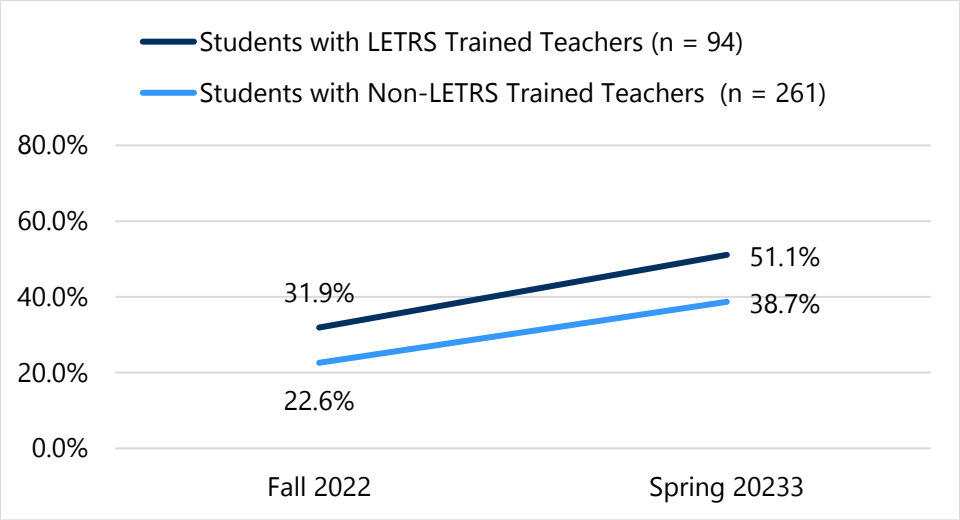
The next series of graphs will present the findings by grade level. Figure 27 shows that the percentage of kindergarten students performing at benchmark was just slightly lower for the comparison group in the Fall. By the Spring, the percentage of students reading at grade level was 19.2 percentage points higher for students of LETRS trained teachers.

Figure 27. Percentage of DDSD Kindergarten Students At or Above Benchmark on Acadience



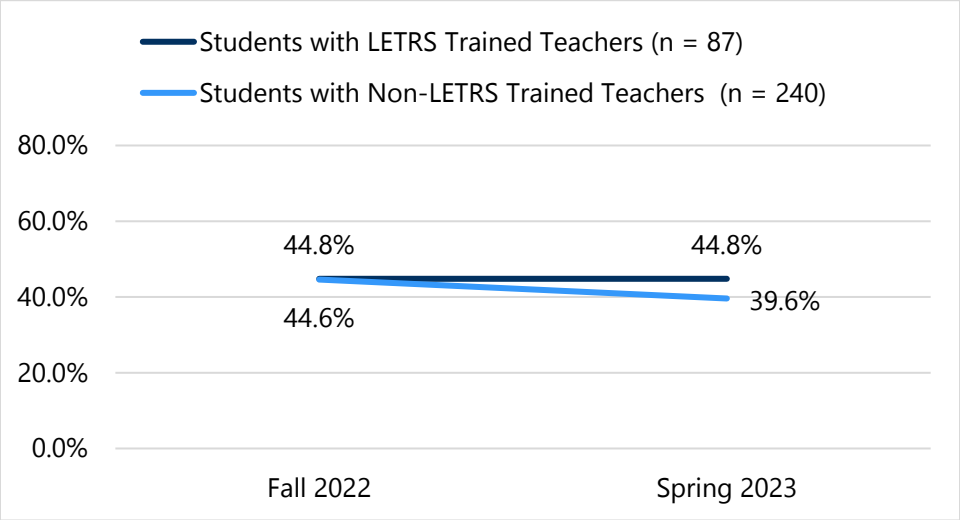
The percentage of first grade students performing at or above benchmark was lower for the comparison group in the Fall. By the Spring, the percentage of students reading at grade level was 12.4 percentage points higher for students of LETRS trained teachers. Figure 28).

Figure 28. Percentage of DDSD 1st Grade Students At or Above Benchmark on Acadience



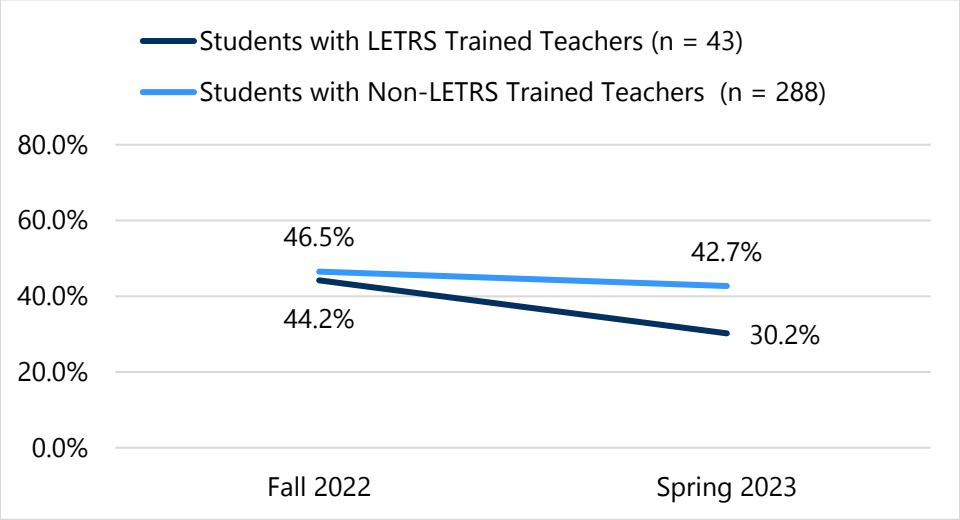
For second grade students in DDSD, the percentage of students performing at benchmark was the same for both groups in the Fall and decreased by 5% in the Spring for comparison group students Figure 29.

Figure 29. Percentage of DDSD 2nd Grade Students At or Above Benchmark on Acadience



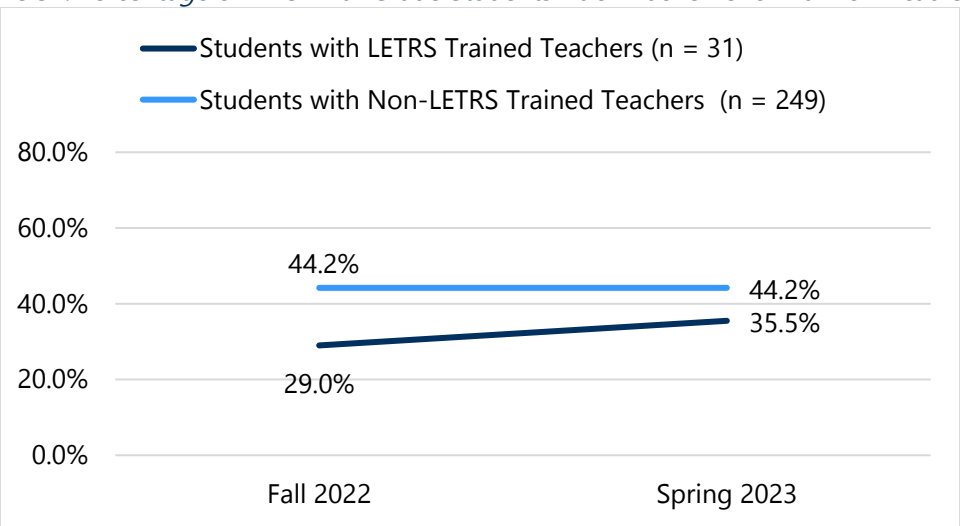
Third and fourth grade findings For third grade students in DDSD, the percentage of students performing at benchmark was about the same for both groups in the Fall and decreased by 14 percentage points in the Spring for treatment group students.

Figure 30. Percentage of DDSD 3rd Grade Students At or Above Benchmark on Acadience



For fourth grade students at DDSD, the percentage of students reading at grade level was 44.2% at both timepoints and increased from 29.0% to 35.5% for students of LETRS trained teachers.

Figure 31. Percentage of DDSD 4th Grade Students At or Above Benchmark on Acadience



Parkrose School District

Parkrose School District used iReady reading as its primary literacy screener during the 2022-2023 school year. To examine the impact of LETRS training on student achievement, iReady data were analyzed for students of LETRS trained teachers (treatment) compared to a group of students whose teacher did not participate in the LETRS training (comparison). LETRS-trained teachers included any educator at Parkrose who had started the training and could be at any stage. The table below shows the progress of Parkrose educators and indicates that just over 60% of the 26 LETRS participants were on Volume 1 of the training.

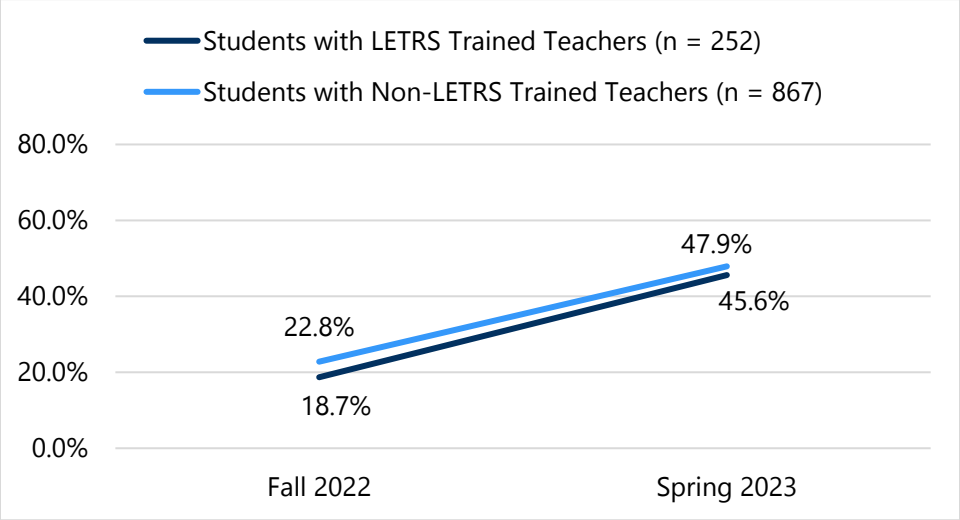
Table 16. Parkrose LETRS Participants' Progress on Training

Progress	% (n)
On Volume 1	61.5% (n = 16)
On Volume 2	26.9% (n = 7)
Completed	11.5% (n = 3)

Students' numeric scores were associated with five composite score categories: 1 grade level below, 2 grade levels below, 3 grade levels below, early on grade level, mid or above grade level. The percentage of students "early on grade level" or "mid or above grade level" for the iReady Reading assessment were combined and compared at the Fall and Spring timepoints for the two groups of students.

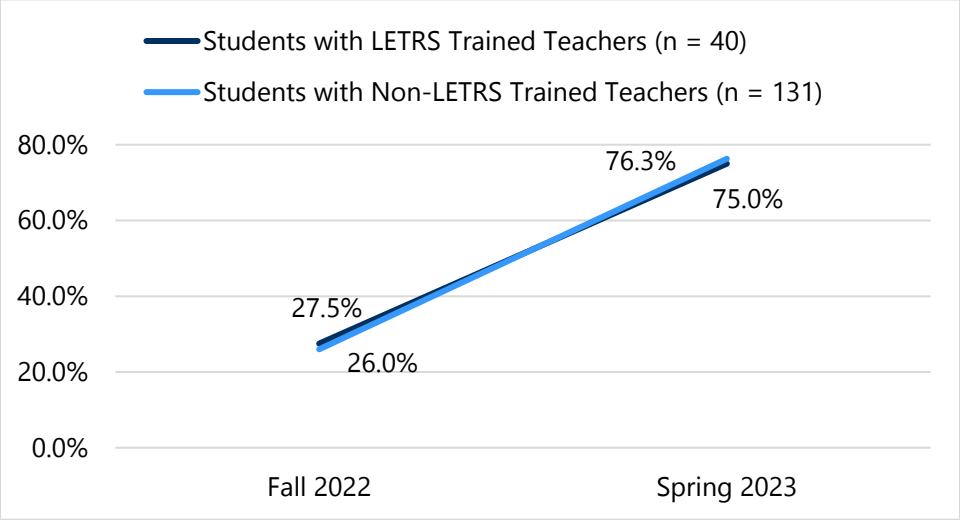
An analysis of iReady assessment data did not provide evidence of an overall impact of LETRS training on student reading achievement at Parkrose. As shown below, the percentage of Parkrose K-5 students performing at benchmark was roughly equal for LETRS trained vs. Non-LETRS trained teachers in the Fall and increased for both groups by the Spring timepoint (Figure 32).

Figure 32. Percentage of Parkrose K-5 Students At or Above Benchmark on iReady Reading



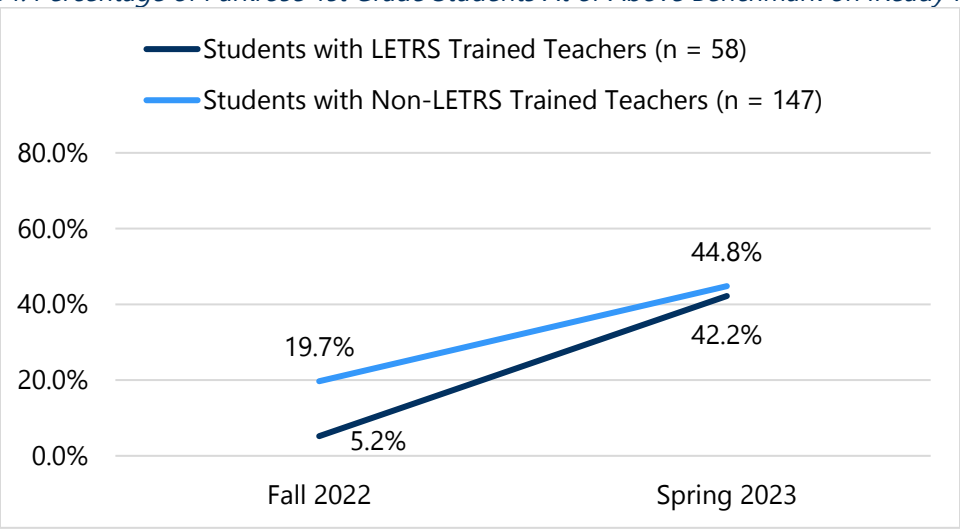
The next series of graphs will present the findings by grade level. Figure 33 shows that the percentage of kindergarten students performing at benchmark was nearly identical for students of LETRS trained teachers compared to non-LETRS trained teachers.

Figure 33. Percentage of Parkrose Kindergarten Students At or Above Benchmark on iReady Reading



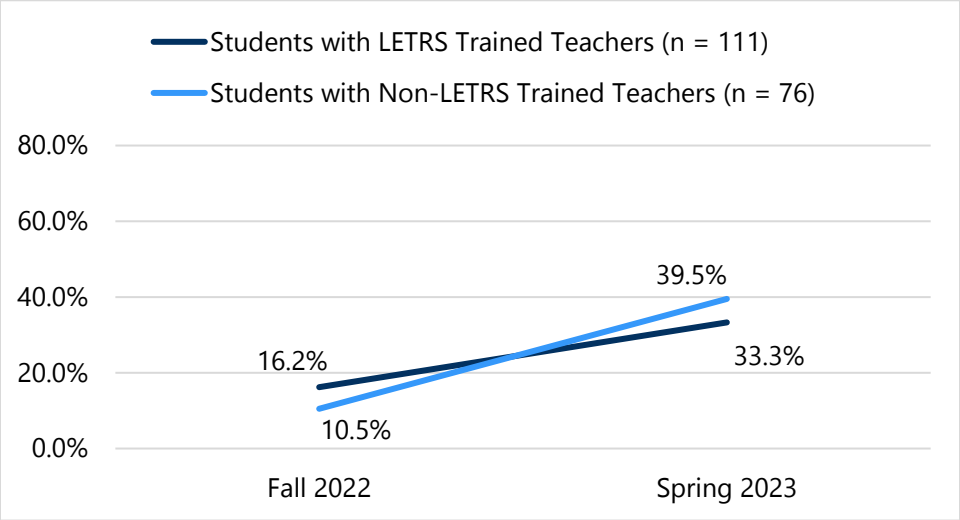
The percentage of first grade students performing at or above benchmark was lower for the treatment group in the Fall. By the Spring, the percentage of students reading at grade level had increase to 42.2% for treatment group students which was just slightly lower than the comparison group Figure 34).

Figure 34. Percentage of Parkrose 1st Grade Students At or Above Benchmark on iReady Reading



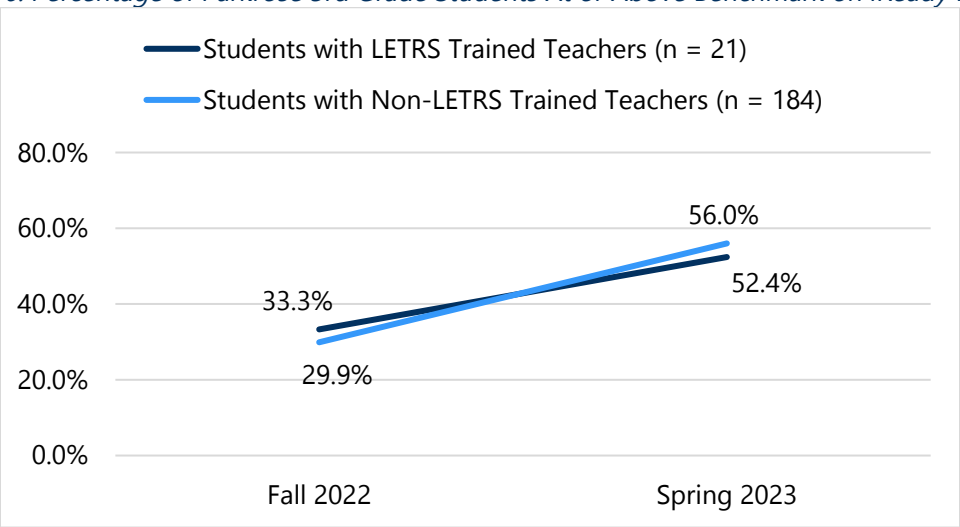
For second grade students in Parkrose, the percentage of students performing at benchmark was similar for both groups in the Fall and increased by more for comparison group students in the Spring Figure 35.

Figure 35. Percentage of Parkrose 2nd Grade Students At or Above Benchmark on iReady Reading



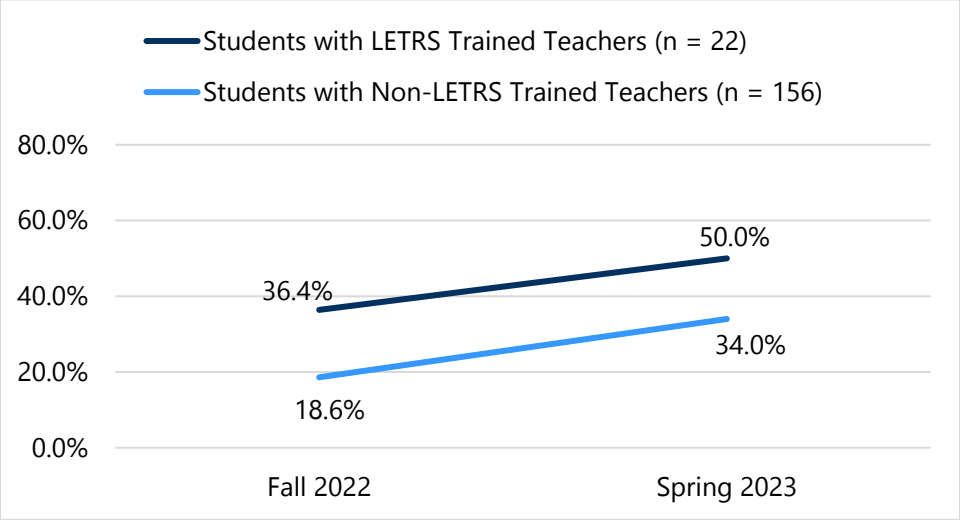
The number of 3rd grade students performing at benchmark in Parkrose was nearly identical for students of LETRS trained teachers compared to non-LETRS trained teachers.

Figure 36. Percentage of Parkrose 3rd Grade Students At or Above Benchmark on iReady Reading



Fourth grade students at Parkrose showed the most promising in the district but had the smallest sample size. By the Spring, 50.0% of students with LETRS trained teachers were reading at grade level compared to 34.0% of comparison group students. There were no iReady data for 5th grade students of LETRS trained teachers.

Figure 37. Percentage of Parkrose 4th Grade Students At or Above Benchmark on Acadience



Portland Public Schools

Portland Public Schools used the DIBELS assessment as its primary literacy screener during the 2022-2023 school year. To examine the impact of LETRS training on student achievement, DIBELS composite performance indicators were analyzed for K-2 students of LETRS trained teachers (treatment) compared to a group of students whose teacher did not participate in the LETRS training (comparison).

LETRS-trained teachers included any K-2 educator at PPS who had started the training and could be at any stage. The table below shows the progress of PPS educators whose students were included in the analysis of achievement data.

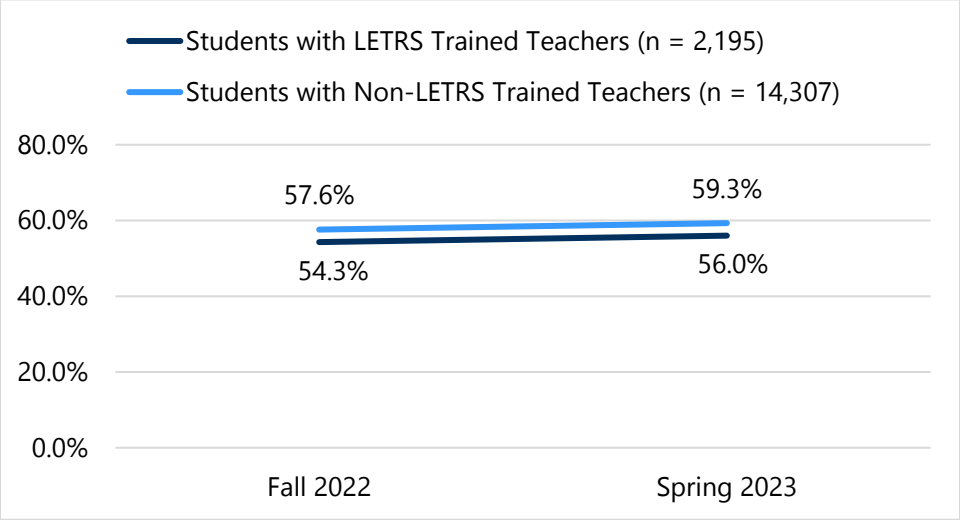
Table 17. PPS LETRS Participants' Progress on Training

Progress	% (n)
On Volume 1	36.8% (n = 39)
On Volume 2	39.6% (n = 42)
Completed	23.6% (n = 25)

Student scores on the assessment are associated with three benchmark categories: intensive support; strategic support; and core support. Those attaining core support scores are considered to be at or above grade level. The percentage of students at the core level on the DIBELS Reading assessment were compared at the two timepoints for the two groups of students.

An analysis of DIBELS assessment data did not provide evidence of an overall impact of LETRS training on student reading achievement in Portland Public Schools. As shown below, the percentage of PPS K-2 students performing at benchmark was similar for students of LETRS trained teachers and the comparison group at both Fall and Spring timepoints with the comparison group having slightly higher rates of students reading at grade level in both the Fall and Spring (Figure 38).

Figure 38. Percentage of PPS K-2 Students at Core on DIBELS



The next series of graphs will present the findings by grade level. As shown below, the percentage of kindergarten and 1st grade students performing at benchmark was nearly identical for students of LETRS trained teachers compared to non-LETRS trained teachers (Figure 39 and Figure 40).

Figure 39. Percentage of PPS Kindergarten Students at Core on DIBELS

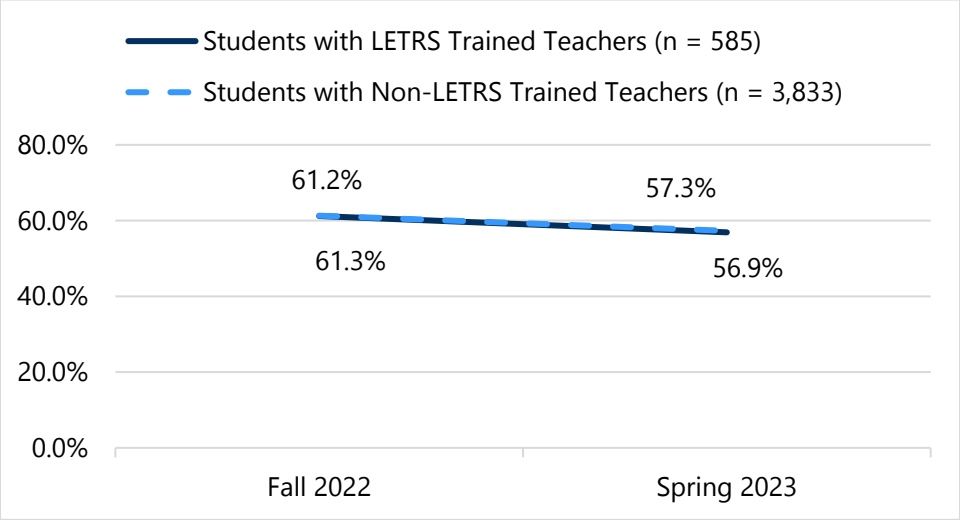
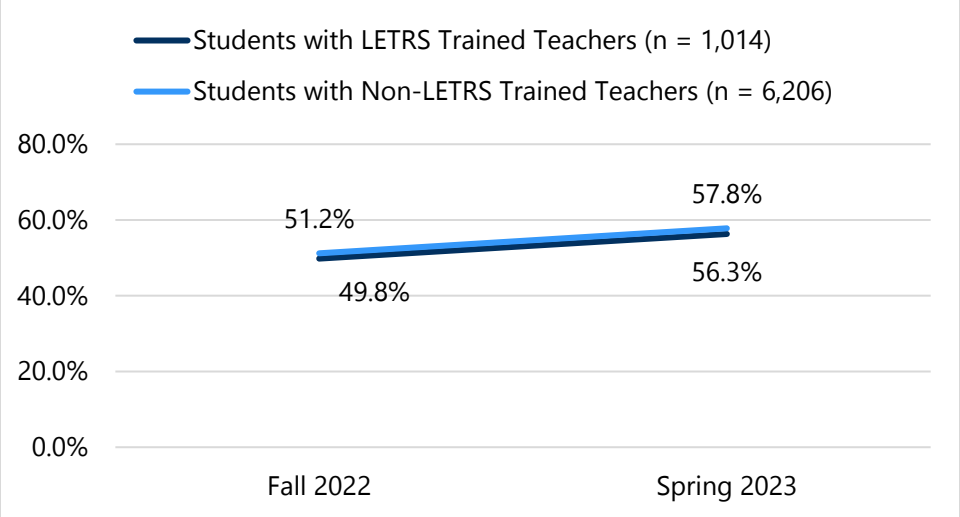
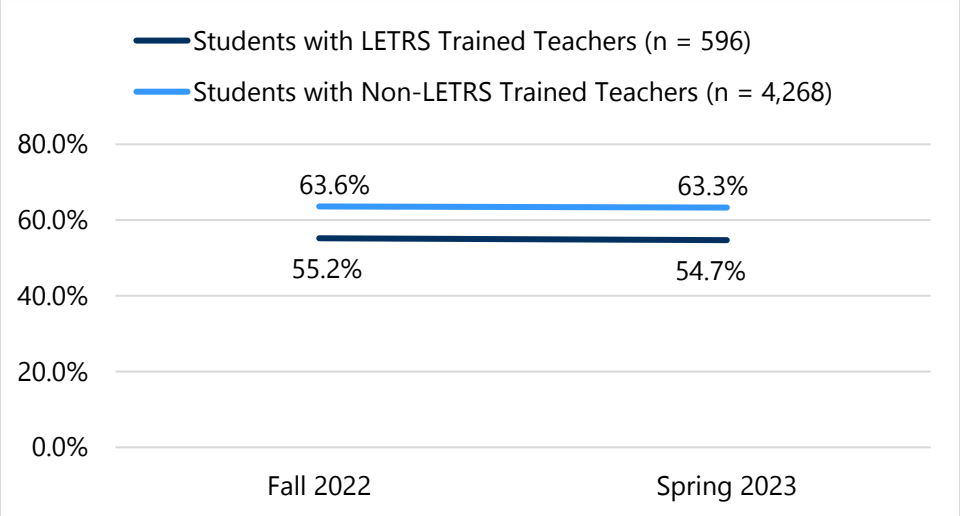


Figure 40. Percentage of PPS 1st Grade Students at Core on DIBELS



For second grade students in PPS, the percentage of students performing at benchmark was slightly higher for comparison group students than students of LETRS trained teachers at both Fall and Spring timepoints Figure 41.

Figure 41. Percentage of PPS 2nd Grade Students at Core on DIBELS



Reynolds

Student outcomes on the DIBELS Reading assessment were examined for K-5 students at Reynolds School District to assess the impact of LETRS on students with teachers participating in the training (treatment) compared to those with teachers not participating in the training (comparison). Student scores on the assessment are associated with three benchmark categories: intensive support; strategic support; and core support. Those attaining core support scores are considered to be at or above grade level. The percentage

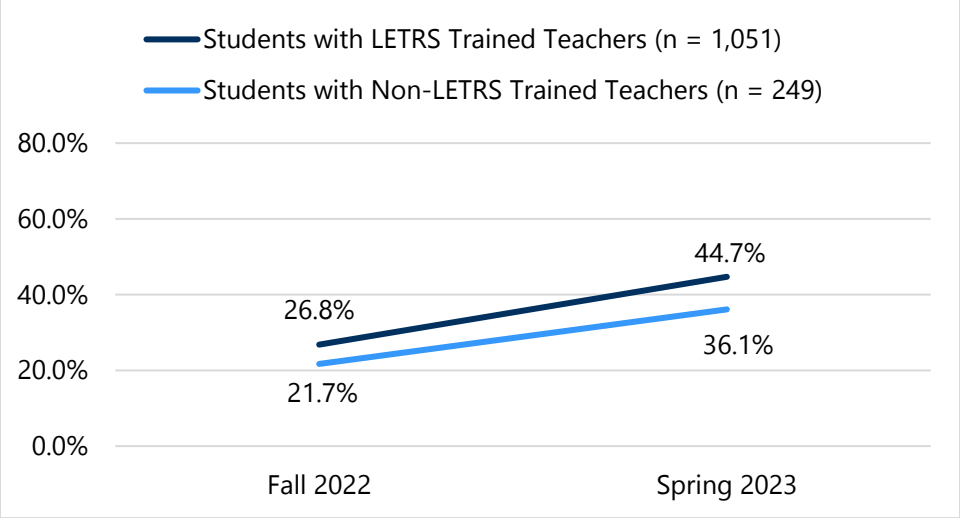
of students at the core level on the DIBELS Reading assessment were compared at the two timepoints for the two groups of students. LETRS-trained teachers included any educator at Reynolds who had started the training and could be at any stage. K-5 teachers with students who had data at both time points were included in the student achievement analysis. The table below shows the progress of Reynolds educators who were included in this analysis of achievement data.

Table 18. Reynolds LETRS Participants' Progress on Training

Progress	% (n)
On Volume 1	37.3% (n = 28)
On Volume 2	25.3% (n = 19)
Completed	37.3% (n = 28)

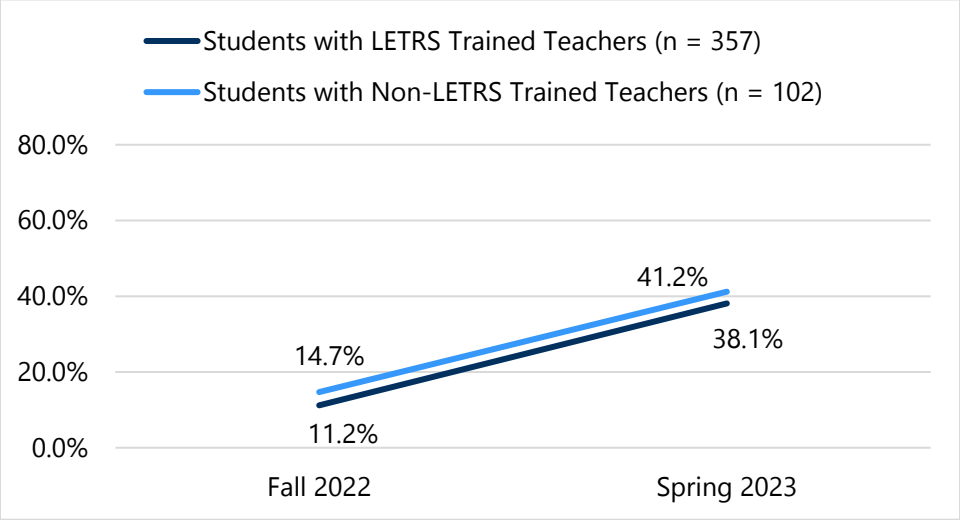
An analysis of Acadience assessment data **does** provide promising results regarding the impact of LETRS training on student reading achievement in RSD but this impact was not significant when examined through logistic regression analyses as described previously in this report. When looking at kindergarten through fifth grade students at Reynolds, treatment group students were reading at benchmark at higher rates than treatment group students at both the Fall and the Spring. The percentage students with LETRS trained teachers increased by more than the comparison group (Figure 42).

Figure 42. Percentage of Reynolds K-5 Students at Core on DIBELS



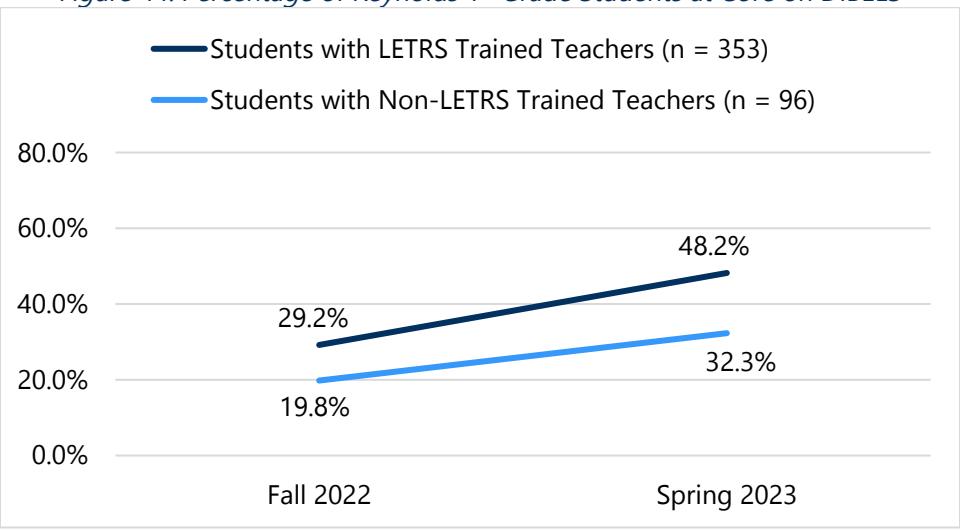
The percentage of kindergarten students at core on DIBELS was slightly higher for comparison group at both Fall and Spring timepoints (Figure 43). Both groups of students demonstrated a noteworthy increase in core attainment from Fall to Spring.

Figure 43. Percentage of Reynolds Kindergarten Students at Core on DIBELS



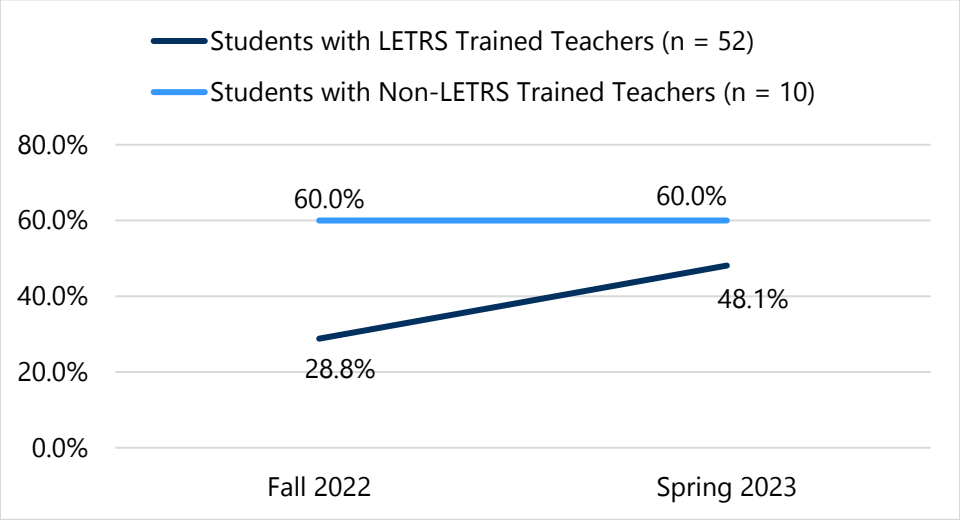
First grade students with LETRS trained teachers scored at the core level on DIBELS at higher rates at both timepoints than students whose teachers did not participate in LETRS. By the Spring, the percentage of students reading at grade level was 15.9 percentage points higher for students of LETRS trained teachers.

Figure 44. Percentage of Reynolds 1st Grade Students at Core on DIBELS



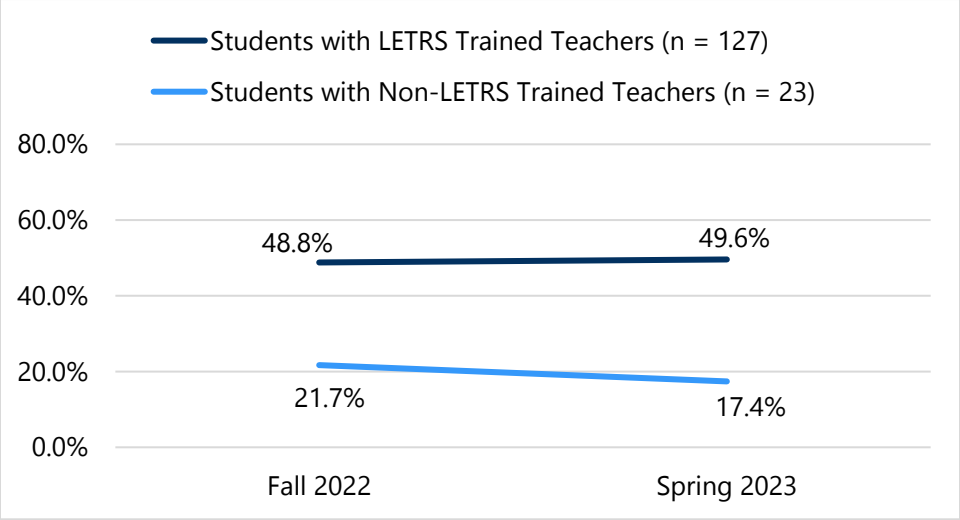
Although comparison group students were at the core on DIBELS at higher rates in the Spring compared to treatment group students, there was a noteworthy increase from Fall to Spring for these students with LETRS trained teachers; whereas, the comparison group's rate at achieving core remained steady (Figure 45).

Figure 45. Percentage of Reynolds 2nd Grade Students at Core on DIBELS



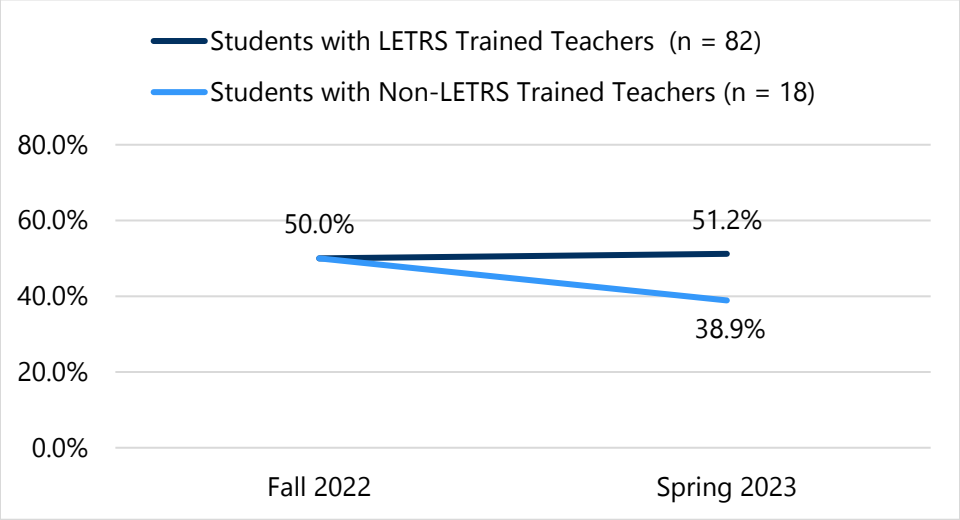
The rate of fourth grade treatment group students who were at core on DIBELS remained fairly steady across the two timepoints, while the comparison group decreased slightly. Notably, the percentage of fourth grade students reading at the core level was 32.2 percentage points higher for students of LETRS trained teachers in the Spring (Figure 46).

Figure 46. Percentage of Reynolds 4th Grade Students at Core on DIBELS



Half of the fifth grade students from both groups were at core on DIBELS in the Fall. While this rate increased very slightly for the treatment group, there was a noteworthy decrease for comparison group students from Fall to Spring (Figure 47).

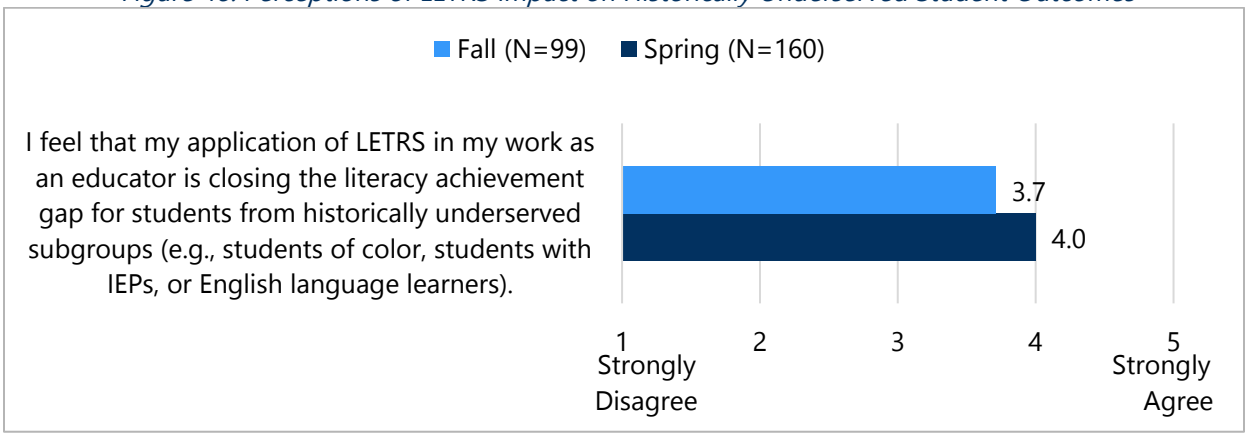
Figure 47. Percentage of Reynolds 5th Grade Students at Core on DIBELS



What was the impact of LETRS training on students from historically underserved student subgroups?

On average, educators mostly agreed that their efforts to apply what they learned from LETRS into their work was helping to close the achievement gap for students from historically underserved backgrounds, such as students of color, those with individualized education plans (IEPs), and those who are English language learners. Educators were slightly more likely to agree with this statement at the Spring timepoint compared to the Fall, as shown in Figure 48.

Figure 48. Perceptions of LETRS Impact on Historically Underserved Student Outcomes



Centennial School District

The rate of students at or above benchmark on the Acadience and at/above benchmark on the STAR assessment (depending on grade level) was examined for SPED and historically underserved race/ethnicity groups with LETRS trained teachers (treatment) and students with non-LETRS trained teachers (comparison) in Fall 2022 and Spring 2023.

The rate of SPED kindergarten and first grade students scoring at or above benchmark on the Acadience assessment decreased slightly from Fall to Spring for treatment group students while increasing for comparison group students (Figure 49).

Figure 49. Percentage of Centennial K-1 SPED Students At or Above Benchmark on Acadience

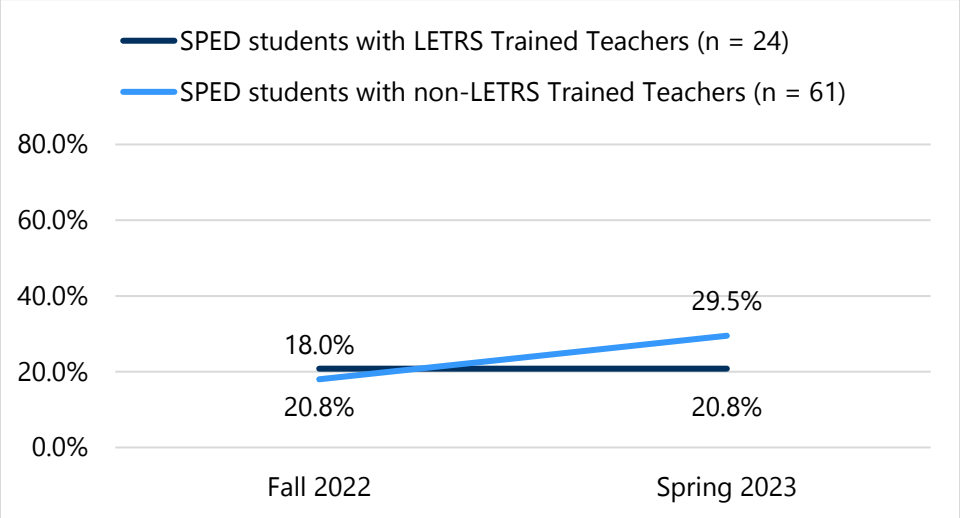
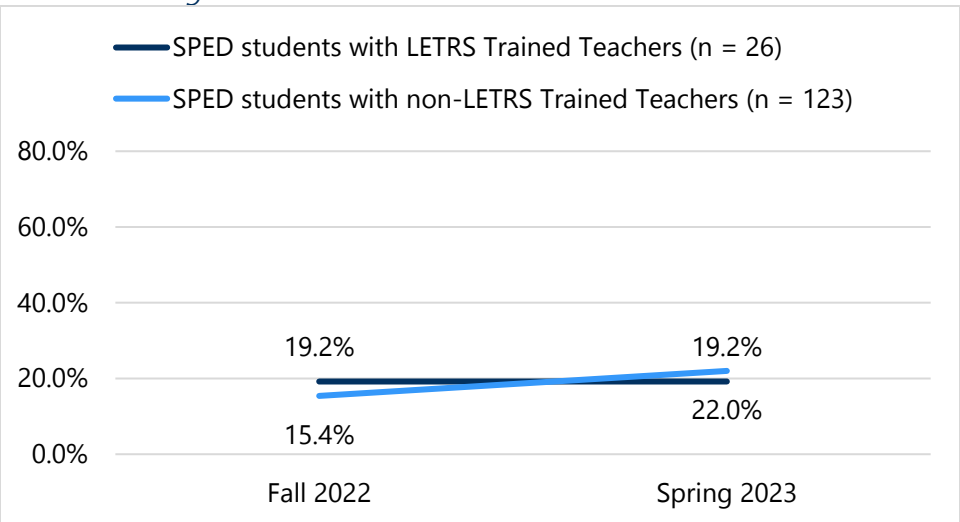


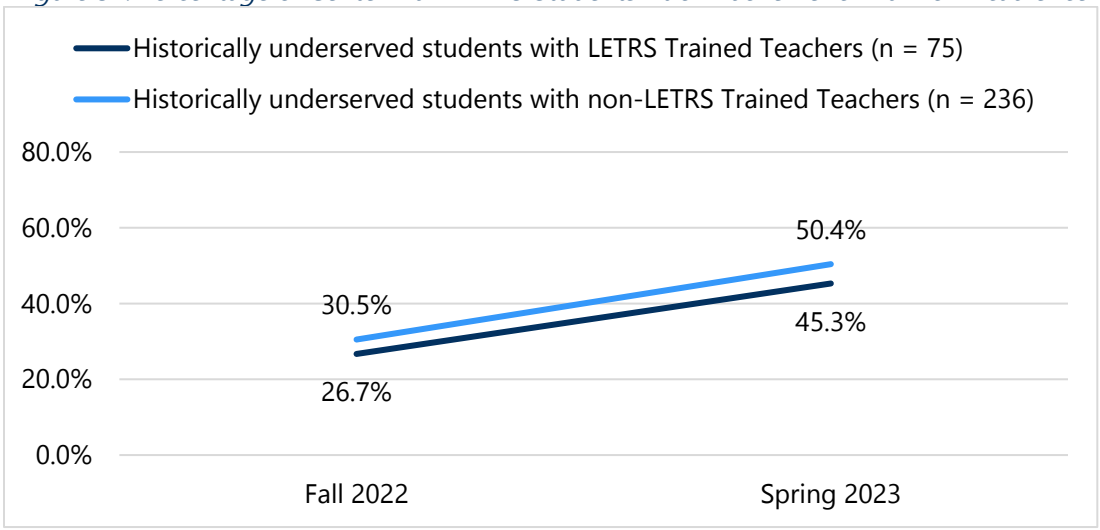
Figure 50 demonstrates that second through fifth grade SPED students in the treatment group achieved at/above benchmark scores on the STAR assessment at the same rate at both timepoints; whereas, there was a slight increase in scoring at/above benchmark for treatment group students from Fall to Spring.

Figure 50. Percentage of Centennial 2-5 SPED Students At or Above Benchmark on STAR



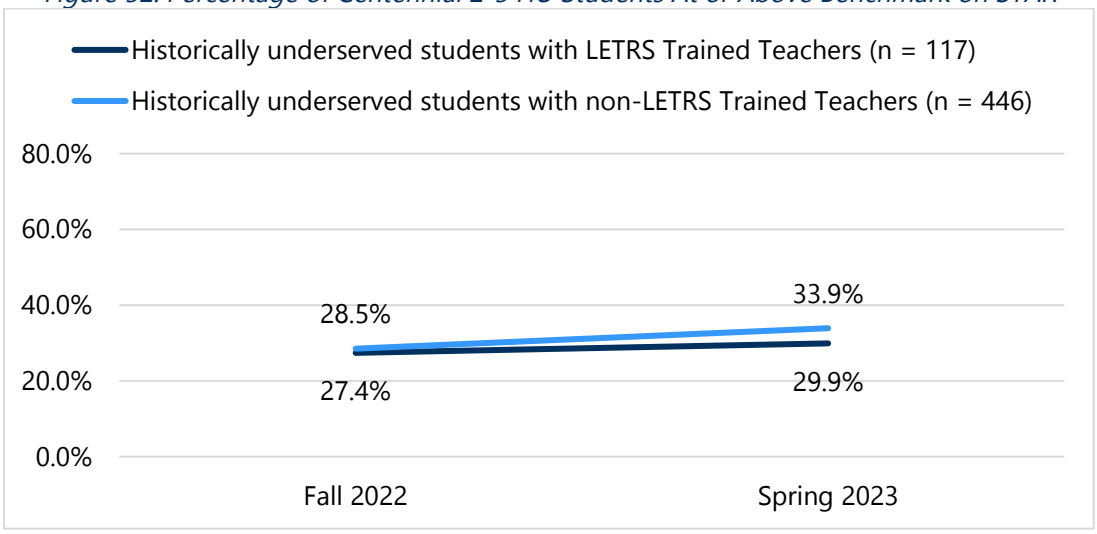
When looking at Accdeince scores for kindergarten and first grade students from historically underserved race/ethnicity groups, comparison group slightly outperformed treatment group students at both timepoints (Figure 51).

Figure 51. Percentage of Centennial K-1 HU Students At or Above Benchmark on Acadience



While the rate of second through fifth grade students from historically underserved race/ethnic groups scoring at/above benchmark was about the same in the Fall for students regardless of whether their teacher was participating in LETRS, the comparison group slightly outpaced the treatment group in the Spring (Figure 52).

Figure 52. Percentage of Centennial 2-5 HU Students At or Above Benchmark on STAR

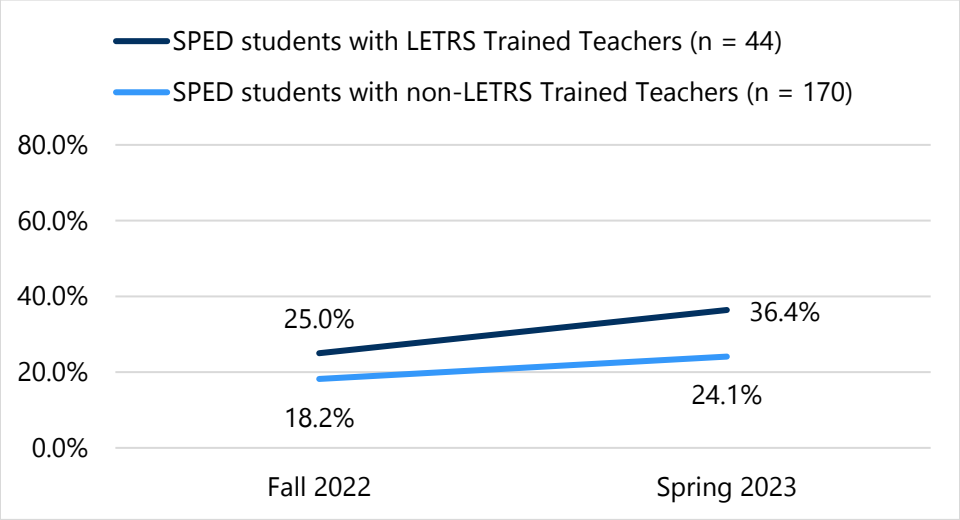


David Douglas School District

The percent of students at or above benchmark on the Acadience assessment was examined for SPED, ELL, and historically underserved race/ethnicity groups with LETRS trained teachers (treatment) and students with non-LETRS trained teachers (comparison) in Fall 2022 and Spring 2023.

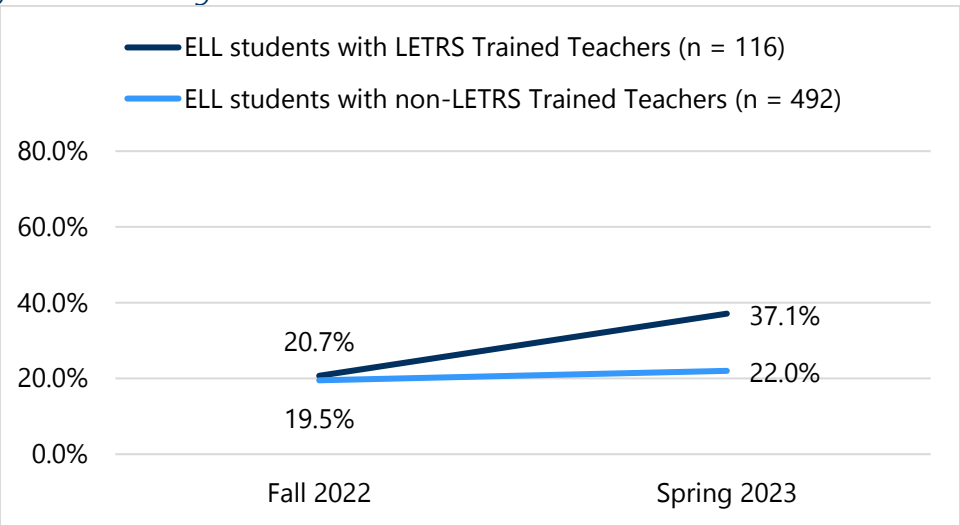
The percentage of SPED students reading at or above benchmark in grade K-5 at DDSD was slightly higher for students of LETRS trained teachers in the Fall and increased by 16.4% by the Spring (Figure 53).

Figure 53. Percentage of DDSD K-5 SPED Students At or Above Benchmark on Acadience



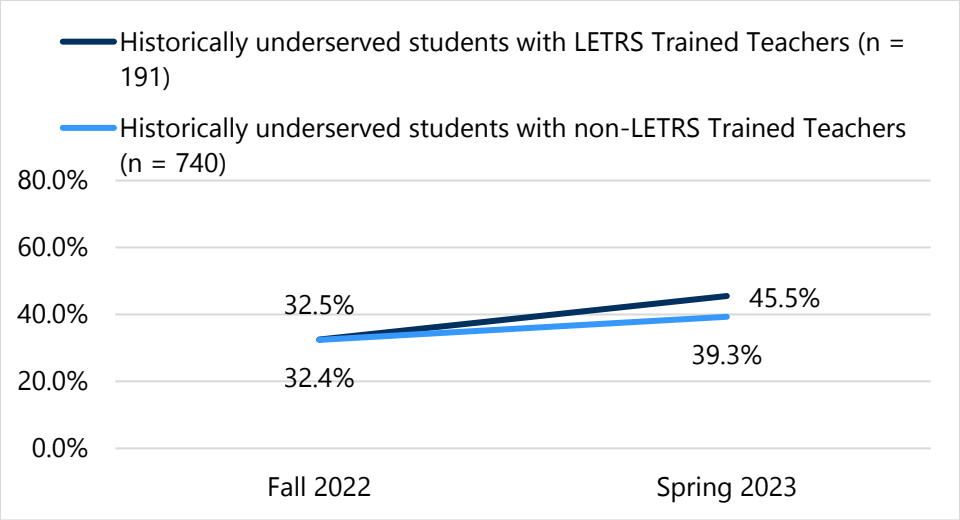
Acadience scores were examined for English Language Learners in grades K-5 in DDSD. The percentage of ELL students with LETRS trained teachers was similar to the comparison group in the Fall but increased by 16.4 percentage points in the Spring (Figure 54).

Figure 54. Percentage of DDSD K-5 ELL Students At or Above Benchmark on Acadience



Finally, Acadience scores were examined for Historically Underserved race/ethnicities in grades K-5 in DDSD. Similar to English Language Learners the percentage of HU students with LETRS trained teachers was similar to the comparison group in the Fall but increased by 13 percentage points in the Spring. (Figure 55).

Figure 55. Percentage of DDSD K-5 HU Students At or Above Benchmark on Acadience

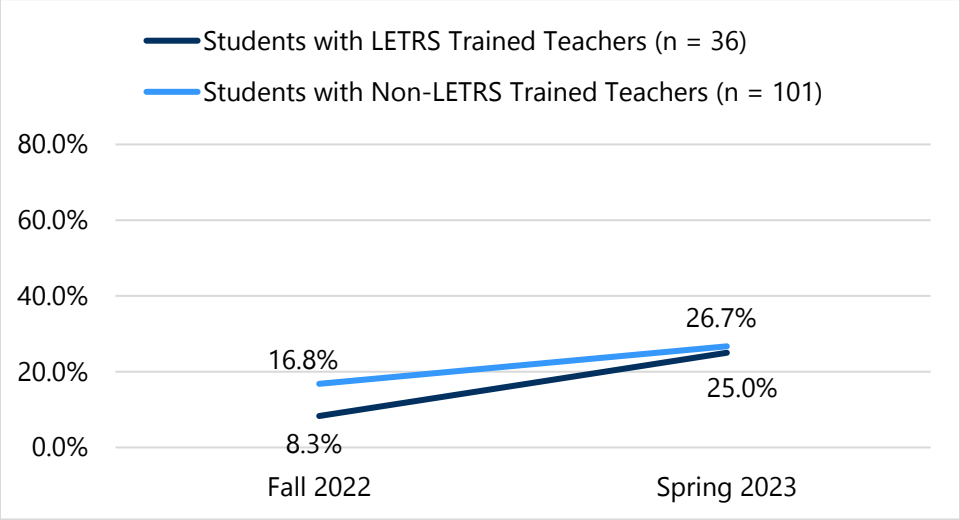


Parkrose School District

The percent of students at or above benchmark on the iReady reading assessment was examined for SPED, ELL, and historically underserved race/ethnicity groups with LETRS trained teachers (treatment) and students with non-LETRS trained teachers (comparison) in Fall 2022 and Spring 2023.

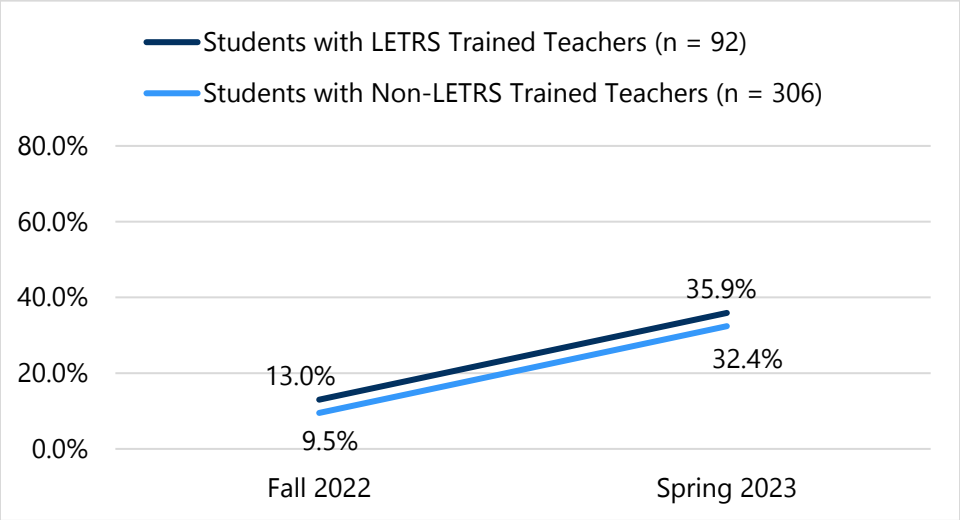
The percentage of SPED students reading at or above benchmark in grade K-5 at Parkose was slightly higher for comparison students in the Fall but was nearly equal by the Spring timepoint. (Figure 56).

Figure 56. Percentage of Parkrose K-5 SPED Students At or Above Benchmark on iReady Reading



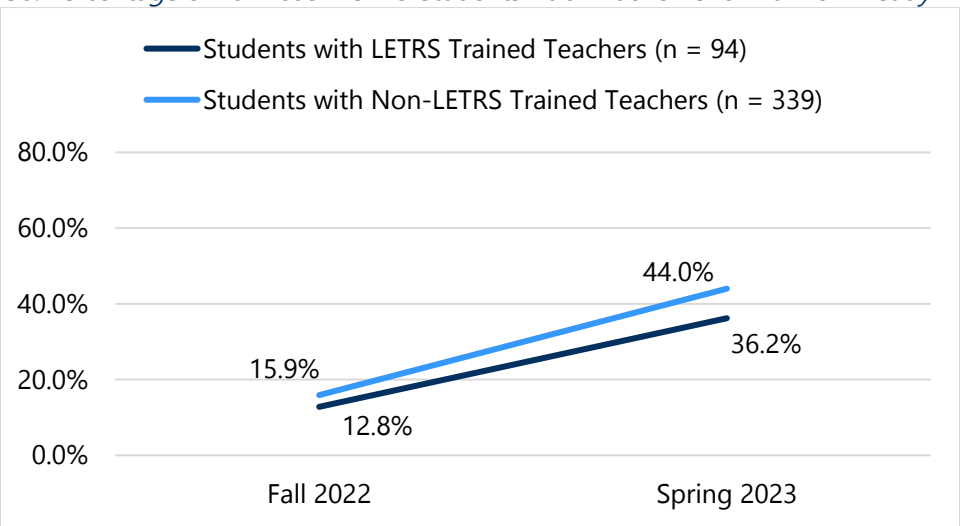
iReady reading scores were examined for English Language Learners in grades K-5 in Parkrose. The percentage of ELL students with LETRS trained teachers was slightly higher than the comparison group at both timepoints (Figure 57).

Figure 57. Percentage of Parkrose K-5 ELL Students At or Above Benchmark on iReady Reading



Finally, iReady scores were examined for Historically Underserved race/ethnicities in grades K-5 in Parkrose. Although both groups started out with about the same percentage of HU students reading at grade level in the Fall, the comparison group had a slightly higher number at the Spring timepoint.

Figure 58. Percentage of Parkrose K-5 HU Students At or Above Benchmark on iReady Reading

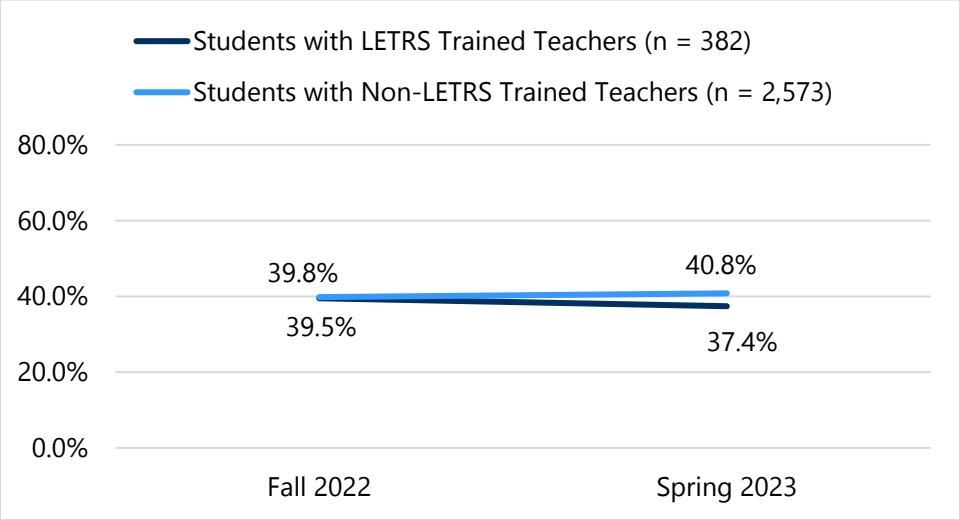


Portland Public Schools

The percent of students at or above benchmark on the DIBELS reading assessment was examined for SPED, ELL, and historically underserved race/ethnicity groups with LETRS trained teachers (treatment) and students with non-LETRS trained teachers (comparison) in Fall 2022 and Spring 2023.

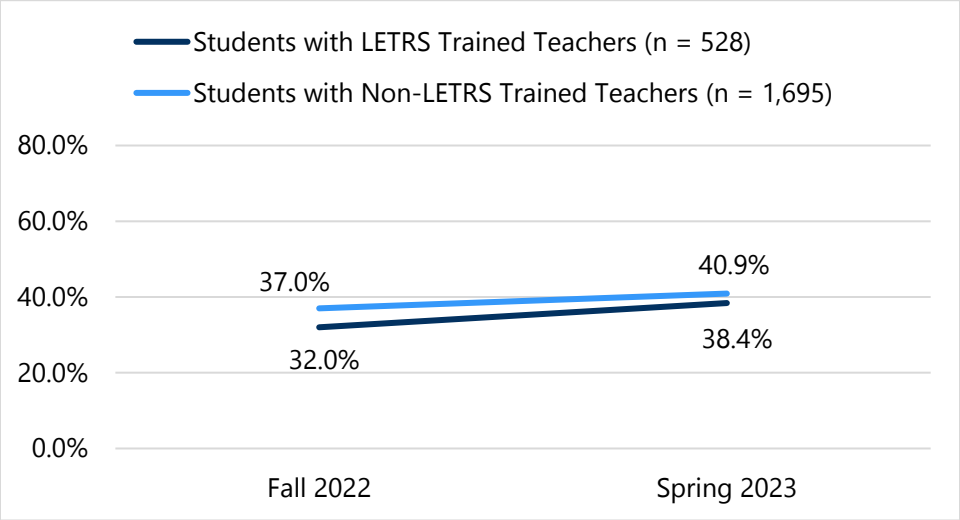
The percentage of SPED students reading at or above benchmark in grade K-5 at PPS was nearly identical for comparison students in the Fall and Spring timepoints (Figure 59).

Figure 59. Percentage of PPS SPED Students at Core on DIBELS



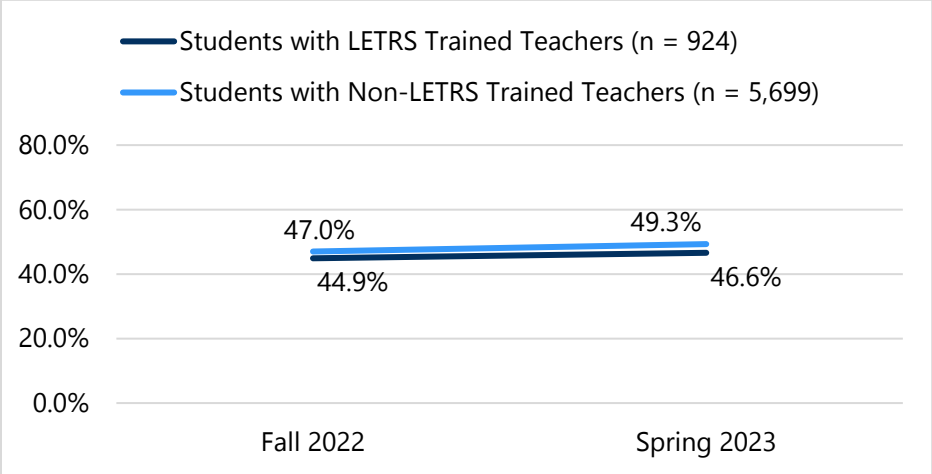
DIBELS reading scores were examined for English Language Learners in grades K-2 in PPS. The percentage of ELL students reading at benchmark in the comparison group was slightly higher than the LETRS group at both timepoints. (Figure 60).

Figure 60. Percentage of PPS K-2 ESL Students Core on DIBELS



Finally, DIBELS scores were examined for Historically Underserved race/ethnicities in grades K-2 in PPS. The percentage of students reading at benchmark was nearly identical regardless of the LETRS training.

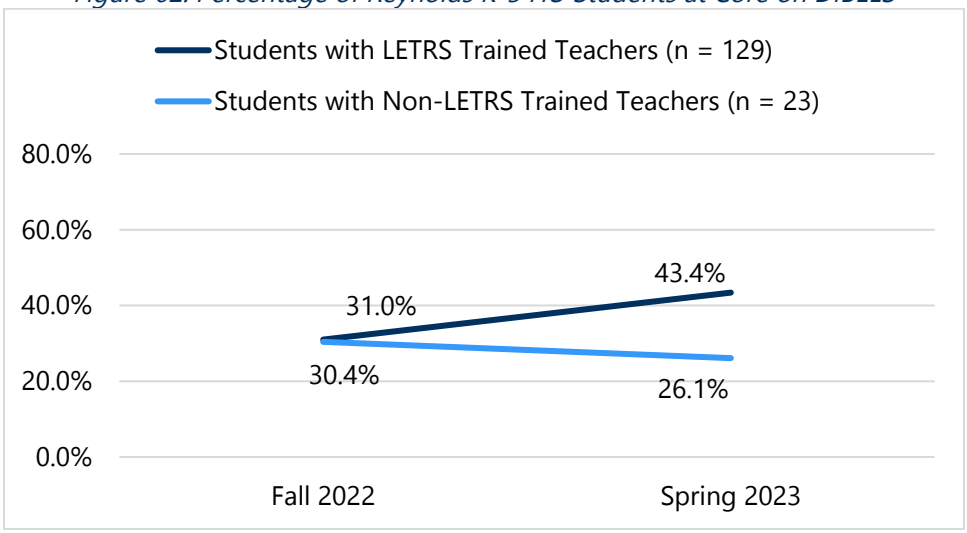
Figure 61. Percentage of PPS K-2 HU Students Core on DIBELS



Reynolds School District

The percent of students at the core level on the DIBELS reading assessment was examined for historically underserved race/ethnicity groups with LETRS trained teachers (treatment) and students with non-LETRS trained teachers (comparison) in Fall 2022 and Spring 2023. The figure below illustrates that while students from both groups scored at the core level at similar rates in the Fall, treatment group rates increased from Fall to Spring and comparison group rates decreased. By Spring, the percentage of historically underserved students reading at grade level was 17.3 percentage points higher for students of LETRS trained teachers. These findings were further explored through logistic regression analysis and showed that students of historically underserved race/ethnicity groups with LETRS trained teachers were 7.54 times more likely to have a Spring reading composite score at or above benchmark compared to HU students of non-LETRS trained teachers.

Figure 62. Percentage of Reynolds K-5 HU Students at Core on DIBELS



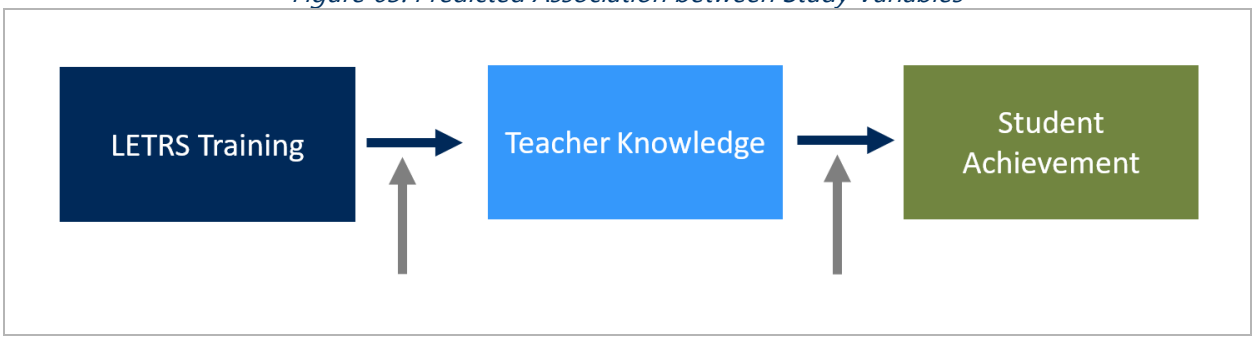
PPS SUPPLEMENTAL STUDY FINDINGS

Study Design

Previous research on the impact of LETRS training suggests a positive association between LETRS training and teacher knowledge, and also a positive association between teacher knowledge and student reading outcomes.[4] The direct relationship between LETRS training and student reading outcomes has been hypothesized, but has remained somewhat elusive to researchers (for more information on the body of research surrounding LETRS, see the literature review prepared by PRE which helped to inform this study). This supplemental study sought to explore the connection between LETRS training, teacher knowledge, and student achievement, using a sample of LETRS trained and non-LETRS trained PPS teachers.

The predicted association between LETRS training, teacher knowledge, and student achievement is graphically displayed in Figure 63. The blue arrows in the model represent the predicted association between these main variables of interest, while the grey arrows represent potential moderating effects that could influence the main effects. Moderators that were measured and are discussed in the findings that follow include teacher beliefs about code-based and meaning-based instructional styles, and aspects of teacher's experiences such as their educational background.

Figure 63. Predicted Association between Study Variables



Methods

Participation in this supplemental study was limited to only PPS educators to control for potentially confounding district-level factors, and because PPS could offer an adequately large sample of both LETRS trained and non LETRS-trained educators. An online survey administered in the Spring of 2023 was used to assess teacher knowledge and beliefs regarding reading instruction. Teacher knowledge was measured using a 37 item Knowledge of Basic Language Constructs[5] instrument, which focused on phonological and

[4] Garet, M. S., Cronen, S., Eaton, M., Kurki, A., Ludwig, M., Jones, W., ... & Sztejnberg, L. (2008). The Impact of Two Professional Development Interventions on Early Reading Instruction and Achievement. NCEE 2008-4030. National Center for Education Evaluation and Regional Assistance.

[5] Binks-Cantrell, E., Joshi, R. M., & Washburn, E. K. (2012). Validation of an instrument for assessing teacher knowledge of basic language constructs of literacy. Annals of dyslexia, 62, 153-171.

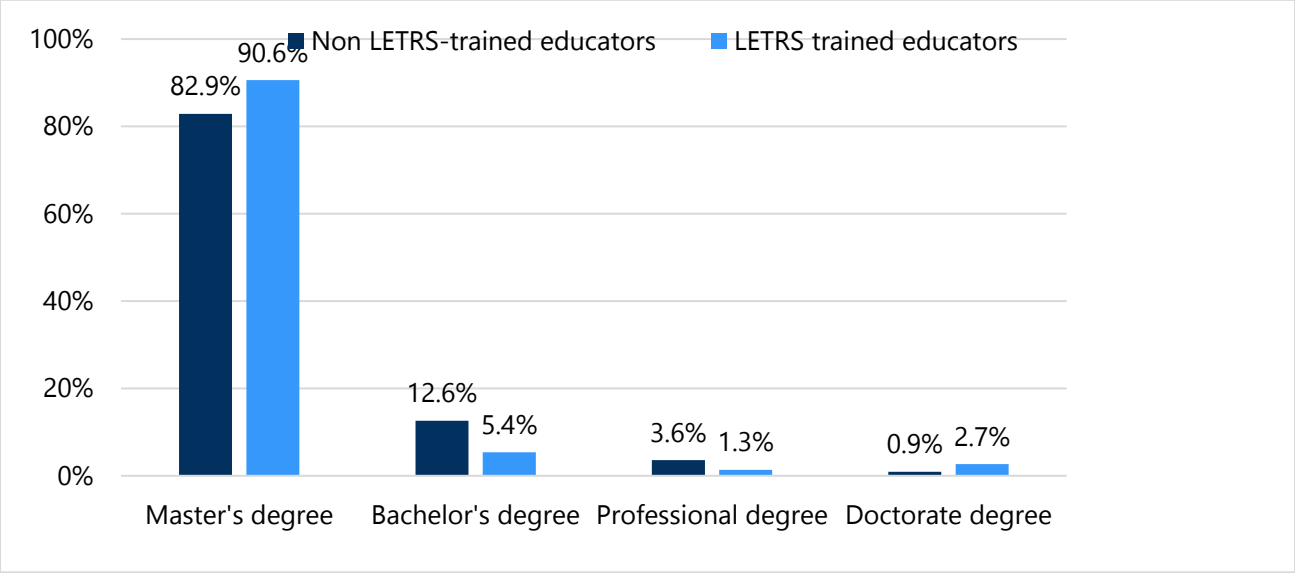
decoding knowledge and skill. All items on the knowledge measure were coded as either correct or incorrect, and averaged to produce a percent correct teacher knowledge score. The Teacher Beliefs Survey[6] was used to measure beliefs about both code-based (i.e., more aligned with phonics and the science of reading) and meaning-based (i.e., more aligned with whole language approaches) literacy instruction, using a 6-point scale from strongly disagree (coded as 1) to strongly agree (coded as 6). The survey also asked teachers about their educational background, and whether they had participated in LETRS training (and if so, how far they had progressed). Student achievement in this supplemental study was considered at the teacher-level. Each participating teacher who had students with available Fall 2022 and Spring 2023 assessment data was measured on the percent of students at or above benchmark (i.e., Core Support or above according to DIBELS) at both timepoints.

PPS Supplemental Study Survey Respondents

Participants (N=261) included educators who had been exposed to LETRS training (n=150), as well as a control group of educators who had not yet had any LETRS training (n=111). Participants were able to skip questions and/or exit the survey before completing all aspects. Therefore, the number of responses that findings are based on throughout this section will vary and will be noted.

All educators worked with students in the kindergarten through fifth grade range. Of educators who indicated their primary role (N=259), most were classroom teachers (61.0%) followed by speech language pathologists (10.0%) and instructional specialists (7.3%). Of educators who shared their highest degree earned (N=260), the large majority of both the LETRS trained group (90.6%) and the control group (82.9%) held master's degrees (see Figure 64).

Figure 64. Supplemental Study - Highest Degree Earned (N=259)

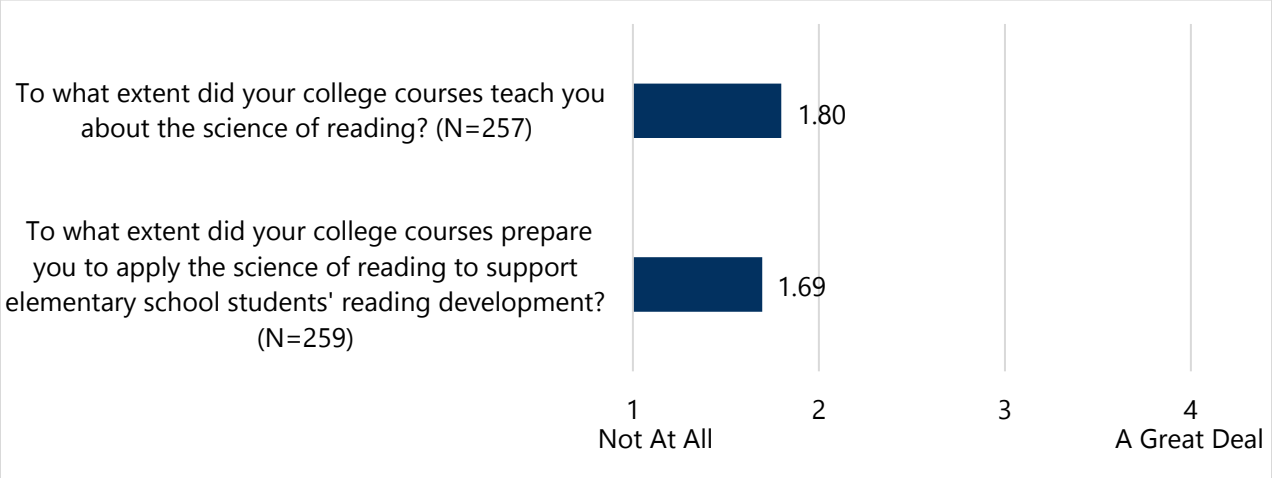


[6] Bills, B. (2020). Teacher Knowledge, Beliefs, and instructional practices in early literacy: a comparison study. University of Nebraska at Omaha.

Findings

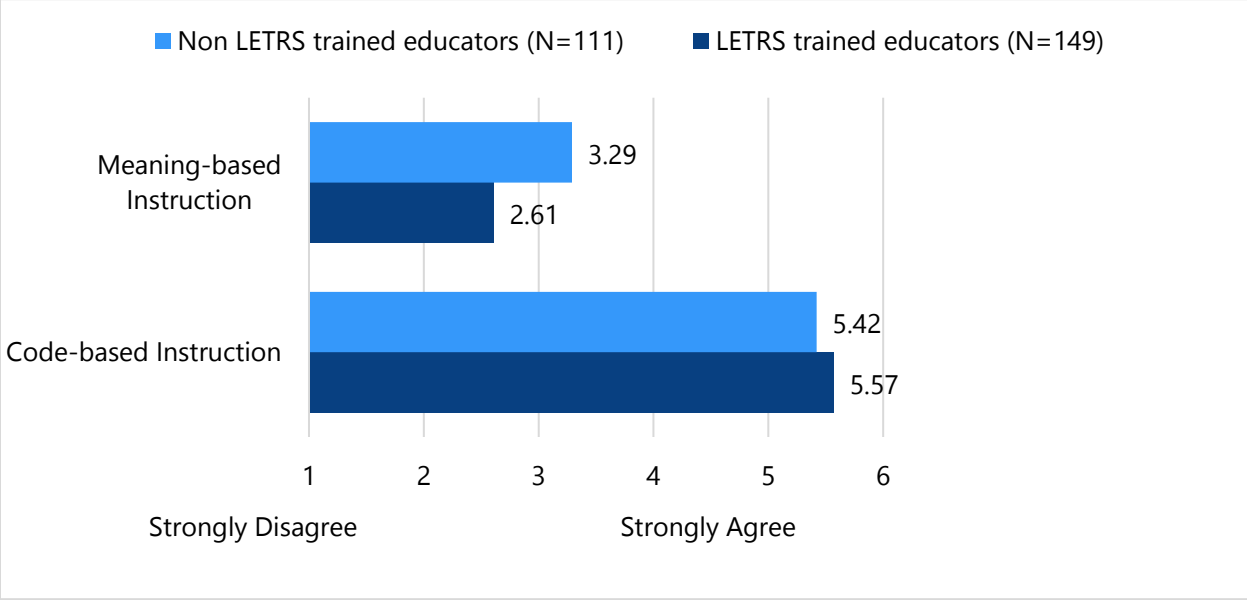
On average, educators indicate that they had learned only a slight amount (i.e., represented by a 2 on a 4-point scale) about the science of reading during their college experience, and that their college experience had only slightly prepared them to apply those concepts to their work supporting developing readers (see Figure 65).

Figure 65. College experience with Science of Reading (N's vary)



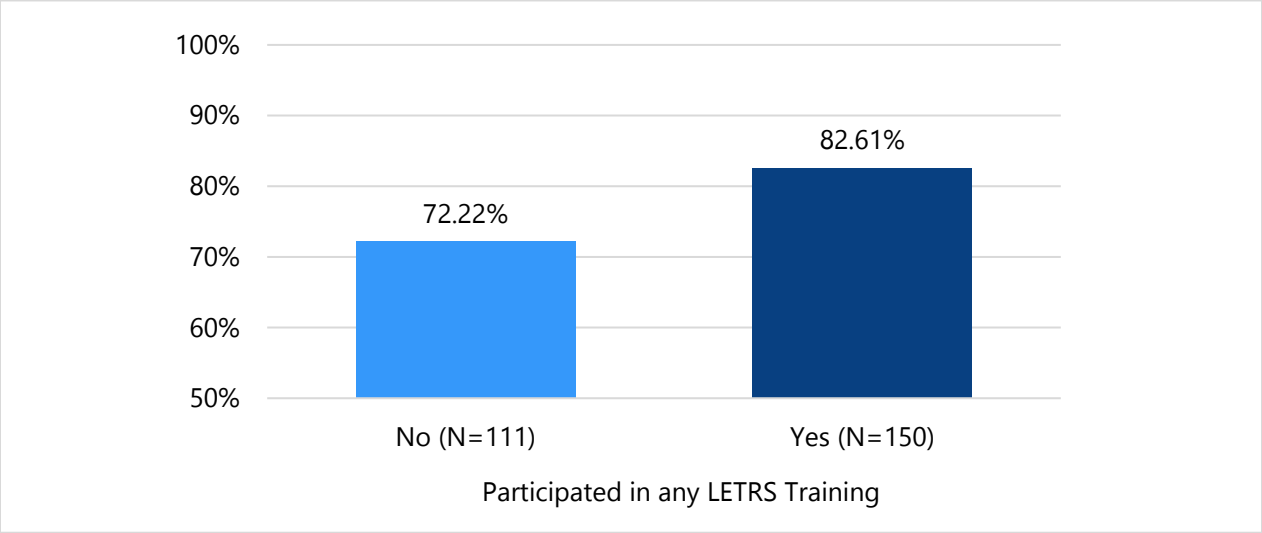
Findings from the Teacher Beliefs instrument suggest that surveyed educators' beliefs generally aligned more with code-based instructional practices than meaning-based instructional practices. While this was true for educators who were LETRS trained as well as those who were not, those who were LETRS trained indicated slightly less agreement with meaning-based instructional beliefs compared to those who were not (see Figure 66).

Figure 66. Agreement with principles of Code vs. Meaning-based Instruction



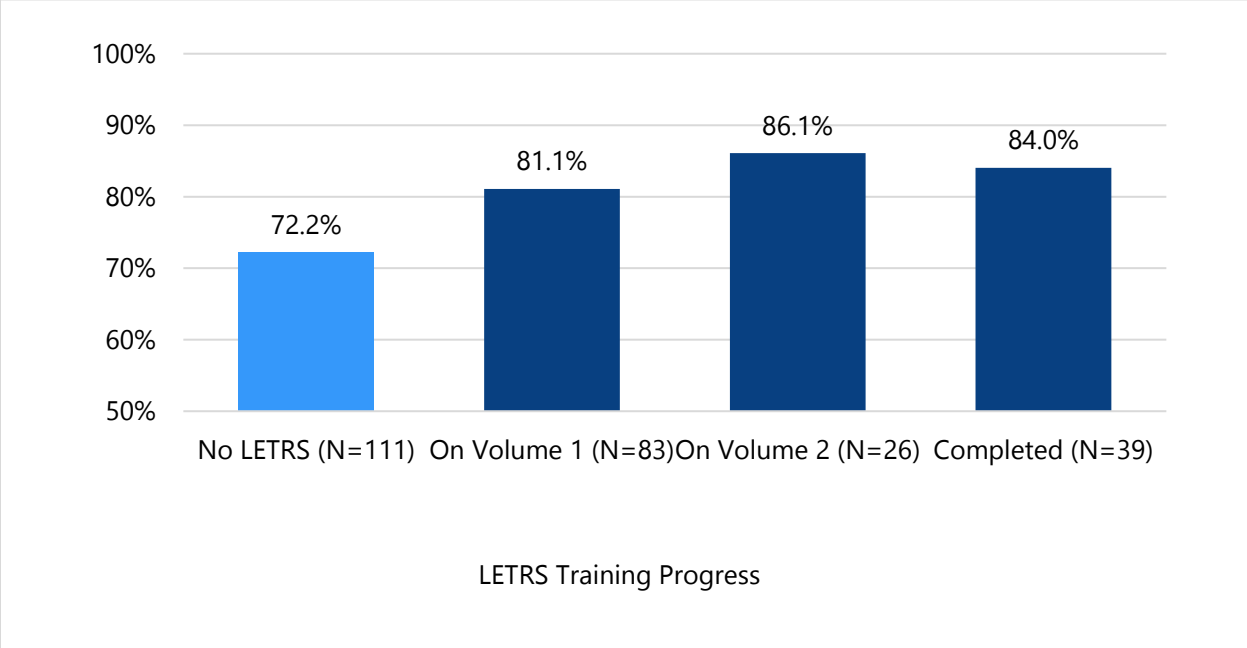
When it came to educators' knowledge, those who had participated in LETRS training were more likely to score higher on the Basic Language Constructs test compared to educators who had not yet participated in LETRS training (see Figure 67). Further statistical analysis revealed that this difference in knowledge between LETRS and non LETRS-trained teacher was significant (p<.001), and that there was a small but meaningful effect size (η_p^2=.21). Teacher's beliefs about code or meaning-based instructional practices were looked at as a moderator between LERTRs participation and knowledge, but were not found to be significant.

Figure 67. Average Scores on Basic Language Constructs Test



Although LETRS participation was a significant predictor of participants' knowledge of basic language constructs, post-hoc analyses revealed no further significant differences in knowledge based on how far educators had progressed through their LETRS training (see Figure 68). One potential explanation for this is that the items on the knowledge test were mostly related to topics that are introduced in LETRS Volume 1 rather than Volume 2.

Figure 68. Average Scores on Basic Language Constructs by level of LETRS training progress



Only eighty of the educators who participated in this supplemental study could be linked to students with available Fall 2022 and Spring 2023 DIBELS (i.e., the assessment used by PPS to measure student reading achievement) data. At the teacher-level, student achievement results were measured by calculating, for each teacher, the percentage of their students (based on available data) who were at or above benchmark (i.e., Core support or above) according to the DIBELS assessment.

A linear regression was conducted to assess the relation between educators' knowledge and the percent of their students who were at or above benchmark at the Spring 2023 timepoint, controlling for the percent of students at or above benchmark in the Fall of 2022. The results of this analysis were non-significant, as they did not reveal a correlation between educator knowledge and student achievement outcomes. Rather, variation in student achievement at the Spring timepoint was predicted only by student achievement at the Fall timepoint, according to our model. Similarly, an analysis of variance revealed no significant relation between educators' participation in LETRS training and the percent of students who were at or above benchmark at the Spring 2023 timepoint (again, controlling for the percentage of students at benchmark in the Fall of 2022). This non-significant association between LETRS training and student achievement outcomes aligns with the PPS student achievement findings discussed earlier in this report. As with previous recommendations, we suggest providing more time for LETRS teachers to fully complete the training and fully integrate new techniques prior to looking for changes in student achievement.

Evaluation Insights & Recommendations

- Educators who received LETRS training shared enthusiasm for the opportunity it gave them to enhance their knowledge and skill in reading instruction and to become better equipped to meet their students' learning needs. According to multiple data sources (i.e., LETRS pre- and post-tests, supplemental study findings, educator surveys and interviews), the training indeed had a positive impact on teacher knowledge and skill. Furthermore, educators agreed that compared to other literacy-related professional development, they not only enjoyed the LETRS training more but found it more useful and relevant. As implementation progressed, buy-in to the LETRS program across districts seems to have increased as well, with some educators sharing that they joined after hearing positive reactions from their colleagues.

- Despite the overriding positive reception of LETRS, educators shared (in surveys, focus groups, and interviews) that the time commitment presents a substantial challenge to completing the program. Educators often used nights and weekends to complete their training, and district points of contact sited time requirements as a likely cause of attrition from the program. One district (Reynolds) provided dedicated time for educators to spend on LETRS, which educators from that district noted as a strong area of support. Reynolds also gave educators the option of completing LETRS in four years (rather than two) but found that many participants struggled more on the four-year track and were now interested in completing at a faster pace.

- The topic of monetary compensation for LETRS training was an important one for many interview and focus group participants, which also came through is survey findings. Some districts (PPS, Centennial, and Reynolds) provided compensation to LETRS participants. Points of contact noted that additionally, some educators expressed interest in receiving a pay increase for completing the program, which presents challenges when the program is not tied to college credit. Finally, some educators had paid for the LETRS training upfront and expressed some uncertainty regarding the process of being reimbursed by their district. Going forward, it may be beneficial for districts to engage in even more detailed communication with perspective LETRS participants regarding what to expect, particularly in relation to financial types of support.

- Administrators and educators shared ideas and lessons learned related to strengthening the support offered to LETRS participants. Administrators from several districts agreed that educators who were able to participate in the LETRS training with colleagues benefitted from going through the training with group support. Additionally, the three districts whose educators received coaching support (Centennial, DDSD, and Reynolds) found that support to be valuable. Some administrators suggested that, in the future, PLCs, accountability groups, or partners may promote better experience, more program endurance, and greater application of the training into practice. Notably, all interviewed district administrators agreed that they would like to continue to provide LETRS training to their educators.

- According to survey results, educators perceived that their application of the LETRS training into their work had positively impacted the literacy outcomes of their students. In educational

intervention research, it is extremely rare to find evidence of student achievement outcomes associated with teacher professional development in less than 2 years. Nevertheless, findings on student achievement show some promising outcomes for students of LETRS teachers, compared to their peers. In particular, statistical analyses found that students of LETRS trained teachers in DDSD were 1.71 times more likely to have a Spring reading composite score at or above benchmark compared to students of non-LETRS trained teachers. Further, this finding held true for important subgroups, in that both ELL students and HU students at DDSD were more likely to have a reading composite score that was at or above benchmark compared to ELL and HU students of non-LETRS trained teachers. It is important to note that the impact of LETRS training was the most pronounced for students in the kindergarten grade-level, suggesting that the influence of LETRS informed teaching on student success may be highly meaningful for younger students.

Appendix A. Literature Review

A Review of the Literature on

Language Essentials for Teachers of Reading and Spelling (LETRS)

Prepared by:
Pacific Research and Evaluation, LLC
October 2022

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INTRODUCTION

Language Essentials for Teachers of Reading and Spelling (LETRS) is a professional learning program for early childhood educators and administrators focused on early literacy and language foundations. Over a two-year period, participants engage in online units, face-to-face sessions, readings, and dedicated time to practice applying skills in the classroom, with learning measured by quizzes, tests, and document submission. Within Multnomah County, five districts have begun investing in LETRS training, including Portland Public Schools, Reynolds School District, David Douglas School District, Parkrose School District, and Centennial School District. In partnership with the Multnomah Education Service District (MESD), Portland Public Schools received funding from the Oregon Department of Education to support implementation of LETRS across these five districts, in addition to an independent study of LETRS implementation and outcomes. Ultimately, the study aims to provide information that supports state-level decisions about whether and how to invest in LETRS training statewide. Pacific Research and Evaluation was selected through a competitive bid process to complete the independent study, which includes in its scope the current literature review.

Purpose and structure of this review

The purpose of this comprehensive review is to summarize and interpret the current body of literature related to the utilization, implementation, and impact of LETRS training. This literature review provides information and background for the formative and summative evaluation of LETRS across the five identified school districts in MESD and will support the contextualization of findings at the end of the study period. To increase relevance and applicability to the five districts included in this study, this review focuses to the extent possible on literature produced in the past decade and involving schools in urban locations. Where available, this review highlights the findings and conclusions drawn from peer-reviewed empirical studies. However, as discussed further in the conclusion of this review, there is a paucity of empirical literature examining LETRS; therefore, recent scientific literature is supplemented by older works as well as other sources, including reports, press releases, and other non-peer-reviewed articles.

This review begins with an overview on the science of reading, including theories and seminal work that form the foundational principals of LETRS, as well as a brief summary of the longstanding debate known as the 'reading wars.' Next, findings related to the impact of LETRS are presented. This review concludes by considering limitations and future directions for research and evaluation, as well as the types of additional supports for teachers that may complement LETRS training.

The LETRS program is one, but not the only, professional training that uses the science of reading as its foundation; however, it was beyond the scope of this review to explore the

literature around additional professional development programs. For more information on available options, refer to the National Council on Teacher Quality's action guide for states (2020).

SCIENCE OF READING OVERVIEW

Scientific inquiry into early reading development spans many decades and constitutes a vast and multi-faceted body of research, an important segment of which is summarized in the oft-cited National Reading Panel Report from the National Institute of Child Health and Human Development (NICHD, 2000). The NICHD report, which was used to inform the No Child Left Behind Act of 2001 and the Reading First initiative, identified five components of effective reading instruction that the authors found to be repeatedly supported by research findings.

Five components of effective reading

Since the publication of the NICHD report (2000) and the No Child Left Behind Act (2001), these five components have been increasingly referenced in articles and material related to professional development (PD) for teachers of reading (for example, see: Jiban, 2022; National Council on Reacher Quality, 2020; Learning Point, 2004). The components are listed below, along with examples of how they appear in classroom instruction (Jiban, 2022):

- Phonemic awareness – developing students' understanding of the sounds made by spoken words
- Phonics – systematically mapping sounds of spoken words onto letters and letter combinations
- Fluency – providing extended reading practice to increase students' reading efficiency and lower the effort involved in word identification so that more mental energy can be devoted to understanding the meaning of the text
- Vocabulary – including ongoing, long-term vocabulary instruction, and teaching vocabulary words prior to assigning reading in order to build students' lexicons
- Comprehension – giving instruction that helps students develop their ability to construct reasonable and accurate meaning from text using background knowledge and context

These five components have become the central hallmarks of what has been termed the science of reading. More research released since the NICHD report has continued to point to the importance of these five factors in students' reading achievement (e.g., see McCutchen et al., 2009). Taken together, there is a strong body of evidence for their significance.

Much of the research supporting these components rests on several theoretical models that emphasize the importance of phonics in the development of literacy skills. Three of the most

influential models—the simple view of reading (Gough & Tunmer, 1986), Scarborough's (2001) rope model of reading, and the four-part processing model (Seidenberg & McClelland, 1989)—are outlined below and covered extensively in the first module of the LETRS training (Moats, 2009).

The simple view of reading

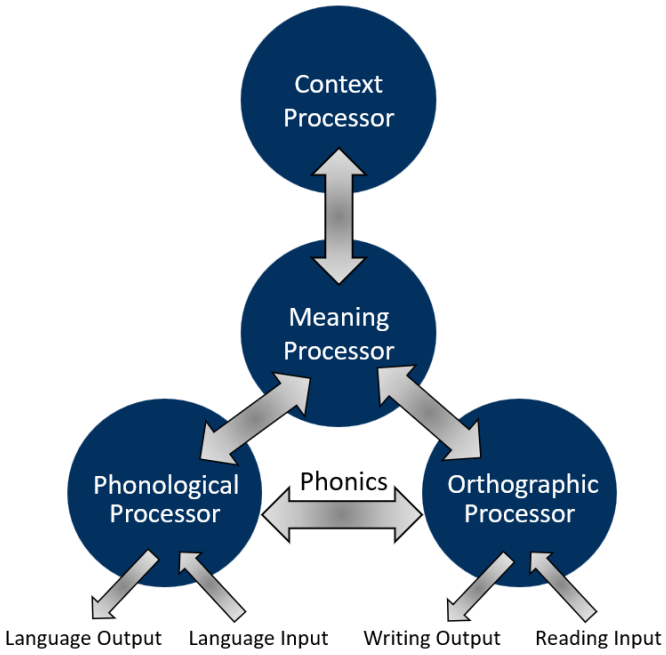
The simple view of reading model describes reading comprehension as the product of decoding (or the ability to use phonics awareness to sound out words) and language comprehension (Gough & Tunmer, 1986). Moats cites the simple view of reading in LETRS training material, noting the multiplicative properties between decoding and comprehension which make both domains necessary and positively related to reading comprehension.

Figure 1. Two domains of reading comprehension in the simple view of reading

The four-part processing model

Another model that often arises in discourse on the science of reading is Seidenberg and McClelland's (1989) four-part processing model (Figure 2), which describes the brain-processing systems involved in word recognition. The LETRS program extensively emphasizes the components of this model and explicitly focuses a number of its training modules on these processing systems as they relate to teaching and reading development. Moats explains that most reading disorders, including dyslexia, originate with a language processing weakness; therefore, providing teachers with the skills to identify and help students with processing challenges may be an important early intervention strategy (Moats, 2019).

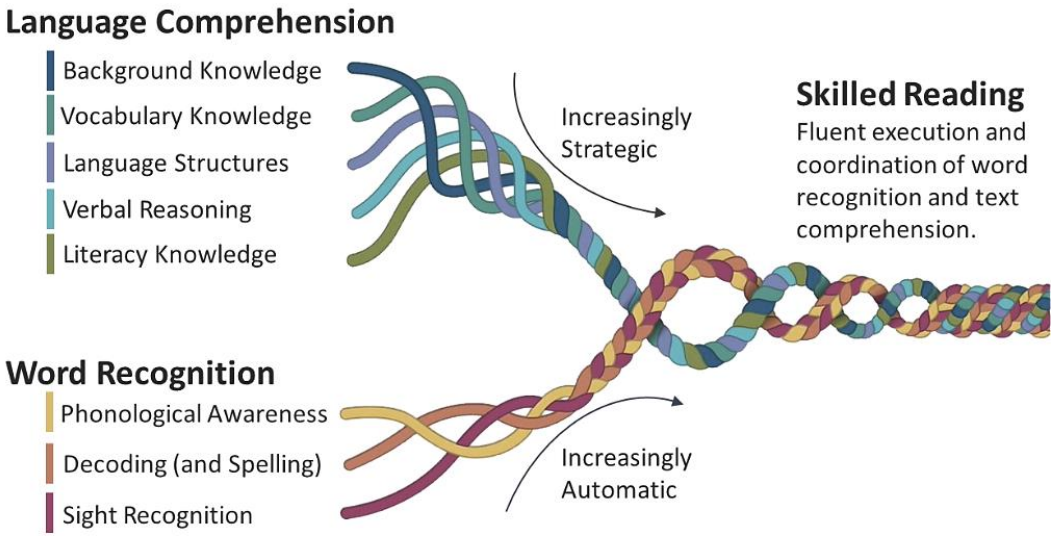
Figure 2. The four-part processing model for word recognition



Scarborough's reading rope

A third notable model popular among science of reading advocates, including Moats, is Scarborough's (2001) reading rope (Figure 3). Expanding on the simple view of reading, Scarborough proposed subsets of skills that contribute to each of the two domains of reading. Each skill can be thought of as a strand that together compose a 'reading rope,' with more and stronger skills contributing to stronger overall reading.

Figure 3. Scarborough's Reading Rope



Debate and commentary on the science of reading

The term 'science of reading' has long been closely associated with phonics and decoding, as far back as the 1830s (Shanahan, 2020). The debate over the science of reading is, at its core, a debate over how much or if phonics and decoding should be explicitly taught to emerging and early readers (Castles et al., 2018). Proponents of the argument opposite of science of reading support approaches that, to varying degrees, deemphasize phonics. For example, the whole language approach stresses the importance of repeated exposure to words and literacy-rich environments when it comes to reading development, and the value of reading comprehension at the text-level above and beyond the word-level (Goodman, 1967; Smith & Goodman, 1971). Whole language theorists suggest that reading is the result of a three-part cueing system in which readers take cues from context (e.g., surrounding words or sentence structure) as well as letter-sound knowledge to help them identify words, at times using some degree of guesswork (Watson, 1989; Smith, 2012).

While whole language and cueing-based reading approaches generally support some level of phonics instruction, they tend to be less systematically incorporated into lessons—a key crux of the debate over the science of reading (Semingson & Kerns, 2021). However, as LETRS founder Louisa Moats (2020) and other science of reading advocates assert, there is a preponderance of evidence to suggest that students who receive systematic phonics instruction learn to read faster, more fluently, and with higher comprehension compared to students who do not (Dehaene, 2011; Ehri et al., 2001; NICHD, 2000). For them, it is 'settled science,' and the debate is over.

Translating the science of reading into policy and practice

Unfortunately, some highly publicized attempts to translate this body of research into policies and practice have not been as well executed or as effective as hoped. For example, the No Child Left Behind Act of 2001 has been widely criticized for the constraints it put on teachers' ability to make use of their individual expertise and creativity, pushing them instead to 'teach to the tests' and to use scripted, drill-oriented instructional methods, which many teachers perceived to have a negative impact on students' motivation to read and write (Powell et al., 2009).

Perhaps most discouraging is that, despite the collective interest in improving literacy among school-aged children, and the investment of a great deal of resources and time, reading proficiency has remained stagnant and even declined in many states (US Department of Education, 2019). According to 2019 reading assessment data from the US Department of Education, only 35% of fourth graders and 34% of eighth graders were proficient readers. In 17 states, reading proficiency for fourth graders significantly decreased between 2017 and 2019. Only one state, Mississippi, saw significant reading improvement among fourth graders in that

same period (US Department of Education, 2019). Notably, teachers in Mississippi have been receiving universal LETRS training since 2014, thanks to a science of reading bill passed by state legislatures the previous year (Mississippi Department of Education, 2021). Additional information and data from this statewide implementation are included in the Impact of LETRS section that begins on the next page of this review.

Promoters of reading reform today call for more teacher autonomy, combined with PD that supports teachers in gaining the science-based knowledge that they need to more effectively teach reading (Moats, 2020). While traditional teacher education programs (i.e., undergraduate and graduate programs for teachers) have begun adopting more coursework that aligns with the science of reading, it remains far from a universal practice among institutions (National Council on Teacher Quality, 2020), and does little to address gaps in veteran teacher knowledge. For years, experts have been warning that the majority of teacher preparation programs do not thoroughly prepare teachers to help students develop all of the essential skills for reading (Brady et al., 2009; Joshi et al., 2009a; Joshi et al., 2009b; Walsh et al., 2006). These apparent gaps in teacher education are a main focus of what LETRS (and other similar PD programs) aims to address (Hejtmanek, 2021).

THE IMPACT OF LETRS

As previously mentioned, the LETRS program is a PD program for teachers. LETRS is not a curriculum, but it is designed to provide teachers with the knowledge and skills to more successfully use curricula that are based on the science of reading in their classrooms. Teachers with more foundational reading and writing knowledge (e.g., regarding phoneme awareness, phonics, etc.) are more likely to instruct students on those essential foundational skills (Cunningham et al., 2004), which supports all developing readers, especially those who are struggling (McCutchen et al., 2009). Therefore, the intended impact of LETRS can be thought of in two general ways: the direct impact on teachers (e.g., their knowledge, confidence, or the ways in which they teach); and the indirect impact on students (most notably, their reading and writing achievement).

Scientific evidence on the impact of LETRS

This section presents research finding from two rigorous evaluations on the impact of the LETRS program. These studies stand out in the body of literature based on their specific focus on the LETRS training and its impact, as well as their use of research designs and methods that are scientifically founded. This review of the literature identified no other studies that met the same criterion.

Folsom et al., 2017

Overview of study & methods: In 2014 the Mississippi Department of Education began providing LETRS training to K-3 teachers using online modules and face-to-face workshops, and provided literacy coaches in target schools with the lowest reading achievement scores based on statewide assessments. This study examined changes in Mississippi teachers' knowledge and competency, quality of instruction, and student engagement with literacy instruction between winter 2014 and fall 2015. To measure these outcomes, the authors developed and validated an evaluation tool called the Teacher Knowledge of Early Literacy Skills (TKELS) survey, as well as a classroom observation tool called the Coach's Classroom Observation Tool (CCOT). The TKELS was administered by the Mississippi Department of Education to kindergarten through third grade teachers statewide at four timepoints between winter 2014 and fall 2015; it was completed by 7,638 individual teachers, 40% of whom completed the survey at multiple timepoints. The CCOT was administered at four timepoints between winter 2014 and spring 2015 by literacy coaches in target schools only; it was used to observe the classrooms of 316 teachers, 80% of whom were observed at multiple timepoints.

Outcomes - teacher knowledge: Findings revealed that teacher knowledge of early literacy skills increased between the first to the fourth timepoint, rising from an overall score in the 48th percentile to the 59th percentile (based on a standardized distribution with an average of 50). Moreover, teachers who had completed the LETRS program were found to have significantly more knowledge of early literacy skills at the end of the study (ending in the 65th percentile) compared to teachers who had not yet started the LETRS program (this group scored in the 54th percentile at the final timepoint).

Outcomes – teacher competency & quality of instruction: Within target schools, average ratings of teacher competency increased between the first and the final timepoint, moving from the 30th percentile to the 44th percentile. Also within target schools, the average ratings of quality of early literacy instruction increased, rising from the 31st percentile to the 58th percentile. At the final study timepoint, teachers who had completed LETRS training were rated as significantly higher on competency and quality of instruction compared to teachers who had not yet started the training.

Outcomes – student engagement: Within target schools, average ratings of student engagement increased between the first and the final timepoint, from averaging in the 37th percentile to the 53rd percentile. At the final timepoint, student engagement was rated as significantly higher in the classrooms of teachers who had completed LETRS training, compared to those who had not yet started it.

Limitations: The authors acknowledge that the study design does not allow for causal inferences to be made. In other words, it is not known with certainty that the LETRS training or literacy coaching (versus other variables that were not controlled for) were the reasons that measured outcomes improved over the course of the study. The study also was not designed to take into account LETRS' impact on student reading or writing achievement outcomes.

Additional notes: Other sources have noted that Mississippi students' reading achievement increased more than any other state in the years since Mississippi teachers began widely receiving LETRS training (Hanford, 2019); however, these observations still do not offer causal evidence (Helms, 2021). It is also worth noting that in 2013 Mississippi was scoring much lower than other states for student reading proficiency, and the state's increase (which started trending upward even before 2013) has just begun to put them on par with national averages (Helms, 2021).

Garet et al., 2008

Overview of study & methods: This study assessed the impact of LETRS training and literacy coaching on second grade teachers' knowledge and instructional practices (based on the five components of reading from the NICHD report; 2000), and on their students' reading achievement. The sample consisted of 90 schools from six urban school districts in low-income areas. Schools were randomly assigned to one of three treatment groups (treatment A, treatment B, and a control group). Schools in treatment A implemented LETRS training with second grade teachers in the 2005-2006 school year; treatment B schools implemented LETRS training plus literacy coaching for second grade teachers the same year; and the control group continued 'business as usual' by providing their district's standard PD to second grade teachers.

Teacher knowledge was measured after the PD implementation phase using the Reading Content and Practices Survey (RCPS), which the authors developed for this study. A classroom observation tool measured reading instructional practices. Reading scores from district assessment records from 2004 to 2007 were used to assess student reading outcomes. Across schools, a total of 270 second grade teachers participated in this study during the implementation year; during the follow-up year, 250 and 254 teachers participated in data collection during the fall and spring, respectively.

Outcomes - teacher knowledge: Teachers in both treatment groups A and B scored significantly higher on reading knowledge measured at the end of the implementation year (spring 2006) compared to teachers in the control group.

Outcomes - teacher instructional practice: Classroom observations revealed that teachers in both treatment groups A and B used significantly more explicit reading instruction related to phonemic awareness, phonics, fluency, vocabulary and comprehension. No significant differences were found between groups when it came to two other types of instructional practices (i.e., independent student activity instruction, and differentiated instruction).

Outcomes – student reading achievement: Based on student reading assessment data, the authors of this study found no significant difference between any of the treatment groups when it came to student reading achievement. This null finding held both when looking at student achievement during the implementation year, as well as the year following. Although there were no significant differences in student achievement between the treatment groups, the study did reveal a significant positive association overall between teacher knowledge and student achievement scores.

Limitations: The authors suggest that student mobility could have limited the ability of this study to uncover significant results related to student achievement. At the end of the implementation year, 17% of enrolled students were ones that had not been enrolled at the beginning of the school year, meaning that they did not receive a full year of instruction from the same teacher or within the same school.

Additional notes: The impact of the LETRS and coaching treatment on teacher knowledge is encouraging, particularly when considered alongside the finding that teacher knowledge was positively associated with student achievement. It is possible that the effect of LETRS and coaching on teacher knowledge was not large enough to result in significant student achievement outcomes. This interpretation of Garet et al.'s findings, if accurate, would suggest that LETRS and coaching-based PD might be especially beneficial for teachers who are less knowledgeable about one or more of the five key reading components.

Supplemental evidence

Several other reports and articles related to the impact of LETRS were identified during this review process but were determined to be less relevant to the current study than those outlined above. Articles from this supplemental body of evidence are briefly presented below.

Preskitt & Ernest, 2020

In 2018, Alabama began providing LETRS training to pre-K through third grade teachers. This non-peer reviewed evaluation report focused on the impacts of LETRS training in Alabama's pre-K classrooms. Findings indicated that LETRS-trained pre-K teachers had more positive teacher-child interactions and classroom quality (according to the CLASS,

or Classroom Assessment Scoring System) compared to a national comparison group. The study also found that children in LETRS classrooms showed more progress toward kindergarten readiness from the beginning of the school year to the end compared to the progress made by children in non-LETRS classrooms.

North Carolina Department of Public Instruction, 2022

This recent press release compared student reading proficiency data from kindergarten, first grade, and second grade students in North Carolina (NC) to data from 1.6 million students in other states (measured on the same reading assessment). Results revealed that NC students in each target grade level began the 2021-2022 school year with lower reading proficiency compared to students in other states but ended the school year at or above the national average (these were observed differences, not tested for statistical significance). Kindergarten students in NC in particular made impressive reading gains. At the beginning of the school year only 27% of NC kindergarteners scored at or above the national reading proficiency benchmark (compared to 36% of kindergarteners in other states), but by the end of the school year 67% of NC kindergarteners were at or above the benchmark (compared to 60% of kindergarteners in other states). These notable improvements come just a year after NC passed related legislation and began providing LETRS training to elementary and pre-K teachers statewide (see Fofaria, 2022). While promising, these results are observational and descriptive only and, as such, do not provide causal evidence of LETRS' impact.

Carlisle et al., 2009

This peer-reviewed study examined the relation between first through third grade teachers' knowledge about early reading with their students' improvement on word analysis and reading comprehension. Prior to the study, participating teachers received two types of PD, one of which was LETRS. This study did not differentiate the impact of one type of PD over the other on teacher knowledge. Teacher knowledge was assessed using the Language Reading Concepts test. Findings from this study regarding the association between teacher knowledge and student reading improvement were not significant. The authors suggest that a lack of alignment between the content of the LRC, the reading curriculums being used, and the assessment used to measure students' learning could have undermined their ability to find significance.

Carlisle & Berebitsky, 2009

This peer-reviewed study investigated the impact of literacy coaches on teacher and student outcomes. Teachers in this study were first grade teachers, all of whom received LETRS training the previous year. The study compared outcomes for 43 teachers who

received literacy coach support to 33 teachers who did not. Looking at changes from beginning of the school year to the end, findings revealed greater improvement on word decoding for students of teachers with literacy coaches compared to those without. Results suggest benefits of a model of PD in reading that includes school-based coaching for teachers of first grade.

CONCLUSION

Overall, evidence for the impact of the LETRS training for teachers on their students' reading development is limited, but promising. Some results indicate that LETRS training increases teacher knowledge of core reading development processes and strategies (Folsom et al., 2017). Other studies have positively linked teacher knowledge in this domain with student reading achievement (Garet et al., 2008), although researchers investigating this association have not always established its significance (Carlisle et al., 2009).

Mississippi and North Carolina stand out as states that have implemented LETRS training widely and, soon after, recorded better than average improvements in students' reading proficiency scores (US Department of Education, 2019; Mississippi Department of Education, 2021; North Carolina Department of Public Instruction, 2022). However, the role of LETRS in those states' student achievement results has yet to be empirically established. It is also worth noting that prior to implementing LETRS, Mississippi and North Carolina were performing far below national averages for elementary students' reading proficiency (Helms, 2021; Fofaria, 2021). Therefore, it is not clear that the same results could be expected in states where student reading proficiency is already closer to the national average, or in classrooms of teachers who are already knowledgeable about the science of reading.

As LETRS training for teachers and administrators becomes more widely implemented, studies examining its impact in classrooms and communities with a variety of characteristics will be important additions to this body of research. Also, it may be helpful for researchers to explore whether the effects of LETRS on teachers' knowledge and performance varies based on teachers' previous exposure to science of reading (i.e., especially as colleges and universities continue to add more of a focus in this area for teacher preparation). Along the same lines, research on the effectiveness of different elementary reading curriculums, the use of school-based literacy coaches, and other potential resources and supports may reveal useful strategies for promoting the success of LETRS.

Strategies for supporting teacher success

As LETRS implementation moves forward in Multnomah County, districts may want to consider additional strategies to support teacher success with the program. Fortunately, certain aspects

of the LETRS program already align with expert suggestions for making PD successful, such as incorporating opportunities for reflection and active learning (Darling-Hammond et al., 2017). Another recommended component of LETRS includes coaching to support teachers; this strategy is echoed by experts in the field of effective PD practices (Darling-Hammond et al., 2017) and has been incorporated into the proposed implementation plan to support teachers in Multnomah County. Perhaps most importantly, teachers need adequate time to complete the program, connect their learning to their classroom lessons, and to discuss what they are learning with other teachers. A research brief from the National Comprehensive Center for Teacher Quality (Archibald et al., 2011) provides some guidance around how schools can make more time for teacher PD, including setting aside hours each week by adjusting the amount of time used for other tasks (e.g., teacher planning or staff meetings). Finally, school leadership can play an important role by demonstrating that they support, prioritize, and are committed to PD for teachers (Bredeson, 2000).

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Oregon's Early Literacy Framework

A Strong Foundation for Readers and Writers (K-5)

OREGON DEPARTMENT OF EDUCATION

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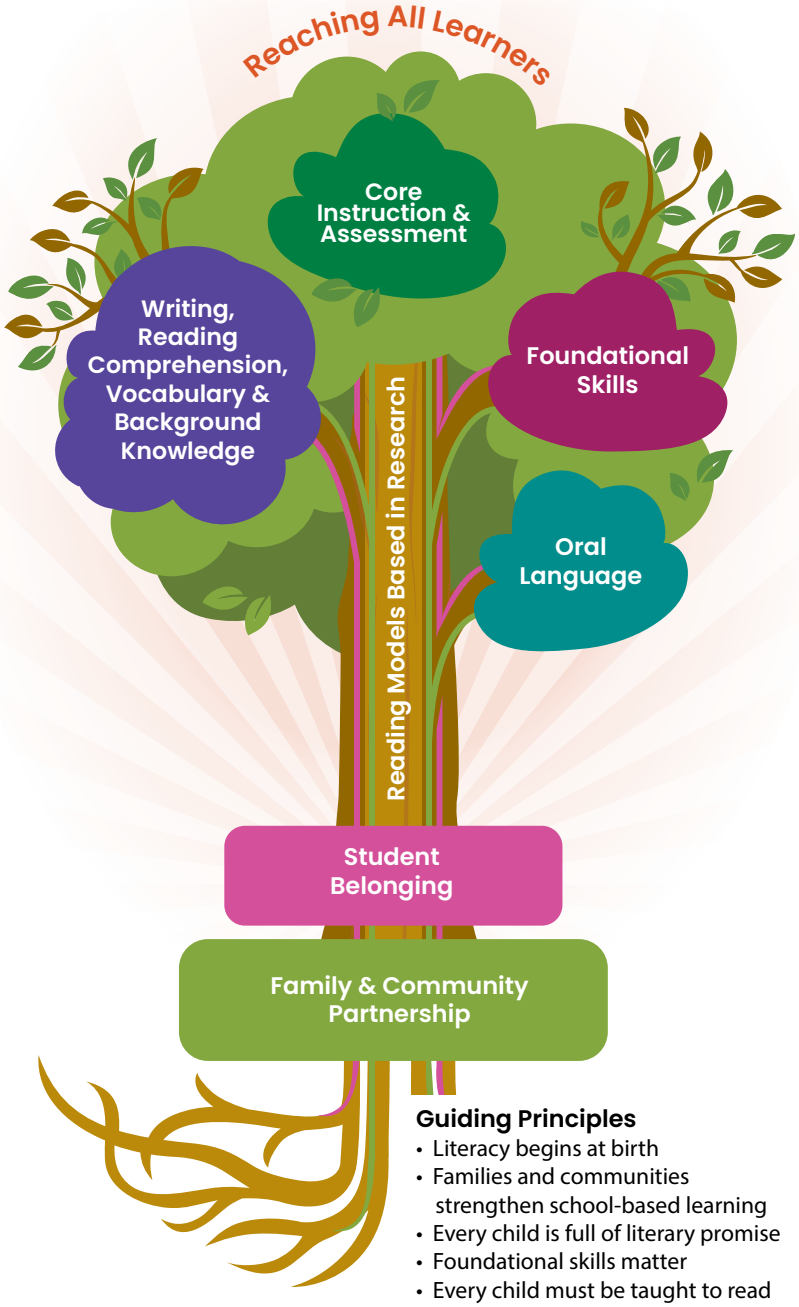
Framework Overview



Guiding Principles

- Literacy begins at birth
- Families and communities strengthen school-based learning
- Every child is full of literary promise
- Foundational skills matter
- Every child must be taught to read and write
- Multilingualism benefits everyone
- Educator knowledge and classroom practices are essential

Oregon's Early Literacy Framework includes eight sections that work in reciprocity with one another to help reinforce culturally responsive practice and reading science as fundamental to children's literacy and multilingual development.

- Section 1: Student Belonging - A Necessary Condition for Literacy Learning
- Section 2: Family & Community Partnerships
- Section 3: Oral Language as the Root of Literacy Development
- Section 4: Reading Models Based in Research
- Section 5: Foundational Skills
- Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge
- Section 7: Core Instruction & Assessment
- Section 8: Reaching All Learners

Figure 1 reflects the reciprocal and interconnected relationship between the sections and reinforces the importance of the ways in which all sections of the framework co-exist in relationship with one another.

This framework builds momentum and capacity for strengthening belonging and literacy instruction in every elementary classroom so that all children leave elementary school proficient in reading and writing in at least one language. It speaks to the comprehensive nature of literacy instruction and underscores the complexity of learning to read and write.

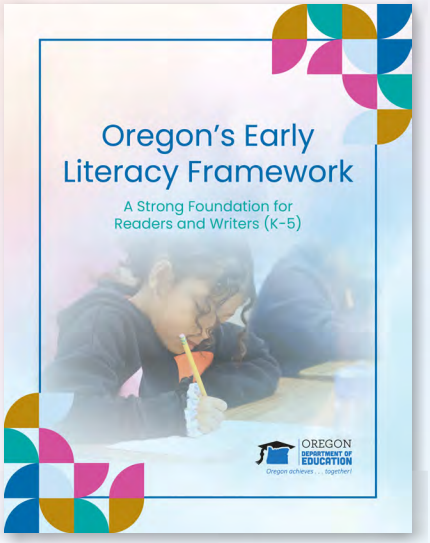
Figure 1. **Oregon's Early Literacy Framework Graphic**

This framework aims to be a foundational literacy resource (or mentor text), for K-5 classroom teachers, specialists, elementary school principals/K-8 principals, superintendents, district leaders, and education service district leaders. More broadly, it is relevant for all who are committed to seeing literacy learning maximized for every student through high-quality instruction.

Navigating the Framework & Playbook

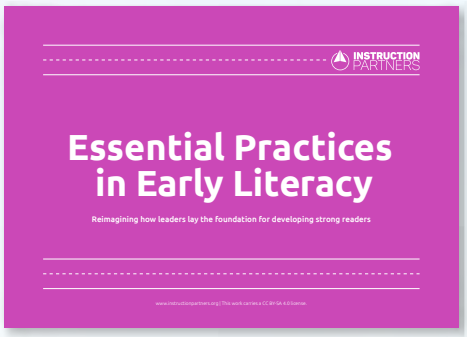
Early Literacy Framework + Early Literacy Playbook = Leading for Literacy Learning Improvement

Put simply, the framework provides the "why" and the "what" for literacy improvement, while the playbook provides the "how."



The Why & What

Oregon's Early Literacy Framework builds momentum and capacity for strengthening belonging and literacy instruction in every elementary classroom so that all children leave elementary school proficient in reading and writing in one or more languages, with as many opportunities to build on their funds of knowledge in additional languages as possible. It speaks to the comprehensive nature of literacy instruction and at its core, is designed to be used as a primary resource (or mentor text) for district leaders and school leaders. The framework is designed around eight sections that work in reciprocity with one another to help reinforce culturally responsive practice and reading science as fundamental to children's literacy and biliteracy development.



The How

Instruction Partners' Early Literacy Implementation Playbook[1] provides ready-to-use, step-by-step guidance. Early literacy leaders and educators can use this playbook to strengthen and monitor literacy development in their school or system, whether building the essential implementation practices from scratch or tuning up what they already have in place.

Overall, the playbook aligns closely with the content of Oregon's Early Literacy Framework, with a few exceptions. As is true when using any resource, there will be opportunities for calibration and potential adaptations. For example, while the playbook indicates K-2, it can (and should) be easily adapted for K-5.

The playbook is organized around five essential implementation practices[2] (Vision, Materials, Data, Team, Time) in early literacy and includes workbooks for four phases of work designed to follow a three-five year arc of deep literacy strategy and implementation.

1 Instruction Partners, 2021a
2 Instruction Partners, 2021b

Key Terminology

While an extensive glossary lives at the end of this framework, these key terms are highlighted at the beginning of the framework to provide clarity and reinforce shared meaning-making.

CORE INSTRUCTION

Core instruction: high-quality instruction in the general education setting that is aligned to grade-level standards, centered around grade-level-aligned materials, and inclusive of every student in the classroom, regardless of performance level.[3] Sometimes also referred to as Tier I Instruction, this is the primary prevention for reading and writing difficulty. It maximizes learning by providing access to peer learning models, the classroom teacher, and grade-level aligned texts and tasks.

CULTURALLY RESPONSIVE

Culturally responsive: the implicit recognition and incorporation of the cultural knowledge, experience, and ways of being and knowing of students in teaching, learning, and assessment. This includes identifying, valuing, and maintaining a high commitment to students' cultural assets in instruction and assessment; diverse frames of reference that correspond to multifaceted cultural perspectives/experiences; and behaviors in the classroom that can differ from White-centered cultural views of what qualifies as achievement or success.[4]

> *Note: The term "culturally responsive practices" centers the importance of affirming students' intersectional cultural identities. However, there are other terms and bodies of research that are important to uplift: culturally sustaining pedagogies, linguistically responsive instruction, and culturally relevant pedagogy. While each of these terms and bodies of research vary in their definitions (see the glossary for a full definition of each), they all reinforce the importance of creating and cultivating a learning environment where students feel seen, heard, and valued – where students know they belong and can show up and learn as their full and authentic selves.*

EARLY LITERACY

Early literacy: skills outlined by Oregon's English Language Arts and Literacy Standards for grades K-5, inclusive of reading foundational skills (e.g., print concepts; phonological awareness; phonics, decoding, and word recognition; fluency); comprehension; language and vocabulary; writing; speaking and listening. These standards reflect the literacy skills and knowledge that begin developing before students enter kindergarten and lay a foundation for more advanced literacy development in later grades.

EVIDENCE-BASED LITERACY PRACTICES

Evidence-based literacy practices: instructional practices with a proven record of success based on reliable, trustworthy, and valid evidence that when implemented with fidelity result in adequate gains in literacy achievement for students.[5] [6]

FOCAL STUDENT GROUPS

Focal student groups: students of color; students experiencing disabilities; emerging bilingual students; students navigating poverty, homelessness, and foster care; and other students who have historically experienced disparities in our schools.[7]

3 Bowen, 2021
4 ODE, n.d.-a
5 Dyslexia-Related Training: Definitions, 2018
6 ODE defines evidence-based in a range of ways given the complex bodies of work across the K-12 system.
7 Oregon Department of Education (ODE), 2022c

MULTILINGUAL LEARNER

Multilingual learner: a student who, by reason of foreign birth or ancestry, speaks or understands languages other than English, speaks or understands little or no English, and/or requires support in order to become proficient in English.[8] "Multilingual learner" is used intentionally to promote multiliteracy and honor the process of language and literacy development in two or more languages. While English Learner is the formal term used most often in K-12 policy, this term is inadequate and reinforces a deficit view of multilingual students. To reinforce the cognitive benefits of multilingualism and the importance of neutralizing language status, additional terms (such as multilingual learners and emergent bilinguals[9]) bring an asset orientation necessary to ensure children are valued for the language(s) developed in their home and community context.

Note: Oregon's Early Literacy Framework is primarily written from the lens of developing literacy for multilingual learners within an English instructional model. Wherever possible, best practices for multilingual learners participating in dual language education with biliteracy as the intended outcome is incorporated throughout the framework. With the understanding that best practice for supporting multilingual learners' literacy development is to build upon their linguistic repertoire through multilingual instructional programs such as dual language education, the current reality is that the majority of multilingual learners in Oregon are developing literacy within English instructional programs.

RESEARCH-BASED LITERACY PRACTICES

Research-based literacy practices: models, theories, and practices that are based on the best research available in the particular field of study. These practices differ from evidence-based in that they have not been researched in a controlled setting to measure efficacy.

SCIENCE OF READING

Science of reading: research that is aligned with "neurological and cognitive science studies of how brains process written words[10]," and includes a broad collection of research from multiple fields of study including cognitive science, learning sciences, literacy research, and instructional science and research broadly.[11]

Note: Within Oregon's Early Literacy Framework, this definition of the science of reading reinforces the essential role it plays in informing literacy instruction. Reading research provides fundamental information about reading and it deserves to be recognized as such. Furthermore, it underscores the complexity and richness of literacy instruction. Amanda P. Goodwin, co-editor of the academic journal Reading Research Quarterly, describes the science of reading as: "not just phonemic awareness, phonics, reading fluency, vocabulary, and comprehension but also language development, motivation, dyslexia, the reading of digital texts, multilingual literacy, the literacies of Black students and other historically minoritized student groups…"[12]

Ultimately, the term "science of reading" can be interpreted in divisive ways or in informative ways; the goal in this framework is to use the science of reading as a term to bring clarity and common ground to move Oregon forward in supporting the literacy development of all students.

See Appendix C: Glossary for additional terms.

8 NYSED, 2019
9 García, 2009b
10 Shanahan, 2021
11 National Center on Improving Literacy, 2022
12 Heller, 2022

Introduction & Purpose

When a child first comes to school, they arrive brimming with literary and linguistic strengths that are ready to be seen and expanded. Children begin literacy learning in their homes and communities, where language, culture, and identity are affirmed by families and caregivers who serve as important first teachers and storytellers. Students' accumulated familial, cultural, and linguistic experiences, or funds of knowledge,[13] serve as the foundation for building rich literacy skills and experiences and finding deeper joy, meaning, and purpose in the larger world.

> "Literacy is inseparable from opportunity, and opportunity is inseparable from freedom. The freedom promised by literacy is both freedom *from*—from ignorance, oppression, poverty—and freedom *to*—to do new things, to make choices, to learn."
>
> Koichiro Matsuura

Children need literacy instruction that guarantees proficiency, addresses individual strengths and needs, and provides learning conditions and content exposure that honors linguistic and cultural assets and lived experiences. The significance of literacy cannot be overstated; it has been described as a social determinant of health, with literacy deficits leading to lifetime impacts.[14] Oregon's Early Literacy Framework emphasizes core instructional practices that benefit all students, with an intentional emphasis on how those practices can be leveraged to best serve students in focal groups who have historically been marginalized by education systems.

This framework delivers an approach to comprehensive literacy instruction that, if used well, will meet the strengths and needs of all students. Far too often and with far too much predictability, students in underserved focal groups in Oregon may be farthest away from literacy success due to systemic inequities, implicit bias, racism, lack of access to high quality instructional and reading materials that reflect the diversity of our students and lack of instructional opportunity.

13 Moll et al., 1992 (see *Appendix C: Glossary*)
14 Hutton et al., 2021

To nourish our children in ways that lead to literary empowerment requires collective commitment. From the local library to Relief Nurseries, community partners to child care providers, preschools to higher education, local businesses to teacher preparation programs, and elders to neighbors: literacy is a community commitment. Moreover, the Oregon Department of Education, education service districts, school districts, and public charter schools hold an essential responsibility to ensure every child in Oregon reads and writes with confidence and competence in at least one language.

To realize this promise, significant strides are needed to improve the quality of literacy instruction and to ensure the experience of belonging in classrooms. This means ensuring that every student receives classroom instruction aligned to grade-level standards and scaffolded for their success (see Appendix B: Companion Guidance Documents & Resources) and informed by research and culturally responsive practices, and cultivating and strengthening community partnerships and family engagement to meet students' strengths and individual needs.

THE CORE PURPOSE OF THIS FRAMEWORK IS TO:

- Build statewide coherence, clarity, and common ground.
- Fuel action and improvement.
- Support districts and schools in the implementation of a comprehensive literacy vision and plan.
- Serve as a shared north star for educators, leaders, and community, in alignment with the Governor's vision for improving student literacy outcomes.

In support of strong readers, writers, and thinkers, Oregon's Early Literacy Framework provides a statewide call to action, and lays out a research-based instructional vision including the essential building blocks for K-5 educators to grow every student's literacy skills. At its heart, Oregon's Early Literacy Framework is intended to build momentum and capacity for strengthening belonging and literacy instruction in every elementary classroom so that all children leave elementary school proficient in reading and writing in one or more languages, with as many opportunities to build on their funds of knowledge in additional languages as possible.

The following Institute of Education Sciences, "What Works Clearinghouse" Practice Guides informed the development of Oregon's Early Literacy framework.

- Foundational Skills to Support Reading for Understanding in Kindergarten Through 3rd Grade
- Improving Reading Comprehension in Kindergarten Through 3rd Grade
- Preparing Young Children for School
- Teaching Academic Content and Literacy to English Learners
- Assisting Students Struggling With Reading: Response to Intervention (RtI) and Multi-Tier Intervention in the Primary Grades
- A First Grade Teacher's Guide to Supporting Family Involvement in Foundational Reading Skills
- Teaching Elementary School Students to Be Effective Writers

Guiding Principles

Persistent opportunity gaps in nearly all aspects of our educational system invite a collective interrogation of the beliefs and mindsets that underlie student learning outcomes. The Guiding Principles in this framework provide a call to action for increased internal accountability and a necessary redesign of the literacy learning experience.

The following guiding principles anchor Oregon's Early Literacy Framework:

- **Literacy begins at birth:** The first sounds a child may hear or see (signed) are the voices of the people in their home environment, building neural pathways and serving as the initial source of knowledge about language and their world. Families and caregivers are essential first partners in oral language development that cultivates later success in literacy and life.
- **Families and communities strengthen school-based learning:** Outside of school, children spend most of their lives at home or in the community. Parents and caregivers have a role to play in reinforcing the learning that happens at school as much as possible at home, and they must be supported as full partners in their children's literacy development. Children's literacy learning is deepened through their lived experiences, where language, culture, and identity are affirmed by families and caregivers who serve as important first teachers.
- **Every child is full of literary promise:** School systems and instructional practices must be designed around a fundamental belief that children can be taught to read and write, supported by high expectations and ongoing feedback. Adults must have a mindset that sees children as brimming with literary, cultural, and linguistic strengths ready to be seen and expanded.
- **Foundational skills matter:** Literacy is not possible without foundational skills, systematically taught in an organized order that builds on one another. Across the K-5 continuum, literacy instruction must explicitly and systematically build students' foundational skills alongside the application of vocabulary, comprehension, and writing.
- **Every child must be taught to read and write:** This responsibility is met by effective literacy instruction rooted in reading and writing research; culturally responsive and inclusive practices; Oregon's learning standards; high-quality instructional materials; and targeted support.
- **Multilingualism benefits everyone:** When families' cultural and linguistic assets become an integral part of the instructional experience, children's literacy skills and dispositions deepen. Culturally responsive instructional practices that serve multilingual students are proven strategies to accelerate and deepen learning for every child.
- **Educator knowledge and classroom practices are essential:** Teacher and leader professional learning must be comprehensive and designed to include training on foundational skills, oral language, writing, vocabulary, and background knowledge, as well as professional learning around culturally responsive practices and student belonging. Professional learning must be inclusive of literacy strategies that benefit students who experience disability, students with dyslexia, and multilingual learners. Educators are most successful when professional learning, time for planning and collaboration, as well as consistent encouragement and formative feedback, are present.

Section 1: Student Belonging - A Necessary Condition for Literacy Learning

While evidence-based, systematic, and explicit literacy instruction is foundational for students' literacy success, research also tells us that equally important are the conditions in which this teaching and learning takes place. Building inclusive and supportive environments in schools is essential to growing readers and writers. This is a shared responsibility for all staff members. School leaders set the tone so that classroom teachers, specialists, and support staff can successfully build such environments. We must be all in to create the conditions for students to thrive.

For children to thrive, they need a sense of belonging and safety. When children experience belonging at their school, they are not only more engaged and more motivated to learn, but they are also likely to take risks in their learning and experience higher academic achievement.[15] Children keenly perceive how others receive them within their school environments and whether their ways of knowing, speaking, being, and learning are affirmed and reflected at school. They know and can feel when they are taught by educators who believe they can learn at high levels and when they are provided with learning opportunities that honor their language, community, and culture.

> "Belonging is a fundamental human need. People search for a sense of connection with the people and places in their lives. Students spend a huge portion of their time during childhood and adolescence at school, which makes it essential that the learning environment cultivates a sense of belonging for students. A recent review by Kelly-Ann Allen and her colleagues of the academic research on belonging found evidence of our need to connect embedded in our genetic code."
>
> Ralph, 2022

15 REL Northwest, 2018

Culturally Responsive Practices

Culturally responsive practices are research-based approaches that provide learning environments that foster belonging and enable students to see the relevance of reading and writing in their own lives.[16] When students are in an environment that incorporates culturally responsive practices, they see themselves in the learning and in the curriculum, providing experiences that affirm their culture, home language, lived experiences, and identity as assets to be sustained, not erased and replaced.[17]

> "Reading science has shown us what needs to be amplified in early reading, but for this practice to be equitable for students, we must also address the how. … To implement foundational skills programs equitably, we also must ensure that in addition to holding high expectations for all students that all students have access to a full range of supports, culturally relevant content and practices, and aligned instructional materials."
>
> Pimental & Liben, 2021

School leaders who implement culturally responsive practices design school-wide systems and environments to support and learn alongside staff to deliver culturally affirming instruction. Educators who use culturally responsive practices believe that all students are capable of reading and writing and they align literacy instructional practices, text selections, and formative assessment approaches with what they know about their students. As such, culturally responsive practices require support and time for educators to explore how their perspectives and lived experiences shape decisions that influence student learning. Educators who embrace culturally responsive practices take time examining their own identities and biases. Anchored in a deep belief that all students can engage in meaningful and connected literacy, culturally responsive teachers value their students' identities, including their race, ethnicity, ability, gender, home languages, religion, and lived experiences.

Children come to school in their full humanity (inclusive of but not limited to their culture, race, ethnicity, gender identity, language, ability, sexual orientation, and religion). If educators and school systems see students through a single lens, they are only seeing a partial picture of students' lived experiences. For students to feel known, it is important that educators learn to see and acknowledge students' intersectional identities, especially when they do not reflect the dominant culture. When educators understand and reflect on their own identities and teach about identity and intersectionality,[18] they are more likely to embrace students' multiple identities and recognize that a single social identity does not fully represent or define a child. Culturally responsive teaching creates the experience of belonging as the neurobiologically vital state in which each student becomes available for the work of learning as well as utilizing instructional strategies to build the intellectual capacity to apply that learning in academic contexts. Educators who attend to cultural frames for information processing help to simultaneously reinforce learning and belonging. This may include, for example, using call and response, rhythm, music and storytelling as central practices in literacy acquisition. Instruction and engagement are maximized when educators leverage what they know about a child and honor their intersectional identities – this has the potential to fundamentally shift access to literacy learning.[19]

16 Hammond, 2015
17 Gay, 2018
18 Crenshaw, 1989
19 Gay, 2018

High Expectations with Responsive Support

An essential tenet of culturally responsive practice is that educators hold consistently high expectations for every student, accompanied by responsive support. In literacy environments, this means providing all students, including students experiencing disabilities and multilingual learners, with access to grade-level standards,[20] texts, tasks, and experiences while also providing robust support for students to grow.

When educators use culturally responsive practices, they see each child's brilliance and potential; they believe all students are capable of academic success.[21] These educators have been described as "warm demanders," a term to describe an educator who expects a great deal from their students while also conveying warmth, care, and unconditional acceptance.[22]

In literacy instruction, this means explicit modeling of skills with ample scaffolding and practice that provides students with the tools they need to reach grade-level literacy learning goals. While instructional strategies may vary, the message in the approach to teaching with high expectations and high support is the same: every child in the classroom can achieve at high levels and participate in the cognitive richness and joy that comes from robust literate experiences.

> Culturally responsive teaching means teaching with students' "academic prowess" at the center. Zaretta Hammond describes this as changes in instruction that actually increase students' cognition. This involves teacher expectations of student achievement, teacher comfort with challenge and productive struggle, and intentional partnership with families toward the acquisition of skills. In this way, culturally responsive instruction requires changes in instruction that actually increase student's cognition and scaffold every child's ability to develop stamina for problem solving and practice with synthesis and analysis of content.[23]

Diverse Texts[24]

Culturally responsive literacy instruction includes the selection of a high-quality literacy curriculum and supplemental materials that include characters, settings, and authors which are reflective of the abilities, identities, and cultures of the full range of students and their communities. When curriculum and materials reflect and honor student identity, home languages, and culture, they contribute to a welcoming and affirming classroom environment. Throughout early literacy, concepts and characters in culturally and linguistically diverse texts also provide opportunities for students to engage in discussions about numerous topics, including their culture and identity, as well as to explore power dynamics in society and to consider how choices affect others.[25] This exposure encourages reflection and connection through the exploration of language, including writing, which can build relationships while inviting the understanding of someone else's perspective.

> "Seeing ourselves in stories and other texts is a powerful human need. Being able to say, 'Look, there I am!' feels good. It helps us know that who we are is recognized and validated and that we are not alone."
>
> National Council of Teachers of English, 2021

20 ODE, n.d.-g
21 Krasnoff, 2016
22 Delpit, 2013; and Hammond, 2014
23 Hammond, 2015
24 Aukerman & Chambers Schuldt, 2021
25 Schlund, 2019

Culturally responsive instruction in literacy builds awareness of various perspectives, addressing the experiences of diverse populations, while also exposing and disrupting negative stereotypes that may be present in materials. When reviewing early literacy curricula and supplemental materials, it is important to go beyond superficial representation and to carefully avoid common biases in materials that can include harmful stereotypes. Oregon's English Language Arts instructional materials evaluation tool[26] as well as the Culturally Responsive Curriculum Scorecard Toolkit from New York University[27] are resources to support the review and evaluation of literacy curriculum materials. Each of Oregon's Student Success Plans (African American/Black, American Indian/Alaska Native, Latino/a/x & Indigenous, and LGBTQ2SIA+)[28] reference the importance of culturally responsive curriculum as part of their plans.

> "Books are sometimes windows, offering views of worlds that may be real or imagined, familiar or strange. These windows are also sliding glass doors, and readers have only to walk through in imagination to become part of whatever world has been created or recreated by the author. When lighting conditions are just right, however, a window can also be a mirror. Literature transforms human experience and reflects it back to us, and in that reflection we can see our own lives and experiences as part of the larger human experience. Reading, then, becomes a means of self-affirmation, and readers often seek their mirrors in books."
>
> Bishop, 1990

Social and Emotional Learning

Children learn best when they are part of a positive school climate where everyone feels and is safe, seen, valued, and respected: when an asset-based orientation permeates teacher-student interactions and informs instructional decisions. Social and emotional learning[29] advances educational equity and excellence through authentic school-family-community partnerships that establish culturally responsive learning environments and experiences. Implementing social and emotional learning in schools creates caring, just, and affirming environments that support student learning.[30] Using this approach during early literacy instruction promotes student voice and agency, fosters well-being, and dedicates time and space for students to make sense of their learning and experiences. Centering the transformative social and emotional learning[31] constructs of identity, agency, belonging, curiosity, and collaborative problem-solving throughout students' literacy development can provide rich context and conditions for authentic student engagement.

Incorporating culturally responsive practices and social and emotional learning are more than strategies to create the necessary conditions for student learning to flourish: they are the epitome of belonging. Classrooms with culturally and linguistically affirming learning environments, where children are encouraged and challenged, provide the most fertile soil for reading, writing, speaking, and listening to occur. The classroom centering social-emotional learning offers young learners the opportunity to take risks, consider their own learning strategies and engage in academic discourse with their peers. The necessary energy to engage and persist with challenging material is exponentially increased when that energy is fed by peer-to-peer engagement and reflective practice.

26 ODE, 2018b
27 The Education Justice Research and Organizing Collaborative (EJ-ROC), 2020
28 ODE, n.d.-b
29 ODE, n.d.-e
30 Durlak et al., 2011; Greenberg, 2023
31 CASEL, n.d.

KEY TAKEAWAYS

- Belonging is a baseline condition for risk taking, thereby rendering it a nonnegotiable prerequisite for classrooms that maximize learning.
- Culturally responsive practice centers mutual relationship and care as conditions that foster a sense of belonging. "I am seen as unique and I am a part of a whole community."
- Culturally responsive practice requires study and reflection regarding identities and cultural reference points brought to the classroom by BOTH educators and students.
- The culturally responsive educator sees and learns about each member of the classroom community. Culturally responsive literacy practice invites students' identities and cultural reference points into the daily rhythm, literacy content, strategies and discourse of the classroom.
- Culturally responsive practice provides literacy instruction centering access for all children to the experience of, and practice with, the full range of literacy skills: phonemic awareness, explicit systematic phonics, vocabulary and language development, comprehension and fluency.
- High expectations for literacy success requires time and support for educators to repeatedly examine biases as they work to ensure literacy engagement, growth and achievement for every child.
- Every child deserves access to grade-level standards. Grade-level expectations are made doable when teachers know children well enough to both set challenges and scaffold challenges through partnership with students and families.
- Maximizing literacy learning includes providing rich and complex texts inviting children to both see themselves and learn about others.
- The social and emotional skills and context provided in the classroom allow children to practice peer-to-peer listening and speaking and normalizes the "risk, fail, try again" stamina that supports literacy achievement.

LEARN MORE

- The Science of Reading is Culturally Responsive
- Ready for Rigor: A Framework For Culturally Responsive Teaching
- Culturally Responsive Instruction for Native American Students
- Culturally Responsive Literacy Resources
- Supporting Gender Expansive Students (from ODE)
- Transformative SE (from ODE)
- Oregon's Student Success Plans (from ODE)

Section 2: Family & Community Partnerships

Parents and families are the first, most important teachers in a child's life. Before a child learns to read and write, they learn to listen and speak. Literacy learning starts at home in a child's first three years of life - in the lap of a trusted and caring adult. Brain science tells us that children are developing these skills from birth, which is why support for children to gain early literacy skills is absolutely critical even in the first few years of life – long before they enter preschool or kindergarten.

Preschool and kindergarten–aged children learn best through intentionally planned activities and meaningful play that provides ample opportunities to explore and discover. As noted in Oregon's Early Learning and Kindergarten Guidelines, "providing these opportunities does not preclude academics, but rather enhances the delivery of academic content through means that are most effective for young children. This approach is often referred to as developmentally appropriate practice."[32]

Across almost every facet of literacy development, support and collaboration with families, tribes, and community-based organizations strengthens student literacy development and serves as accelerators for student success.[33] When planning how to support early literacy, it is important to consider questions such as, "How do we leverage the skills, capacities, and strengths within our community as we design learning experiences that meet the needs of our learners?" and "How might we support parents and caregivers as essential partners in their children's literacy learning?"

This section is intended to provide guidance to district and school leaders and classroom educators to guide approaches to partnering with families regarding early literacy. It is not intended to be a comprehensive guide for community-based organizations or sovereign tribal nation leaders on how to support parents with literacy. These purposes will be met, instead, by tools that are co-created by communities for the communities they intend to serve.

32 ODE, 2017, p. 4
33 Dearing et al., 2004; Cronan et al., 1999

Literacy Starts at Home

Language development is increasingly understood as a process that begins during infant brain development. This development is connected with oral language in any language, and it may be impacted by genetic, medical, and environmental factors.[34] The human brain is hardwired for language development.

Language development occurs before and alongside literacy development, in home environments, and throughout children's daily experiences, including play and storytelling in the context of family traditions, first language, and culture. Engaging in conversations, over a shared meal, in the car, or in other settings, singing, cooking together, growing and harvesting food, and reading and telling stories, can help children develop oral language skills as listeners and speakers. Intentional literacy engagement before kindergarten lays the groundwork so that elementary school instruction can then advance. For multilingual learners, language development in a child's home language in addition to English, supports both language acquisition and brain development.

Families and caregivers want their children to succeed and are one of the most important allies in advancing student learning. When families, caregivers, and communities are mobilized to support literacy learning, they can serve as champions to advocate for striving students, while creating more consistent, coordinated efforts to boost student learning.[35]

Together families and educators can leverage evidence-based early literacy practices inside and outside the classroom.[36] Engagement with books and opportunities to write and draw from an early age promotes excitement about reading and writing.[37] The positive interactions that young children have when they read with adults and see adults engaged in authentic reading and writing increases their motivation to read and write more.

Many evidence-based practices in support of early literacy begin at home and in early learning settings. For instance:[38]

- Regular, intentional, engaging practice focused on social-emotional skills.
- Strengthening children's executive function skills using specific games and activities.
- Planned activities to build children's vocabulary and language.
- Building on children's knowledge of letters and sounds.
- Use of shared book reading to develop children's language, knowledge of print features, and knowledge of the world.

34 Hutton et al., 2021
35 Regional Education Laboratory Pacific, 2015. For more information about effective home-school partnerships and family engagement see Mapp & Kuttner, 2013; Epstein et al., 2018
36 Caspe & Lopez, 2017. For more information on early literacy evidence-based practices at school and at home, see Shibre, 2021.
37 Michigan Department of Education, 2021
38 Foorman, Lee, & Smith, 2020

Literacy Learning Before Kindergarten

Paying attention to the literacy and learning that happens prior to children entering kindergarten ensures that children have a more seamless transition to kindergarten. Oregon's Early Learning and Kindergarten Guidelines[39] are an integral resource for schools, districts, and families to consider when planning for literacy and learning before and up through kindergarten. The guidelines include a continuum of development and learning in five domains: approaches to learning, social-emotional development, language and communication, literacy, and mathematics. The guidelines are designed to:

- Align Oregon's existing preschool guidelines and kindergarten standards and clarify the learning progressions from early childhood to elementary school.
- Support all adults who work with children by showing the progressions of what children know and are able to demonstrate in early childhood,[40] at kindergarten entry, and at the end of kindergarten.
- Provide caregivers with information on developmental milestones. Caregivers can use this information to provide experiences that support children's learning and development.
- Provide a framework for early education and care providers to plan high-quality facilitated play and individualized instruction and support services.
- Inform family engagement and professional development regarding the learning and development of children.
- Strengthen the relationship between early learning and K–12 so that schools are ready for children and children are ready for school.

Supporting Literacy Through Expanded Learning

Parents and caregivers have a role to play to supplement and reinforce the literacy learning that happens at school as much as possible at home. To create those conditions, it's natural for parents and caregivers to need and want support, tools, and information, including knowledge of their child's strengths and needs from educators' perspectives. This knowledge and communication about their child helps parents make informed decisions and ensures they are empowered to support their child's literacy development before school, after school, and during the summer.

The Role of Libraries

Public libraries and school libraries are an integral component of children's literacy development. Extensive research supports the role school libraries[41] play in the health and success of the school community.[42] A well-equipped library, staffed by a full-time, certified teacher-librarian, contributes significantly to gains in student learning.[43] High-quality school libraries staffed by trained librarians not only help students read more, but they also help them learn how to use and process information and to perform better on achievement tests.[44] Levels of library funding, staffing levels, collection size and range, and the librarian's instructional role all directly impact student achievement, regardless of student socioeconomic status.

39 ODE, 2017
40 For more information on learning development for children ages birth to five, see Early Childhood Learning and Knowledge Center, 2022
41 Oregon Library Association, n.d.
42 Library Research Service, 2013a
43 Library Research Services, 2013b
44 Lance & Kachel, 2018

One purpose of school libraries is to provide access to books, with research confirming that access is associated with raising student test scores in all aspects of literacy.[45] Access to culturally relevant and responsive books fosters an early love of learning and a sense of belonging while also positively affecting reading achievement and appears to offset the impact of poverty. This research points to the importance of ensuring that all students, no matter their socioeconomic status, have equitable access to library resources because all aspects of literacy improve when children have access to books.[46] With reliable access to diverse books, students are more likely to read them and to read them for longer periods of time. School libraries can bridge the opportunity gap for students from historically and systemically marginalized communities by providing equal access and resources for learning through culturally relevant and responsive books and instructional materials. Cultivating a library that is welcoming and creates an enriching learning environment ensures that students have ready access to culturally relevant and responsive books.[47]

Another purpose of school libraries is for teacher-librarians to provide valuable instruction and support by responding to needs and requests from teachers and students, as well as providing much-needed instruction in the areas of information literacy, media literacy, digital citizenship, and more. Just as with content area instruction, teacher-librarians rely on standards when designing instruction (see Appendix B: Companion Guidance Documents & Resources).

In addition to school libraries, public library programs are an excellent resource for teachers, students, parents, and the broader community. Public libraries serve many roles in their communities and offer early learning and literacy engagement opportunities, summer and after-school literacy programs for students, and adult literacy learning.

Hours Outside the School Day[48]

Reading and writing before and after school are important for literacy development. Educators can encourage children to spend more time reading and writing outside of the school day by creating a culture of literacy that extends beyond the school building. To do this, schools can make books available for borrowing, encourage book reviews and student writing to be shared during school announcements, and organize book clubs and writing groups as after-school activities. Guiding students to read independently or with a buddy while riding a bus to and from school is another way for a school to encourage more time for reading. Educators can also provide families with strategies to use when reading with their children after school. Some strategies include reading aloud together, providing writing materials to use at home, and giving guidance on how to talk with children about what they read.

Collaborating with community systems of care (e.g., tribal governments, community-based organizations, libraries, parks and recreation centers, culturally-specific organizations, early learning hubs, STEM/STEAM hubs, housing agencies, area chambers of commerce, business and industry, public agencies) that provide opportunities for formal and informal learning is another way to extend literacy learning outside the classroom. Examples of how schools can support these activities include announcing library events or working with local businesses (such as barbershops, hair salons, and laundromats) to provide books for children to read while they wait.[49]

45 Scholastic, 2016
46 Library Research Service, 2013a; Gretes, 2013
47 ODE, 2023
48 Michigan Department of Education, 2021
49 For more examples of how to build and sustain school-community partnerships, see the Colorado Education Initiative's toolkit.

Literacy During Summer and School Breaks

Schools can support student literacy throughout the year during summer and school break by providing independent reading and extra support for literacy skills during summer and school break time through informal and formal reading opportunities. Summer programs may be perceived and designed to feel like punishment to students who have not been adequately supported in their literacy development. It is therefore critical that summer programs be intentionally designed to counter that narrative. In part, effective strategies may involve creating programs that are fun and engaging to student interests, and which also include a literacy component.

Encouraging students to find opportunities to read every day is one of many ways informal learning can happen outside the classroom. Daily reading outside of school is critical, with young students reading with an adult and older students reading independently. To strengthen reading skills, it is recommended that children in grades 2 and below read with an adult for at least 20 minutes daily outside of school time; while children in grades 3 and above read at least 30 minutes daily outside of school time, either with or without an adult. This additional reading builds fluency, vocabulary, stamina, and background knowledge, all necessary to develop literacy skills. Families can be encouraged to support their child's reading without concern for the length of text or genre. Novels, short stories, comic books, cooking recipes, and poetry provide reading opportunities.[50]

Strategies for supporting student literacy year-round include:[51]

- Local libraries can provide book suggestions and engaging summer reading programs that encourage independent reading throughout the year.
- Teachers can provide personalized lists of books students may like to read that connect to their interests.
- Families and students can share reading experiences, practice skill development that was learned during class, and discuss prompts for older children who can read independently.

Formal reading programs involve face-to-face learning, virtually or in person. Summer reading programs can be offered by the school or school partners, like community-based organizations and libraries. Summer learning programs provide unique opportunities to build relationships, spark joy, and deepen natural curiosity to promote learning, growth, and success for every student. Well-rounded summer learning is individualized to a student's assets, needs, and goals; intentional to meet learning goals and apply evidence-based instructional methods; and integrated into rigorous high-quality course content and meaningful study.[52]

50 Michigan Department of Education, 2021
51 Michigan Department of Education, 2021
52 ODE, 2021c

KEY TAKEAWAYS

- Parents and families are the first, most important teachers in a child's life. Before a child learns to read and write, they learn to listen and speak.
- Language development begins as the brain develops in response to genetic, medical, and environmental factors.
- Parents and caregivers have a role to play to supplement and reinforce the literacy learning that happens at school as much as possible at home. To create those conditions, it's natural for parents and caregivers to need and want support, tools, and information, including knowledge of their child's strengths and needs from educators' perspectives.
- Paying attention to the literacy and learning that happens prior to children entering kindergarten ensures that children have a more seamless transition to kindergarten.
- Across almost every facet of literacy development, support and collaboration with families and community-based organizations strengthens student literacy development and serves as accelerators for student success.[53]
- Engagement with books and opportunities to write and draw from an early age promote excitement about reading and writing.
- Encouraging children to spend more time reading and writing outside of the school day can begin with creating a culture of reading and writing inside the school building.

LEARN MORE

- Toolkit: Tribal Best Practices
- Ways to Become More Culturally Responsive in Engaging American Indian and Alaska Native Families
- Tips for Supporting Reading Skills at Home
- Honoring Family in the Class
- Early Learning and Kindergarten Guidelines (from ODE and DELC)
- How Parents and Families Support Oral Language and Vocabulary
- Toolkit: Families and Schools Partnering for Children's Literacy Success
- Addressing Challenged Materials in K-12 Education (from ODE and State Library of Oregon)
- Family Engagement Resources (from ODE)
- Toolkit: Community Engagement (from ODE)
- Toolkit: Jump Start Kindergarten (from ODE)

53 Dearing et al., 2004; Cronan et al., 1999

Section 3: Oral Language as the Root of Literacy Development

Language is essential for children as they make sense of the world, develop relationships with others, and understand their role in their homes, schools, and communities.[54] When educators understand the role of oral language and dialect in literacy acquisition, they can leverage students' oral language skills in any language or variation of English. Educators further students' literacy development by intentionally providing scaffolding to support the simultaneous development of language and literacy skills. Skilled educators map new learning onto existing knowledge, thus building on linguistic strengths and accelerating literacy learning.

The Role of Oral Language in Early Literacy Development

Literacy development is increasingly understood as a process that begins as the brain develops language – hence the increasingly familiar refrain "literacy begins at birth." As infants hear more sounds from their home language(s), their brain connections become stronger, and they become more adept at recognizing the sounds of their home languages. These first sounds a child may hear or see (signed) are the voices of the people in their home,[55] which serve as the initial source of knowledge about language and their world. In turn, learning to read involves learning about print, specifically how words known from speech are represented in a visual-graphical code or written language.[56]

54 Herrera et al., 2022
55 Seidenberg, 2017
56 Seidenberg, 2017

EARLY LITERACY FOR DEAF AND HARD OF HEARING STUDENTS

"Early and consistent access to a language is vital to its acquisition and continued development. Hearing loss complicates access to language. However, there are several strategies that are most often employed to build communication skills. There is no single test or exam that can determine which strategy is right for an individual. Understanding and spending time exploring options will allow the child to own the strategy best suited for them."[57]

The Outreach Center for Deafness and Blindness, 2017

See also: Early Reading for Young Deaf and Hard of Hearing Children: Alternative Frameworks and Foundations for Literacy: An Early Literacy Intervention for Deaf and Hard-of-Hearing Children

A child's ability to read and write is predicated on oral language because of the primary role oral language plays in laying the groundwork for foundational literacy skills.[58] In fact, research supports that reading, writing, and oral language are highly related.[59] It is also true that oral language is highly correlated with comprehension, which can be explained by the overlap in word recognition and oral language skills.[60] Students' comprehension of spoken language is critical for their reading comprehension — the ultimate purpose of reading. This is also true of cultivating students' writing ability.[61] While some children may develop oral language skills quickly and effortlessly, others may struggle with acquiring oral language. Factors such as genetics, environment, and early experiences all play a role in a child's language development. Children who experience disability have brilliant minds that can process information at different speeds, rates, and patterns. This can create what systems frame as developmental delays or presents challenges that are best met through differentiated and inclusive instruction. It is important for parents, caregivers, and educators to be aware of these individual differences and provide appropriate intervention and support to help children reach their full potential in language acquisition. These needs should be considered within the context of each individual student's needs and strengths, as described in Section 8: Reaching All Learners. The larger context of how oral language is situated within, and interacts with, other elements of literacy is explored further in Section 4: Reading Models Based in Research, Section 5: Foundational Skills, and Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge.

Oral Language Skills and Text-Based Language Skills are Interrelated

Oral language includes semantics, which is essential to vocabulary development. It also includes phonemic awareness, which is critical to reading. When children learn to blend sounds into words and segment words into sounds (phonemic awareness) in English, they can then connect the sounds with corresponding letters (phonics) to sound out words and begin to master the alphabetic principle to identify words accurately. Accurate decoding (reading) and encoding (spelling) of words leads to high-quality representations of words in memory so that the words can be recognized instantly.[62] Such efficient recognition is critical to reading fluency and to comprehension.

57 The Outreach Center for Deafness and Blindness, 2017
58 Foorman et al., 2016; Seidenberg, 2017; National Research Council, 1998
59 Mehta et al., 2005; Kim et al., 2011
60 Foorman et al., 2018b; Lonigan et al., 2018
61 Massachusetts Department of Elementary and Secondary Education (DESE), n.d.
62 Dehaene, 2009; Ehri, 2020; Perfetti & Helder, 2022; Seidenberg, 2017

Multilingualism Supports Oral Language & Literacy

A growing number of Oregon's children are learning more than one language resulting in multilingualism being one of their many strengths. There are many cognitive benefits to learning multiple languages. Multilingual students outperform monolingual students on tasks that use cognitive flexibility.[63] Multilingual students' brains get an extra workout because navigating more than one language requires the brain to use problem-solving and task-switching skills. The multilingual brain, therefore, is wired for powerful literacy and language learning.

> "Children who are learning English as a second language will become literate more easily if they have a strong foundation in their home language."
>
> National Association for the Education of Young Children & International Reading Association, 2009

Effective literacy instruction is rooted in an asset-based approach in which teachers value the linguistic strengths students bring to the classroom, while also paying close attention to student instructional needs. For multilingual students developing two or more languages, "this plurality of languages provides a multi-textured way of viewing, understanding, and interacting in and with the world…literacy development is nested within this larger picture of first and second language acquisition and use. Children's oral language practice and development in all languages is foundational to their literacy development."[64]

An Expansive Perspective of Oral Language

Oral language plays a critical role in learning about self, culture, and tradition. When educators learn about the cultural and linguistic backgrounds of the children in their care and learn from families, they can then draw connections, build from linguistic strengths, and better support a student who may not yet be fluent with written text.

Since Time Immemorial: Honoring Indigenous Language and Knowledge

Indigenous communities have centered story and oral language since Time Immemorial, passing information and carrying meaning and connection over generations without it being transcribed or written. These Native stories share traditional knowledge and connection to the land and help to carry culture and important teachings; such stories are often connected to seasons and the natural world. Oral tradition has kept Native languages and ways of knowing alive for thousands of years. Due to colonization and forced assimilation, the number of surviving Oregon tribal languages and dialects has dwindled from an original base of approximately one hundred to about eight. Tribal Elders often say that when a language goes extinct, a library dies.[65]

> "Our Language is as old as time itself. For countless generations our people lived out their lives speaking our words. In all that time, our words were never written. They were carried in the hearts and minds of our ancestors. They were learned by each generation and in turn taught to the next."
>
> Lewis, 2018

63 Barac et al., 2014
64 Herrera et al., 2022
65 Lewis, 2018

Efforts such as Native language revitalization programs led by the Confederated Tribes of Grand Ronde and the Northwest Indian Language Institute at the University of Oregon as well as Oregon's Tribal History Shared History[66] curriculum, underscore the importance of honoring Indigenous languages and restoring value and shared understanding about the role of oral language and survivance[67] in Native culture. For example, the Tribal History Shared History curriculum includes a 4th-grade lesson[68] on the importance of oral storytelling: "Indigenous stories provide essential knowledge required to sustain and maintain certain ways of knowing and being. Each tribal nation has its own oral history, and these histories are just as valid as written records. Oregon Tribal Nations work hard to protect their lifeways and celebrate their ways of being and knowing."[69]

The Importance of Storytelling

Storytelling has the power to create connections between humans, animals, and the land, to pass on traditions, entertain, and affirm identity. A uniquely situated form of literacy, oral storytelling's power is found through gestures, emotions, and voice. Many cultures use oral traditions to recite poetry, chants, and to connect through song. For the identities of all children to be fully seen and honored in early grades, there is an essential role for story and oral history. In early literacy, the cadence, flow, and rhythm of how the story is told supports early language development for young children.[70] A research study from the Frank Porter Graham Child Development Institute emphasizes the importance of recognizing and capitalizing on storytelling skills to help young African American children with their early reading development.[71] As Gholdy Muhammad explains within her historically and culturally responsive literacy framework, as children learn and grow, they engage in extensive identity exploration, trying to make sense of who they are, who others say they are, and who they desire to be. To support this effort, educators can structure literacy experiences that hold space for storytelling while centering learning opportunities that affirm and bring to life students' (and their ancestors') histories, cultures, and traditions.[72] Using oral language to honor cultural identity while simultaneously creating foundational literacy skills is critical for each and every child.

Recognizing and Honoring Dialects

It is also important to recognize and honor children developing fluency in various dialects of English. They bring unique and valuable strengths to literacy learning, such as translanguaging, by "accessing different linguistic features or various modes of what are described as autonomous languages, in order to maximize communicative potential."[73] For example, when a learning environment cultivates language varieties such as African American English, students' bicultural and bidialectal identities and lived experiences are affirmed.[74]

It is important that teachers understand that language varieties are linguistically equal, even when they are not socially equal.[75] "Standard English" is not a language. It is one variety of English, and it is not linguistically superior to other varieties. Linguistic complexity is a profound area of research, often illuminating ways in which regional dialects or situational dialects require an amazing array of cognitive and social skills. This is true across race, social class, gender, and region.[76]

66 ODE, n.d.-h
67 Sabzalian, 2019
68 ODE, n.d.-c
69 ODE, n.d.-c
70 Programmatic Assistance for Tribal Home Visiting (PATH), n.d.
71 Gardner-Neblett & Iruka, 2015
72 Muhammad, 2020
73 García, 2009a
74 Washington & Seidenberg, 2021
75 Darder, 1991
76 Grieve, 2022

"Most languages have several within-language varieties. An inclusive way to think about language varieties is that they occur along a continuum from those that differ little from the general variety to those that are more distant. This framing includes all communication practices across all speakers and does not consider one variety to be superior. It allows us to put languages and speakers in their proper perspective as equally valued, especially as we support children learning to read and write. All children need to have the skills to make linguistic choices across contexts: formal, informal, home, school, speaking, reading, or writing."

Washington & Seidenberg, 2021

Awareness of early literacy strategies supporting multidialectal students is vital for teaching, learning, and assessment. These strategies allow educators to promote students' academic achievement while recognizing and honoring the value of the student's home dialect.

KEY TAKEAWAYS

- Literacy development is increasingly understood as a process that begins as the brain develops language – hence the increasingly familiar refrain "literacy begins at birth."
- Learning to read involves learning about print, specifically how words known from speech are represented in a visual-graphical code or written language.[77]
- A growing number of Oregon's children are learning more than one language and can add multilingualism as one of their many strengths.
- Transformative literacy instruction is rooted in an asset-based approach, in which teachers value the linguistic strengths students bring to the classroom.
- Indigenous communities have centered story and oral language since Time Immemorial, passing information and carrying meaning and connection over generations without it being transcribed or written.
- All varieties of English (dialects) are valid, valued, and deserve to be recognized as such.
- Oral language plays a critical role in learning about self, culture, and tradition. A child's ability to read and write is predicated on oral language because of the primary role oral language plays in laying the groundwork for foundational literacy skills.[78]

LEARN MORE

- Early Learning and Kindergarten Guidelines (from ODE)
- Oral Language | National Association of Education of Young Children
- Telling and Retelling Stories: Learning Language and Literacy
- Supporting Early Language Development for Diverse Learners

77 Seidenberg, 2017
78 Foorman et al., 2016; Seidenberg, 2017; National Research Council, 1998

Section 4: Reading Models Based in Research

Learning to read and write is complex; yet, literacy researchers have made significant strides in working to demystify these processes. The science of reading represents over five decades of research, inclusive of studies across the world and spanning multiple disciplines (i.e., cognitive psychology, developmental psychology, education, implementation science, linguistics, neuroscience, school psychology). This body of knowledge informs how reading skills develop and describes the cognitive processes that occur in the brain when students learn to read. It also sheds light on why some students have difficulty, how educators can most effectively assess and teach, and how data can be used to improve student outcomes.

SCIENCE OF READING

Figure 2. **The Science of Reading**

Science of reading is aligned with "neurological and cognitive science studies of how brains process written words,"[79] and includes a broad collection of research from multiple fields of study including cognitive science, learning sciences, literacy research, and instructional science and research broadly. The "science of reading" captures this comprehensive, ever-evolving, research base that informs literacy instruction for all learners.[80]

Within Oregon's Early Literacy Framework, this definition of the science of reading reinforces the essential role it plays in informing literacy instruction. Reading research provides fundamental information about reading and it deserves to be recognized as such. Furthermore, it underscores the complexity and richness of literacy instruction. Amanda P. Goodwin, co-editor of the academic journal Reading Research Quarterly, describes the science of reading as: "not just phonemic awareness, phonics, reading fluency, vocabulary, and comprehension but also language development, motivation, dyslexia, the reading of digital texts, multilingual literacy, the literacies of Black students and other historically minoritized student groups..."[81]

Ultimately, the term science of reading can be interpreted in divisive ways or in informative ways; the goal in this framework is to use the science of reading as a term to bring clarity and common ground to move Oregon forward in supporting the literacy development to all students.

79 Shanahan, 2021
80 National Center on Improving Literacy, 2022
81 Heller, 2022

Five Models of Reading and the Essential Components of Literacy

The following five reading models reflect past and present research findings and hold important insight into how children acquire literacy skills that are paramount for shaping and reshaping how literacy instruction is approached and designed. While there are many models of reading, these are commonly used models to illustrate the core ideas of reading research:

1. The Five Pillars of Reading
2. The Simple View of Reading
3. Scarborough's Rope
4. The Four-Part Processing Model
5. The Active View of Reading

These models are not methods, techniques, or programs; however, they help educators understand the interrelated components, or smaller parts, that comprise reading and writing. No single reading model captures all of the components; for this reason, it is important to draw from multiple models.

Several components of literacy from across these models are reinforced throughout the framework: oral language, concepts of print, phonological and phonemic awareness, phonics, alphabetic principle, fluency, automaticity, background knowledge, vocabulary, text comprehension, and writing (written expression and spelling).

This section describes how each model contributes to the interplay and interdependence of these components. Section 3: Oral Language as the Root of Literacy Development, Section 5: Foundational Skills, and Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge examine more closely the components elevated by these models, describe the relationship between the components, and support the connection of theory to practice by highlighting instructional implications for each.

1. The Five Pillars of Reading

In 2000, the National Reading Panel identified five components as part of a comprehensive system for English literacy instruction:

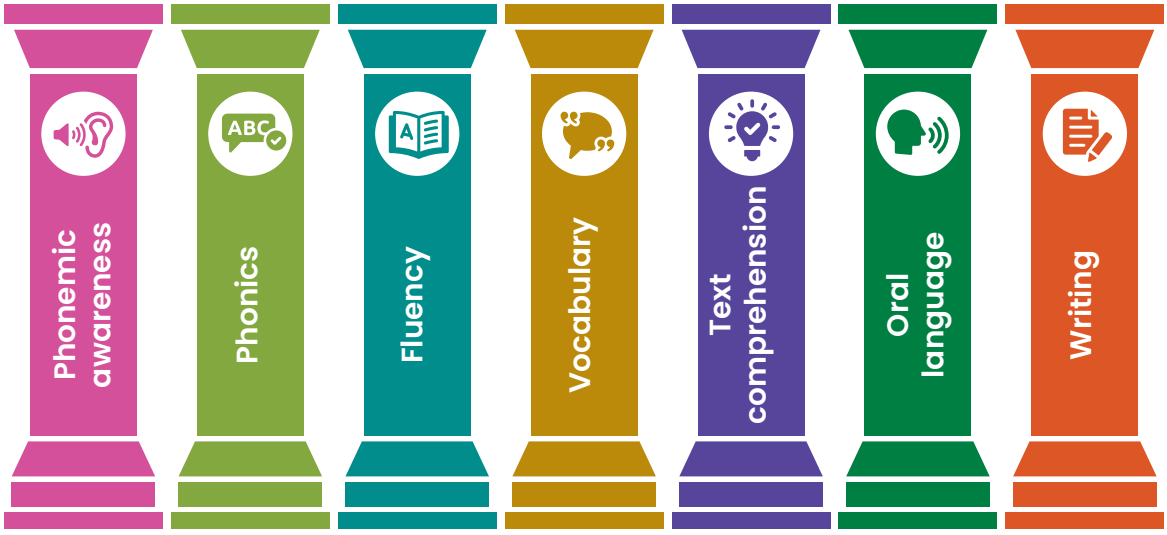
- **Phonemic awareness:** an awareness of, and the ability to, manipulate the individual sounds (phonemes) in spoken words.
- **Phonics:** the study and use of sound/spelling correspondences and syllable patterns to help students read written words.
- **Fluency:** reading text with sufficient speed, accuracy, and expression to support comprehension.
- **Vocabulary:** the body of words and their meanings that students must understand to comprehend text.
- **Text comprehension:** the ability to make meaning using specific skills and strategies, vocabulary, background knowledge, and verbal reasoning skills.

Over the last two decades, research has built on the above original components to include oral language and written expression as additional ingredients to cultivate students' literacy development:[82]

- **Oral language:** "Sometimes called spoken language, oral language includes speaking and listening—the ways that humans communicate with one another. Oral language skills provide the foundation for word reading and comprehension. They are at the heart of listening and reading comprehension, serving as a predictor for both."[83] (See Section 3: Oral Language as the Root of Literacy Development)
- **Writing (written expression and spelling):** Writing was added, "due to the reciprocal relationship between written expression and text comprehension."[84] (See Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge)

Figure three represents the original five pillars of reading and two additional components.

Figure 3. **Pillars of Reading (adapted to include writing and oral language)**



2. The Simple View of Reading

As its name implies, this model reinforces a straightforward interpretation of reading that continues to inform a core conceptual idea around reading in which decoding and language comprehension are both essential to reading comprehension and skilled reading. This model is widely used and referenced in relation to the science of reading and empirically validated in over 150 scientific studies.[85] It includes two key components, decoding (or word recognition) and language comprehension (the ability to understand spoken language). Both must be present for reading comprehension to be possible. This reinforces the importance of early oral language development composition, both before and during the early grades - beginning formal schooling with strong oral language paves the way for reading comprehension as students begin to learn how to decode and recognize words. Figure 4 represents the Simple View of Reading.

82 Graham & Hebert, 2011
83 Literacy How, 2020
84 Colorado Department of Education, 2020
85 The Reading League, 2022

Figure 4. **Simple View of Reading**

Based upon more recent advances in reading research, the decoding "side" of the equation may be referred to as fluent word reading, acknowledging the importance of automaticity and fluency in word recognition.[86]

The Simple View is most useful for understanding the abilities that underlie early reading comprehension and may help in understanding both how to design effective reading instruction and the source of reading struggles for some students. Intervention for children who are not yet skilled readers is most effective when it addresses the specific area of need, which may be decoding, language comprehension, or both.[87] For example, the Simple View can also inform an understanding of skilled reading and three different types of reading difficulties:[88]

- A typically developing reader has both strong word recognition skills and strong comprehension of oral language. This leads to strong reading comprehension or skilled reading.
- Students who are not yet strong readers need support in both areas.
- Hyperlexic students can read words at a level above their oral language comprehension. These students read quickly and accurately, but have difficulty comprehending what they just read.
- The term dyslexic is used to refer to students with strong language comprehension, but weak word recognition (decoding) skills.

Identifying students' individual needs through this lens can help inform teachers' instructional next steps and ensure that interventions are appropriately matched to a student's area(s) of need. For more information on supporting students with reading difficulties, see Section 8: Reaching All Learners.

THE SIMPLE VIEW OF READING AND MULTILINGUAL LEARNERS[89]

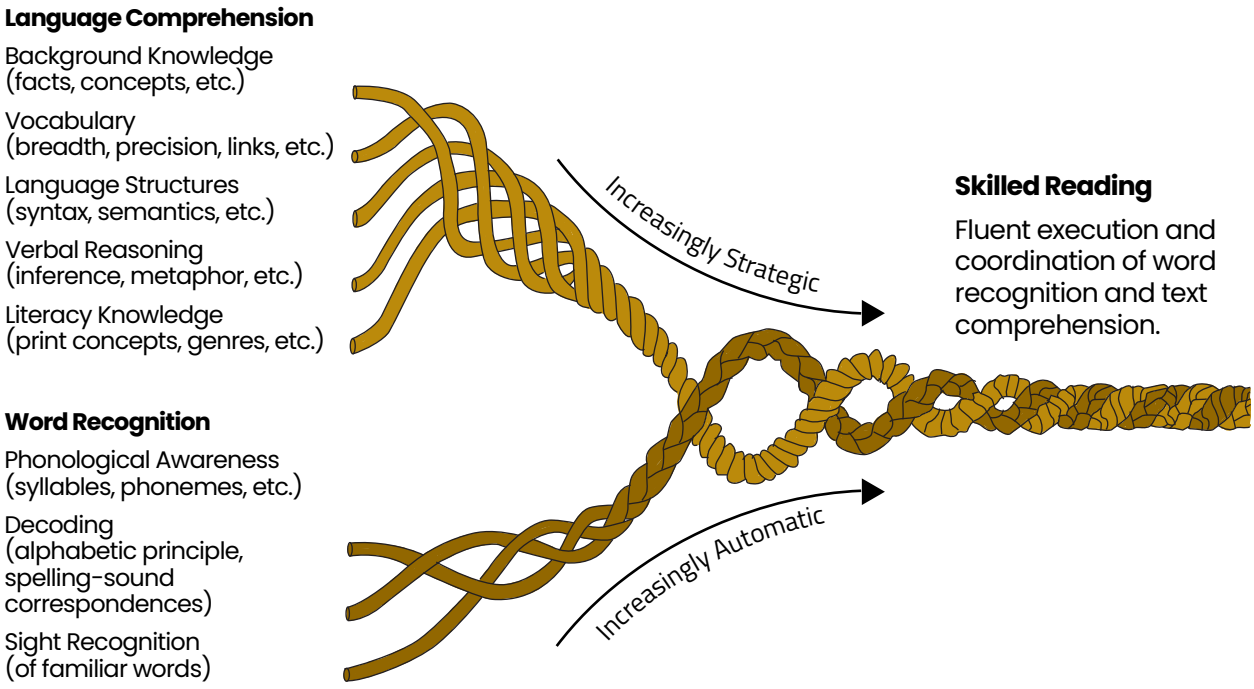
Research has shown that English learners can achieve word reading proficiency that matches their English monolingual peers when they receive evidence-based instruction that responds to their linguistic strengths and needs.[90] While all students should receive instruction in both fluent word reading and language comprehension to secure solid reading comprehension,[91] multilingual learners benefit from more of both, with considerations for how a focus on those skills is culturally responsive and ensures a well-rounded learning experience.

86 DESE, 2022b
87 Snow, 2018
88 Gough & Tunmer, 1986
89 DESE, 2022b
90 Vargas et al., 2021
91 Verhoeven & van Leeuwe, 2012

3. Scarborough's Reading Rope[92]

Scarborough's Reading Rope is a visual metaphor for developing skills over time that expands upon the essential components of the Simple View of Reading. This model asserts that, for either of the two essential components of reading (decoding and language comprehension) to develop successfully, students need to be taught the skills necessary for each of those two domains. In their development, these subcomponents intertwine and become increasingly strategic and automatic over time to develop fluent, skilled reading. This interweaving of skills can occur early in literacy development and continues as students become more skillful readers.

Figure 5. **Scarborough's Rope Representation[93]**



Recent research supports that reading, writing, and oral language are so highly related that they can be thought of as a single literacy category[94] and that proficiency in reading comprehension can be explained by the overlap in word recognition and oral language skills.[95] This research expands the Simple View of Reading and also provides an empirical base for the strands of language and word recognition that become interwoven in Scarborough's reading rope.[96] Importantly, this research also expands the five components of the National Reading Panel Report[97] to include oral language (not just vocabulary) and writing (spelling and written expression).

92 Scarborough, 2001
93 Duke & Cartwright, 2021; Scarborough, 2001
94 Mehta et al., 2005
95 Foorman et al., 2018b; Lonigan et al., 2018
96 Gough & Tunmer, 1986; Scarborough, 2001
97 National Reading Panel, 2000

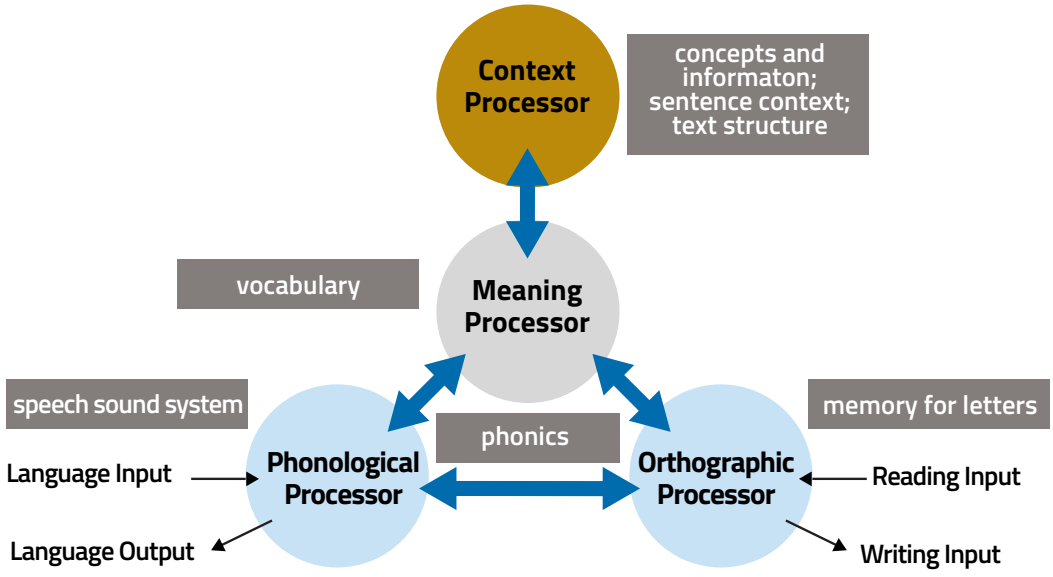
4. The Four-Part Processing Model[98]

The Four-Part Processing Model for word recognition is a model that illustrates how the brain reads or recognizes words and can be useful in guiding educators' understanding of the underlying processes involved in word recognition, language comprehension, and overall reading comprehension. The model describes four processors, or areas in the brain, that are active when reading:

- **Phonological Processor:** Detects, recalls and understands sounds that make up spoken words and controls the production of sounds and words in spoken language.
- **Orthographic Processor:** Recognizes, stores and recalls the letters and combination of letters used in written language and stores print information needed to efficiently recognize and recall words when reading and writing/spelling.
- **Meaning Processor:** Interprets word meanings and organizes words into meaningful categories according to spelling patterns, concepts, word relationships, word meanings, and; meaningful parts of words
- **Context Processor:** Supports the meaning processor by interpreting words based on other language in the text, experiences, and background knowledge

The orthographic and phonological processors first work together to decode a word by connecting the word's speech sounds to its symbols (phonics). Once the word is read, the meaning processor considers all possible definitions of the word (vocabulary), while the context processor helps support the meaning processor by applying context and background knowledge about what is being read.

Figure 6. **Four Part Processing Model of Word Recognition[99]**



The Four Part Processing Model helps to illustrate how different elements of instruction support the different brain processes required for reading and writing, and can inform how to provide additional support for students struggling to read.

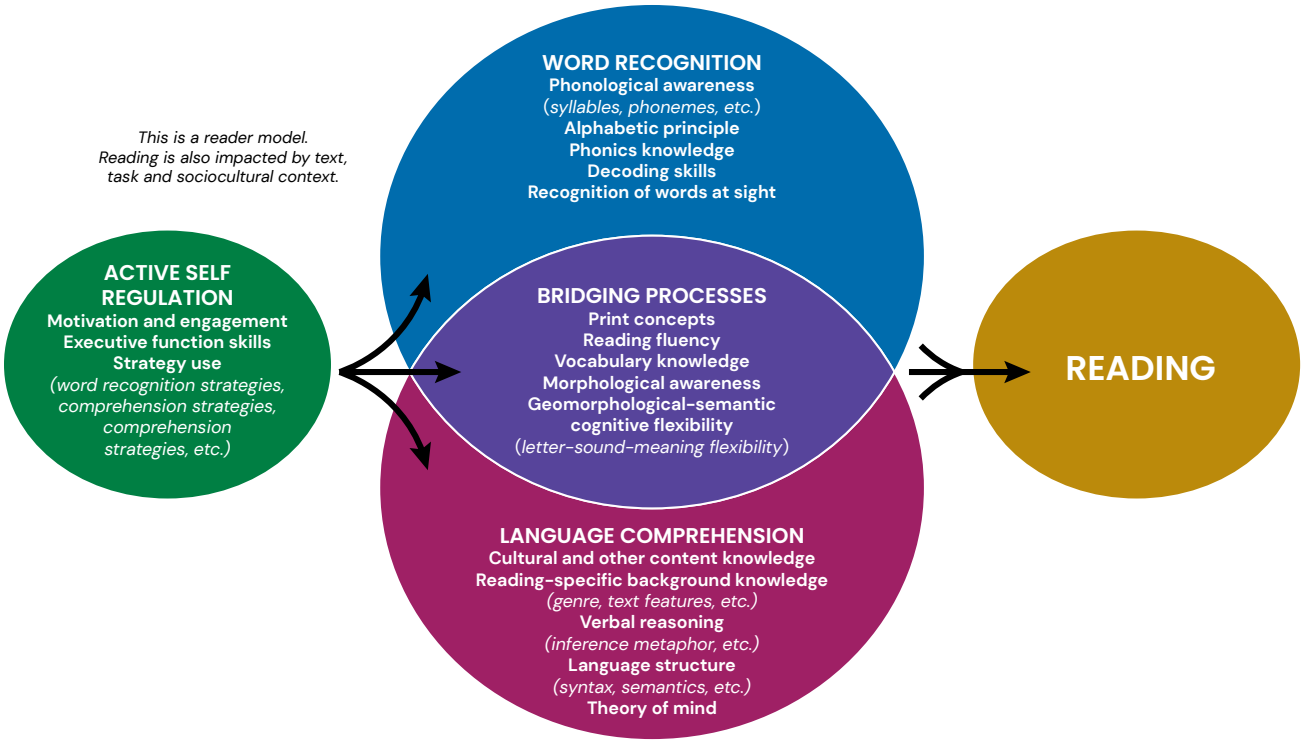
98 Seidenberg and McClelland, 1989 and Dehaene 2013
99 Wyoming Department of Education, 2019, p. 13

5. The Active View of Reading

The Active View of Reading is a recent model of reading that expands the Simple View of Reading to add text, task, and sociocultural context.[100] This model also incorporates research on executive function skills[101] and comprehension monitoring[102] and depicts a multidimensional context for literacy.[103] At its core is the belief that more than just word recognition and language comprehension are needed for children to develop as "active readers" (readers with the literacy skills to successfully navigate text while feeling empowered and engaged). Key ideas supported by the Active View of Reading follow:

- In addition to decoding and language comprehension, executive function skills, comprehension strategy use, and motivation support reading comprehension.
- Reading processes, such as vocabulary and morphological awareness (understanding parts of words, like Latin roots or prefixes), help bridge decoding and language comprehension.
- Cultural knowledge and content knowledge are constructs that contribute to reading success.

Figure 7. **Active View of Reading representation[104]**



This model reinforces a bridging process between word recognition and language comprehension development. In other words, the relationship between word recognition and language comprehension represents an equally important function of reading. For example, a strong vocabulary improves the ability to decode unfamiliar words. Similarly, knowledge of another language may influence word recognition in English.[105]

100 Duke & Cartwright, 2021
101 Kieffer & Christodoulou, 2019
102 Castles et al., 2018; Shanahan et al. 2010
103 Duke & Cartwright, 2021
104 Duke & Cartwright, 2021
105 Duke & Cartwright, 2021

The Active View also reinforces the role of active self-regulation in the reading process and reinforces the larger sociocultural context of reading. Competent and confident readers not only have strong word recognition and language comprehension skills, they actively self-monitor in order to apply skills and strategies while they read so that they can actively make meaning and read fluently. Most importantly, the Active View of Reading model provides substantial grounding for culturally responsive practice as an influencing factor in learning to read and write.[106]

KEY TAKEAWAYS

- Reading research, often termed "the science of reading," studies how reading skills develop and helps us to understand what happens in the brain when students learn to read.
- The following five reading models reflect past and present research findings and hold important insight into how children acquire literacy skills that are paramo.unt for shaping and reshaping how literacy instruction is approached and designed:
  - The Five Pillars of Reading
  - The Simple View of Reading
  - Scarborough's Rope
  - The Four-Part Processing Model
  - The Active View of Reading
- Generally, these reading models emphasize the interaction between:
  - word-identification, and
  - language comprehension.
- This interaction results in reading comprehension through:
  - knowledge of the English writing system;
  - linguistic knowledge;
  - background knowledge; and
  - the type of text, nature of the task, sociocultural context, and executive functions.
- Executive functions of memory and attention can be enhanced by teaching self-monitoring strategies and motivating students to engage with text.
- A major roadblock to comprehending text is fluency. These models emphasize the importance of accurate and efficient word identification and recognition so that executive skills can be devoted to comprehending text.

LEARN MORE

- Which Reading Model Would Best Guide School Improvement?
- The Impact of Word Knowledge Instruction on Literacy Outcomes in Grade 5
- The Science of Reading Progresses: Communicating Advances Beyond the Simple View of Reading
- What is the Science of Reading?

106 Duke & Cartwright, 2021

Section 5: Foundational Skills

Foundational skills refer to the tightly interrelated but discrete sub-skills (e.g., phonics, phonological awareness, concepts of print, fluency) specific to each language. They are the smaller, interconnected pieces that allow a child's brain to break the alphabetic code in order to read fluently and make meaning of words on the page. Foundational skills in the teaching of literacy are essential. Unlike oral language, which develops naturally through incidental learning in the home and community, learning to read and write requires explicit instruction in foundational skills (print concepts, phonics, and phonemic awareness). For this reason, school leaders and educators design schoolwide systems to provide students with ample opportunities (especially in early grades) to practice foundational skills in culturally responsive contexts and receive consistent feedback as skills progress is paramount to ensuring that students learn to read.

Although this section is separate from and precedes Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge, it would be inaccurate to imply that grades K-2 are all about foundational skills and grades 3-5 are all about background knowledge, reading comprehension, vocabulary, and writing. The reading models help convey this point of overlap.[107]

107 B. R. Foorman, personal communication, March, 10, 2023

Overview of Foundational Skills[108]

Each foundational skill is described below in Table 1, along with commonly associated terms, to promote shared understanding and clarity. Reading and writing skills in English will need to be adjusted for multilingual learners based on the target language of instruction. For example, phonological awareness skills can transfer across languages when students have opportunities to build these skills in their native language and English. Additionally, multilingual learners developing literacy in English instructional programs will need a strong foundation of oral language development in order to reach higher levels of English reading fluency, whereas multilingual learners in dual language programs will already have the oral language skills to develop reading fluency if the literacy instruction is in their home language. Section 8: Reaching All Learners of this framework adds and further addresses the development of foundational skills for multilingual students.

Table 1. **The Foundational Skills (A Cursory Look)[109]**

Foundational Skill	Description	Related Skills & Concepts
Print Concepts	Print concepts include understanding the features and organization of printed texts, letter formation, and recognizing distinctive features of letters. These include some discrete skills and others that overlap with phonological awareness and phonics activities over time, such as recognizing that sentences consist of words and spoken words are represented by groups of letters. Print concepts are primarily a kindergarten skill, aside from a focus on the features of a sentence (capitalization, punctuation) in first grade. Print concepts are supported when basic fine motor and perceptual skills are developed (i.e. how to write upper/lower case letters and distinguish between similar letters like b/d/p.)	• **Return sweep:** moving your eyes from the end of one line of text to the start of another line. • **One-to-one correspondence of words:** matching the printed word to the spoken word. • **Letter recognition:** visually recognizing the name of a printed letter.

108 Derived from Foorman et al., 2016
109 Adapted from Student Achievement Partners, 2020

Foundational Skill	Description	Related Skills & Concepts
Phonological Awareness	**Phonological awareness** refers to awareness of the segments of sound in words.[110] Phonological awareness is entirely oral and forms the building blocks for later reading before print is even introduced. **Phonemic awareness** is a subgroup of phonological awareness that refers to the specific ability to hear, identify, and manipulate individual sounds (phonemes) in spoken words. Phonemes are the smallest unit of sound within words. Phonemic awareness, including blending sounds into words and segmenting words into sounds, has a direct and significant effect on learning to read and spell. Like phonological awareness, phonemic awareness is entirely oral.	• **Oral Rhymes and Alliteration:** recognizing the beginning and ending sounds of words. (Example: The end of the word "cast" sounds just like "blast". These words rhyme.) • **Words:** hearing and counting the number of words when we read or speak. (Example: I hear five words in the sentence "I ran to the cone.") • **Syllables:** A syllable is a word or word part that contains a vowel or, in spoken language, a vowel sound (Example: I hear two syllables in the word "kitten.") • **Onset/Rime:** the part of a syllable before the vowel (onset) and the vowel and the consonants that follow (rime). • **Phonemes:** an individual unit of speech in a word that can be heard discreetly. There are 44 phonemes in the English language: 25 consonants and 19 vowels. • **Segmenting:** breaking, or segmenting a word into its separate sounds (cat= /c/ /a/ /t/) • **Blending:** combining, or blending the separate sounds in a word to say the word (/c/ /a/ /t/= cat) • **Manipulating:** adding, deleting, or substituting sounds in a word

110 Foorman et al., 2016

Foundational Skill	Description	Related Skills & Concepts
Phonics and Word Recognition	Phonics consists of learning sound and spelling patterns in a distinct sequence that allows students to identify the relationship between sounds of spoken language and the letters that represent those sounds in print. Phonemic awareness connects directly to phonics, as students must be able to distinguish the sounds in order to recognize them in written form. In phonics instruction, decoding and encoding go hand-in-hand. The goal of phonics instruction is to help children to learn and be able to use the alphabetic principle. The alphabetic principle is the understanding that there are systematic and predictable relationships between written letters and spoken sounds. Phonics instruction helps children learn the relationships between the letters of written language and the sounds of spoken language.	• **Decoding:** Translating a word from print to speech by using knowledge of phoneme-grapheme, or sound-symbol correspondences. • **Encoding:** Translating speech into print (writing) using knowledge of phoneme-grapheme, or sound-symbol correspondences. • **Automaticity:** the ability to decode words in print correctly and instantly. As automaticity increases, readers are able to focus more attention on constructing meaning from text rather than decoding. • **Word Recognition:** Quick identification (recognition) of a previously learned word and its meaning; recognizing words in the moment of reading. • **Graphemes:** a letter or combination of letters that represent a sound (phoneme) in a syllable or word. • **Sound and Spelling Pattern:** the phonics-based skill of focus in a scope and sequence, usually a letter, letter pair, or word part.

Foundational Skill	Description	Related Skills & Concepts
Alphabetic Principle	Children's reading development is dependent on their understanding of the alphabetic principle – the idea that letters and letter patterns represent the sounds of spoken language. Learning that there are predictable relationships between sounds and letters allows children to apply these relationships to both familiar and unfamiliar words, and to begin to read with fluency. Children whose alphabetic knowledge is well developed can identify and name letters with ease and can begin to learn letter sounds and spelling patterns.	• **Alphabetic Awareness:** Knowledge of letters of the alphabet coupled with the understanding that the alphabet represents the sounds of spoken language and the correspondence of spoken sounds to written language. • **Alphabetic Understanding:** Understanding that the left-to-right spellings of printed words represent their phonemes from first to last. • **Decodable Text:** Text in which the majority of words can be identified using their most common sounds. • **Regular Word:** A word in which all the letters represent their most common sound, in which the alphabetic principle can be applied. • **Irregular Word:** A word that cannot be decoded and must be identified by sight.
Fluency	Reading fluency encompasses accuracy, the speed or rate of reading, and the ability to read materials with expression, and comprehension. Expression, or prosody, includes timing, phrasing, emphasis, and intonation. Fluency is built through word recognition that is automatic and fluid, allowing readers to focus on comprehension of the text. Teaching systematic phonemic awareness and phonics and applying these skills to texts allows students to build automaticity in word reading (and thereby comprehension). To build fluency over time, and to connect reading to meaning, it is important to build from a focus on accuracy for readers. Fluency represents the essential link between reading words quickly and accurately and understanding text.	• **Accuracy:** the ability to read words correctly. Over time, accuracy will lead to developing a bank of "sight words," or words that are correctly and instantly recognized without applying decoding knowledge. • **Rate:** the speed at which a person reads. Fluent reading is not speed reading; an appropriate rate reflects an understanding of what is read and varies based on grade-level. • **Prosody:** reading with appropriate expression. Components of prosody include timing, phrasing, emphasis, and intonation. • **Comprehension:** the ability to synthesize, or make meaning from text.

Instructional Considerations for Foundational Skills[111]

Foundational skills instruction must be a part of the core curriculum and materials, and be integrated into protected daily literacy instruction, with opportunities to practice and apply these skills up to and beyond grade five as necessary. They cannot only be added as a supplementary component. Providing it only as supplemental content is not only inadequate for most students learning to read, but it can be especially detrimental to students who need additional support learning to break the code of written language.

Specific Strategies

More specifically, the following strategies help all students develop strong foundational skills, especially students with foundational reading and writing difficulties:[112]

- **Explicit instruction:**[113] Emphasize active participation for students while providing modeling (I do), scaffolding (we do), and prompting (you do) until students can apply a skill independently.
- **Systematic instruction:** Teach skills intentionally and in a carefully planned sequence with each foundational skill presented in a logical and recommended sequence, beginning with simple skills and moving to more complex skills.
- **Precise, simple, and replicable language:** Use precise, simple language and ensure that instructions and explanations are short and clearly stated; use consistent language when modeling a reading skill or conducting a "think aloud." Think-aloud effectively allows the teacher to demonstrate orally how a skilled reader thinks about a literacy task.
- **Repeated opportunities to practice, build fluency, and review:** Provide opportunities for teacher-supported guided practice of a previously taught skill, as well as opportunities for independent practice in which students work individually or in small groups. Embedded practice across the curriculum increases the maintenance and generalization of newly learned skills. This includes providing a "double dose" of instruction in which a previously taught skill is retaught, using small group or one-on-one instruction, and/or using technology to facilitate reading practice.[114]
- **Adequate time and exposure to decodable text:** When students read and re-read decodable texts, they apply skills practice in real-time and connect their phonics and decoding instruction to reading. Once students are able to apply their decoding skills with fluency, they can transition away from decodable texts to authentic texts that are written to inform, explain, entertain, or elicit a response. Focusing first on decodable texts to build and practice decoding skills provides a pathway for students to grow into texts that are not controlled by phonics.
- **Frequent opportunities to respond and interact:** Engage students by providing opportunities to respond in small groups. Active participation strategies include choral responses, whiteboards, response cards, or partner talk. For students with the most intensive needs, research suggests that groups of two to four students or one-on-one instruction may be the most effective.[115]
- **Specific error correction and high-quality feedback:** Provide students with both positive feedback and error correction.[116] When students make errors, provide specific and precise feedback on the exact part of the incorrect process to ensure they do not continue to practice and solidify errors. Additionally, model the correct response and provide students with opportunities to practice the skill correctly to help cement the new learning.

111 Derived from Foorman et al., 2016
112 Weingarten et al., 2018
113 Special Education Resource Project, n.d.
114 Gersten et al., 2008
115 Vaughn et al., 2012
116 Hattie & Timperley, 2007

When teaching foundational skills, Table 2 provides a series of important pivots and shifts.

Table 2. **Teaching Foundational Skills**[117]

Instead of This:	**Do This:**
Loosely tending to the order of foundational skills and allowing for classroom-to-classroom variance…	Follow a clear, intentional scope and sequence based on the learning progression for foundational skills (Figure 8).
Spending a few minutes a day on foundational skills…	Ensure adequate instructional time is spent on teaching foundational skills, including related practice with decodable texts and writing. The amount of foundational skill instruction should be responsive to student needs and strengths.
Focusing only on English…	Make connections between English and a child's home language so that they can leverage existing knowledge and skills. Whenever possible, create opportunities for children to learn to read in their home language.
Patching together an assortment of favorite lessons and randomly sourced supplemental materials…	Select and implement high-quality instructional materials for core instruction that provide guaranteed and viable curriculum across the school and district.

Learning Progressions

Across the K-5 continuum, literacy instruction must systematically build students' foundational skills alongside the application of meaning-making skills and knowledge. Once students receive instruction in particular skills based on a learning progression, they will progress more quickly when provided with opportunities to apply those skills in the context of connected text and authentic reading and writing.[118] Just as literacy learning progresses in complexity over time, the teaching also responsively advances instruction in complexity to ensure continuity and alignment in the arc of a student's literacy trajectory.

It is also important to note that skills may develop beyond the grade level suggested in the progression, and students may need intensified instruction in skills that need more development.

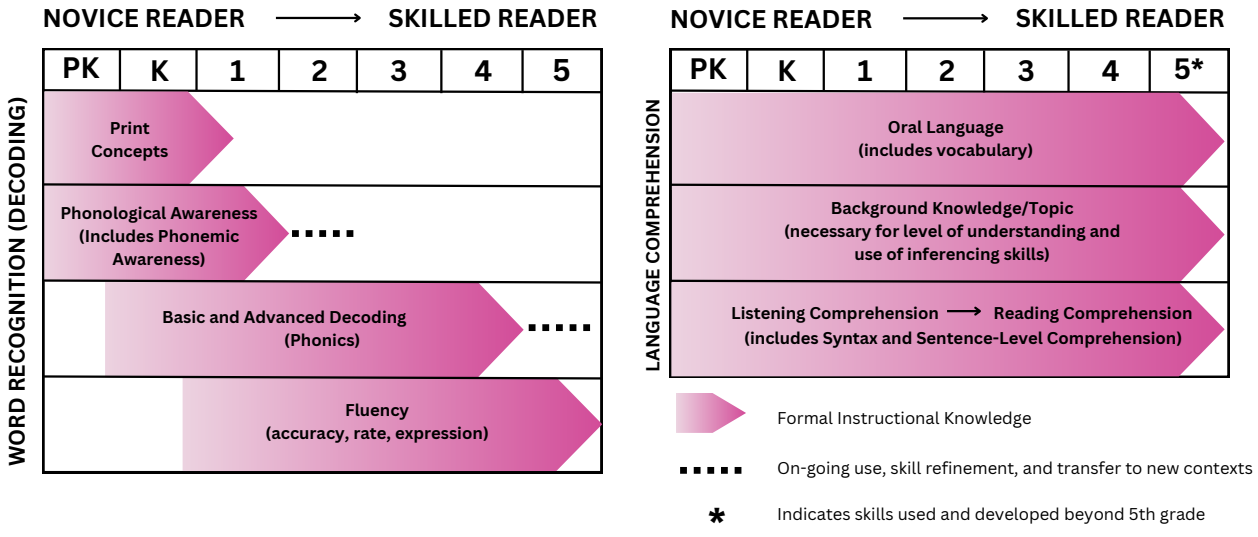
THREE KEY RESOURCES TO SUPPORT THE USE OF LEARNING PROGRESSIONS INCLUDE:

- Oregon's ELA K-5 Foundational Reading Skills Progression – serves as an instructional support tool for planning purposes to assist foundational reading skills development.
- Achieve the Core's Foundational Skills Guidance Documents: Grades K-2 provide examples and guidance for planning literacy instruction in K-2.
- Head Start's Planned Language Approach provides resources for education staff and families to support language and literacy development for children ages birth to five in the key skill areas of Alphabet Knowledge and Early Writing; Background Knowledge; Book Knowledge and Print Concepts; Oral Language and Vocabulary; and Phonological Awareness.

117 Student Achievement Partners, n.d.-a
118 Armbruster et al., 2006; Blevins, 2016

Figure 8 outlines a learning progression, informed by reading research, which is designed to develop novice readers into skilled readers spanning pre-kindergarten through 5th grade. The progression of foundational skills (for word recognition/decoding) is presented with the progression for the elements of language comprehension to illustrate how the design of instruction throughout students' development and grade levels work together to support skilled reading over time. Each bar represents an evidence-based estimate for when typical readers master these skills. These learning progressions give educators a guide to the elements of literacy they need to prioritize, including foundational skills, when sequencing their instruction to meet the needs of a broad range of learners.

Figure 8. **Foundational Skills Learning Progression**[119]



High-Quality Instructional Materials

Access to high-quality instructional materials is a key lever for supporting literacy teaching and learning, and this is especially true for teaching foundational skills. All approved materials provide explicit and systematic instruction and diagnostic support in concepts of print, letter recognition, phonemic awareness, phonics, word awareness and vocabulary development, syntax, and fluency.

A growing and compelling research base suggests that high-quality instructional materials can yield significant improvements in students' learning[120] especially when paired with high-quality professional learning that supports implementation. Given this, effective curriculum adoptions are also paired with high-quality professional learning for strong implementation.

Oregon's language arts instructional materials adoption criteria for grades K-2 and grades 3-5 include foundational skills. Additionally, to be included on the state-approved list,[121] the adopted core language arts curriculum must also include high-quality texts, text-dependent discussions and writing, building knowledge, text-dependent questions and tasks, supports and scaffolds for all learners, cultural representation, and accessibility. Every curriculum on the State Board-approved adoption list meets this minimum criterion. Any adopted instructional materials should be evaluated for culturally responsiveness and adapted or supplemented to meet the strengths and needs of the classroom community. Reviewing, adopting, and supporting the implementation of high-quality instructional materials is one of the most important jobs of education leaders.

119 Student Achievement Partners, 2020a
120 ODE, 2022b
121 ODE, 2018b

Explicit and Systematic Instruction

To learn to read, the majority of children require explicit instruction and practice with foundational reading and multiple opportunities with differentiated scaffolding to gain fluency with grade-level texts. Explicit and systematic instruction targeting foundational skills can also help prevent students from experiencing reading difficulties and mistakenly being identified as needing special education.

Structured literacy is an approach to literacy instruction that incorporates the science of reading research and employs explicit, systematic, diagnostic, and responsive teaching of the language and literacy skills needed to be a successful reader.[122] The components and methods of structured literacy instruction are beneficial for all, but critical for students with reading disabilities, including dyslexia.

> "Structured literacy describes an approach to reading, writing, speaking, and listening instruction that is explicit, systematic, and intensive. In structured literacy, teachers logically sequence the presentation and integration of language components that contribute to skilled writing and reading comprehension. Instruction directly addresses skills, follows a continuum of skill complexity, and is supported with clear models, step-by-step demonstrations, and ongoing review. Research supports the use of structured literacy to maximize the learning of all students, including English Learners, those with dyslexia, and children with other learning disabilities. If implemented in core (Tier 1) instruction and tiered interventions, structured literacy may prevent or remediate reading difficulties in the vast majority of students at risk for academic concerns."
>
> ALL Ohio, 2022

Explicit and systematic foundational skills instruction includes:[123]

- Fostering students' phonemic awareness and knowledge of letter names and sounds in early grades, including:
  - Developing awareness of the segments of sounds (phonemes) in speech and how they link to letters.
  - Teaching students to recognize and manipulate segments of sound in speech (phonemic awareness).
  - Teaching students letter–sound relationships (phonics).
  - Using word-building and other activities to link students' knowledge of phonemic awareness and its relationship to letter-sound knowledge.
- Teaching students to decode words, analyze word parts, and write and recognize words, including:
  - Looking at letters from left to right within a word, blending corresponding sounds into words using continuous blending. Instructing students in common sound–spelling patterns.
  - Recognizing common word parts.
  - Reading decodable words in isolation and text.

Note: The practice of reading discussed here is not the same in all languages, rather there are languages that are read with different directionality e.g. Arabic, Hebrew, Persian, Urdu, Kashmiri, Pashto, Uighur, Sorani Kurdish, Punjabi, Sindhi, Chinese, Vietnamese, Korean, and Japanese as well as languages that have character based systems e.g. Kanji. It is therefore important that classroom teachers work closely with the English language development teacher in their school or district to ensure that multilingual learners are provided proper language supports to ensure that they are both developing their native language (L1) as well as English.

122 International Dyslexia Association, 2020
123 Foorman, 2023.

Foundational Skills Development for Multilingual Learners

Multilingual learners' literacy outcomes, as with all learners' literacy outcomes, are directly related to the quality of evidence-based instruction they receive. The quality of instruction includes how the teacher responds to the student's linguistic strengths and needs. Effective foundational literacy instruction builds upon the student's home language and a diverse linguistic repertoire.

> "Effective approaches recognize that early literacy development is occurring in the context of first and second (or subsequent) language development and leverage the dual language development process as children are introduced to the skills and practices of literacy."
>
> Herrera et al., 2022

When designing and implementing instruction for multilingual learners, the following considerations will help foster success.

In All Languages: Start with Oral Language

Oral language proficiency and listening comprehension play a significant role throughout all stages of literacy development, increasingly so as students progress through the grades and the English-language demands of reading and writing increase.[124] When students have strong oral language skills and vocabulary in their home language, they are set up to recognize the sounds, words, and structures in another language. Multilingual learners are simultaneously developing their foundational literacy skills alongside their understanding of language. As a result, a stronger emphasis on the meaning of words in the language of instruction ensures they are able to make connections between the meaning of what they are reading and the skill of decoding words and text.[125] Additionally, multilingual learners need frequent opportunities to practice new language skills and concepts to support retention.[126]

In All Languages: Build Phonological Awareness

Research suggests that the same principles of systematic and explicit phonologically-based support that undergird instruction for English-proficient students also benefit literacy development for students learning English.[127] Phonological awareness can be supported in early childhood classrooms through activities such as listening to and creating rhymes and word and language games. While there may be differences between languages, these activities can be practiced in both the home language and English. These strategic moves are effective ways to support children in focusing on the sounds of language, which prepares them for skills such as decoding words.

> Different languages have different sets of phonemes, so it is especially important for multilingual learners to understand the similarities and differences in the two systems. "As children are introduced to the alphabet and exposed to text, the phonological distinctions between the sounds of their two languages become an essential element in preparing for foundational phonics skills and decoding in two languages."
>
> Herrera et al., 2022

124 Goldenberg et al., 2020
125 Goldenberg et al., 2020; Perfetti & Hart, 2002
126 Baker et al., 2014
127 August & Shanahan, 2010

In All Languages: Develop Wide Vocabulary

Research is clear that high-quality vocabulary development be an intentional focus throughout a multilingual student's instructional day.[128] As children are developing language, it is important that they are exposed to books and texts that provide expressive and precise vocabulary in all of their languages. When educators can help students recognize the relationship between vocabulary in the home language and English, students benefit.[129] If the linguistic transfer involves a simple concept or a one-to-one correspondence between the student's primary language, teachers may be able to help students even when the teacher may know very little of the primary language. But if the concepts are difficult or there is no clear word for the concept in the student's native language, teachers will need more extensive knowledge of the primary language to be able to help the student.[130]

KEY TAKEAWAYS

- Foundational skills in the teaching of literacy are essential.
- While oral language begins to develop naturally through incidental learning in the home and community, learning to read and write requires explicit instruction in foundational skills (print concepts, phonics, and phonemic awareness).
- Effective teaching of foundational skills requires explicit, systematic reading instruction and follows an intentional progression that:
    - moves early readers and writers along a continuum in the areas of print concepts, phonological awareness, phonics and word recognition, and fluency, and
    - provides daily opportunities to practice foundational reading and writing skills and to gain fluency with grade-level text (see Figure 8).
- Structured literacy instruction employs explicit, systematic, diagnostic, and responsive teaching of the language and literacy skills needed to be a successful reader and writer. This approach is beneficial for all, and critical for students experiencing reading disabilities, including dyslexia.
- Developing oral language, phonological awareness, and vocabulary across each language is particularly important for multilingual learners.
- Foundational skill areas are addressed in the Oregon English Language Arts and Literacy Standards for students in grades K-5.
- Reviewing, adopting, and supporting the implementation of high-quality instructional materials is one of the most important jobs of education leaders.

LEARN MORE

- English Language Arts and Literacy Standards (from ODE)
- Structured literacy instruction
- Foundational Skills to Support Reading for Understanding in Kindergarten Through 3rd Grade
- Reading 101: A Guide to Teaching Reading and Writing
- Evaluating Materials for Culturally Responsive Practices
- Reading Foundational Skills Key Concepts and Terms
- Planned Language Approach
- English Language Arts Curriculum Reviews
- Developing Foundational Reading Skills in the Early Grades

128 Baker et al., 2014
129 Herrera et al., 2022
130 Baker et al., 2014

Section 6: Writing, Reading Comprehension, Vocabulary, & Background Knowledge

Foundational skills are essential to breaking the code of written language; without the integration and connection to other literacy skills, however, they are insufficient for deep literacy learning. Despite the common refrain that children are "learning to read" in K-2 and "reading to learn" in 3-5, this framing separates building foundational skills from the application of foundational skills in ways that are misleading. The necessary relationship and sequencing of reading skills is illustrated in Figure 8.

It is true that as students increase their ability to automatically recognize letters, sounds, and words they have more access to understanding and expressing complex ideas and vocabulary. It is also true that the reciprocal relationship between foundational skills, background knowledge, vocabulary, reading comprehension, and writing is vital to a child's literacy development K-5. The reading models underscore the interdependence of foundational skills alongside writing, vocabulary development, and language.[131] Given this, reading and writing for purpose, engaging with authentic texts, building background knowledge and vocabulary, and writing are all skills that are just as "foundational" to developing literacy skills.

Engaging students in literacy learning means being clear about why reading and writing matter. Creating purpose for literacy includes engaging students in learning about themselves and their world. Equally important is spotlighting actual examples where reading, writing, listening, and speaking have empowered people toward making a positive difference in their communities and the world. When students understand and experience the ways in which literacy correlates to agency and joy, purpose takes root. Part of being an effective reader and writer is understanding the uses and purposes of text as well as the power of text to communicate, convey information, narrate, and entertain. Children become readers and writers because they experience print as useful and books as beneficial or enjoyable.[132]

131 B. Foorman, personal conversation, March 24, 2023
132 Herrera et al., 2022

"'[T]he relationship between letters and sounds is necessary and nonnegotiable when learning to read in alphabetic writing systems… Yet reading scientists, teachers and the public know that reading involves more than alphabetic skills.' Good literacy instruction teaches these skills explicitly while building on what students already know (including their culture and home language); building background knowledge about the world to support reading comprehension; and integrating reading, writing, speaking and listening to provide reinforcement for understanding."

Darling-Hammond, 2022

Text-Rich Environment and Connected Text

Students should spend a substantial portion of their day engaged in listening to, reading, thinking, talking, and writing about texts. This means that each student should read connected text (starting with relatively short phrases, then sentences, then multiple related sentences, paragraphs, and longer narratives) every day to support reading accuracy, fluency, and comprehension.[133] The amount of time students spend reading and listening to text is a major contributor to the improvement in students' vocabulary and comprehension.[134] One of the most efficient ways to learn vocabulary, in addition to receiving explicit vocabulary instruction, is to acquire it while reading. Recent research demonstrates that students learn up to four times as many words when they are reading texts about conceptually coherent topics for a period of time.[135] The selection of texts for classroom instruction will vary depending on the instructional purpose and the student's reading ability. In general, students should have access to diverse genres and wide-ranging content, including both narrative and informational texts.

"Building knowledge need not—and should not—wait until students possess some level of foundational reading skills."

ASCD, 2023a

Building Background Knowledge & Vocabulary

As described in many of the models in Section 4: Reading Models Based in Research, background knowledge and vocabulary play critical roles in students' reading and writing abilities.

Background Knowledge

There is a vast body of research that supports the role of background knowledge learned through oral language or print,[136] in students' ability to make meaning of and comprehend text.[137] Developing knowledge allows students to, for example, choose between multiple meanings of words and make inferences from a text that require background knowledge. Background knowledge is key to understanding various elements of language, such as idioms, especially for emergent multilingual students.[138] Just as high-quality instructional materials are important in developing foundational skills, they are also critical to effectively building background knowledge over time.

133 Foorman et al., 2016; Foorman, 2020
134 Wegenhart, 2015
135 Landauer & Dumais, 1997
136 ASCD, 2023a
137 Student Achievement Partners, 2015
138 Neuman et al., 2014

> "[O]nce print has been decoded into words, reading comprehension and listening comprehension requires the active construction of inferences that rely on background knowledge and are implicit in the text."
>
> Neuman et al., 2014

Designing a school day that includes a broad range of subject areas, such as science and social sciences, is important for a well-rounded education. It also enhances a student's exposure to vocabulary and content knowledge on a broad range of topics. This leads to an increased ability to understand and build knowledge through creating connections to and between new texts, having a compounding effect on students' reading comprehension.[139]

Equity Implications of Knowledge as a Critical Component of Literacy

In many classrooms, instruction and assessments can privilege those with knowledge of certain elements of a dominant culture or pattern of topics.[140] Regardless of cultural or economic background, all students enter classrooms with a wealth of knowledge that is steeped in culture and ways of being. By affirming this and acknowledging that background knowledge is not fixed, educators can extend what students already know through inquiry, careful planning, and purposeful engagement. Because background knowledge plays a pivotal role in reading comprehension, educators need to continually reflect on the question, "Whose knowledge is being privileged, and how do we ensure we are working from the background knowledge of each student and developing shared understandings?"

For multilingual learners, connecting literacy instruction to students' background knowledge is critical. Multilingual learners often encounter concepts or events in texts that are outside their cultural and life experiences, yet students can grasp many of these concepts by identifying larger themes that correlate with their own lived experiences.

Strategies for Building Knowledge

It is important that building knowledge does not result in simply having students memorize facts, but rather engaging students in activities that develop "knowledge networks" that are grouped and related in domain-specific ways for current and future learning.

139 Willingham, 2006
140 Neuman, 2019

Some strategies for building knowledge include the following:[141]

- Teach words in categories, prompting students to generate and identify patterns.
- Teach concepts and related categories through contrasts, comparisons, and analogies.
- Encourage reading and writing not only across a wide range of topics, but also widely within a focused topic, preferably aligned with student interest.
- Leverage multimedia and experiential learning to provide knowledge and word-rich learning experiences for all students.
- When selecting instructional materials, consider how the curriculum is designed to build student knowledge throughout their early grades and beyond.
- Ensure a well-rounded learning experience for students that avoids "curriculum narrowing," or teaching only a narrow set of subjects.
- Elicit and build on students' existing background knowledge to make connections and when teaching new topics or concepts.

Additional shifts in instructional practice that build knowledge are described in Table 3 below.

Table 3. **Building Knowledge & Vocabulary**[142]

Instead of This:	**Do This:**
Selecting texts based on what texts are most familiar and known to the teacher…	Ensure that the texts and topics used reflect the full range of identities in the classroom and community, serving to affirm all students' lives, languages, perspectives, and histories.
Providing multilingual learners with lower-level or simpler texts and prompts…	Make use of texts and topics where students can use and leverage knowledge from their lives and experiences. This can also be done through the use of paired texts, where knowledge is built in both languages of instruction.
Regularly reading aloud "on-level" student texts with limited opportunities to grow knowledge and vocabulary…	Select books for read-aloud that are far more complex than students can read on their own (1–3 years above what most students can read independently).
Planning read-alouds to teach isolated skills, strategies, or standards (e.g., "This week is author's purpose week…")…	Keep the text at the center of your planning. Plan standards-aligned questions, tasks, and activities that help students unpack the ideas of the text while drawing on their own funds of knowledge and many skills, strategies, and modes of co-constructing meaning.

141 Neuman et al., 2014
142 Student Achievement Partners, n.d.-a

Vocabulary

The richness of children's oral language serves as an important precursor to their active working vocabulary, generating a repertoire of academic language and translating directly to their ability to actively understand and enjoy what they read. Most vocabulary growth occurs when children encounter new words in texts or talk and activate their schema to infer the meaning of the word. The more expansive a child's vocabulary is in early grades, the easier it is for them to decode text, read with fluency, and comprehend at grade level. "Word and world knowledge are reciprocal and mutually reinforcing" and support reading comprehension.[143]

> Morphology refers to "the knowledge of meaningful word parts in a language (typically the knowledge of prefixes, suffixes, and/or roots and base words)." Knowledge of word structure and how words are formed is linked to both greater vocabulary development and stronger reading comprehension. Research has shown that in children as young as first grade, knowledge of word parts has influenced their literacy development .
>
> Massachusetts Department of Elementary and Secondary Education, 2023

Vocabulary and morphology knowledge are supported by explicit teaching in word meaning, word parts, and spelling. Current vocabulary research confirms the benefits of explicit teaching over implicit teaching in promoting vocabulary development.[144] Research also demonstrates that "teachers need to show the spellings of new vocabulary words when they discuss their meanings. Similarly, students need to stop and pronounce unfamiliar words rather than skip them during independent reading."[145]

Intentional and ambitious efforts to build vocabulary include the following strategies:[146]

- Select grade-level academic vocabulary words to teach from read-alouds of literature and informational texts and content area curricula.
- Introduce word meanings to children during reading and content area instruction using child-friendly explanations and provide opportunities for children to pronounce the new words and to see the spelling of the new words.
- Provide repeated opportunities for children to review and use new vocabulary over time, including discussing ways that new vocabulary words relate to one another and children's existing knowledge, addressing multiple meanings or nuanced meanings of a word across different contexts, and encouraging children to use new words in meaningful contexts (e.g., discussion of texts, discussions of content area learning, semantic maps).
- Encourage talk among children, particularly during content area learning and during discussions in response to a text or new learning.
- Teach morphology (i.e., the meaning of word parts).

> "Instructional implications are that teachers should include written words as part of vocabulary instruction and that students should pronounce spellings as well as determine meanings when they encounter new vocabulary words… Students who see the spellings of words actually learn the meanings of the words more easily — orthographic knowledge benefits vocabulary learning."
>
> Rosenthal & Ehri, 2008

143 ASCD, 2023b
144 Butler et al., 2010
145 Ehri & Rosenthal, 2007
146 Michigan Association of Intermediate School Administrators General Education Leadership Network Early Literacy Task Force, 2016

Reading Comprehension

Reading comprehension describes the process of constructing meaning through interaction with a text to understand what an author has stated, explicitly or implicitly. This interaction and meaning-making also draws on what the reader brings to the text, including their background knowledge, abilities, and experiences.[147] The comprehension of written language (i.e., reading comprehension) requires that the components of language and components of the alphabetic principle be activated along with background knowledge, executive function, and motivation.[148] Comprehension and knowledge building should work synergistically with foundational skills learning (see Figure 8). The following strategies come from the Institute of Educational Science practice guides.[149]

Teach students how to use reading comprehension strategies. Examples of effective reading comprehension strategies include activating prior knowledge, questioning, visualizing, monitoring, clarifying, drawing inferences, and summarizing. When teaching comprehension strategies, do not overfocus on or teach the strategy in isolation; stay text-focused and ensure that the purpose of strategy instruction is for a deeper understanding of a complex text. When engaging in a text together, the teacher can model and explain when, how, and why to implement a particular strategy to help with understanding, and then they can guide students through practice until students learn to use the strategies themselves.[150]

Teach students to identify and use the text's organizational structure to comprehend, learn, and remember content. Reading research indicates that being able to identify and use text structures can be an important skill in comprehending text. For example, the RAND Reading Study Group[151] concluded that text structure is an important factor in fostering comprehension. Students who are aware of text structure organize the text as they read, and they recognize and retain the important information the text reveals.

Simply put, text structure refers to the characteristics of written material and the way that ideas are constructed and organized. In other words, text structure is the arrangement of ideas and relationships among the ideas. Text structure organization exists in both narrative and expository structures. Oregon's K-12 English Language Arts and Literacy Standards call for equal attention to fiction and nonfiction text; therefore, it is critical that students learn to recognize and use strategies for both types of texts. Many students start school with an awareness of narrative text structures, but fewer students have an awareness of expository text structure. This is due, in part, to the fact that most of the reading that parents and early childhood teachers do with their preschool children is from storybooks.

Most students enter school with a basic understanding of narrative structure, although some students with less exposure to storybooks may need to be taught this structure directly. Narrative text follows a singular general structural pattern, often referred to as story grammar. This often includes the elements of setting and main character, an initiating event and reaction, solution attempts, the outcome of these attempts, and the ending reaction.

147 Shanahan et al., 2010
148 Foorman, 2023
149 Foorman et al., 2016; Graham et al., 2012
150 Shanahan, 2018
151 Snow, 2002, p. 40

When teaching expository text structure, many researchers reference five primary text structures, including[152]:

- **Collection:** The author lists items or events in some manner. A listing becomes more organized when it is sequenced by time of occurrence.
- **Description:** The author provides information about a certain topic, e.g., attributes, characteristics, etc.
- **Causation (Cause/Effect):** The author delineates one or more causes and then describes the ensuing effects.
- **Problem/Solution:** The author poses some type of problem or question and then generates the answer.
- **Compare/Contrast:** The author compares and contrasts two or more similar events, topics or objects.

Although this classification system makes distinctions between these five different types of text structures, in reality, most texts include a mixture of these structures. The rationale behind teaching text structure is that by teaching students to recognize common patterns within different types of structures, they will be better able to identify the macrostructure formation or gist of the text including main ideas and how these ideas fit together which, in the end, will result in improved comprehension.

Guide students through focused, high-quality discussions on the meaning of text. Research shows that teachers should give students ample opportunities to respond to higher-order questions that require them to reflect on the text and engage in discussions with peers.[153] Reading comprehension improves when teachers ask students follow-up questions and encourage students to refer back to the text. Authentic classroom discussion allows students to share and expand their thinking and use language in new ways. Specifically, discussions about texts provide opportunities for students to collaboratively build knowledge that supports their literacy development and strengthens their reading and writing skills. Multilingual students especially benefit when they are able to have these discussions in multiple languages. Students' overall reading development is supported when they have opportunities to respond to texts both verbally and in writing.[154]

Select complex and diverse texts purposefully to support comprehension development. Reading comprehension should be taught using multiple genres of texts that reflect and positively affirm the lives, languages, perspectives, and histories of the students in the classroom and all members of society. All students should have ample opportunities to read and/or listen to complex texts that provide an appropriate level of rigor, align with grade-level standards, and support the purpose of instruction. For instance, the complex texts selected should represent a range of narrative and informational genres to support students' development of knowledge and vocabulary.[155] Providing students access to complex texts through independent and shared reading experiences generates opportunities to stretch their literacy skills while simultaneously building their world knowledge and vocabulary. Research also recommends utilizing complex texts that integrate other disciplines to support the balance of skills-based and knowledge-based competencies in early literacy instruction.[156]

Establish an engaging and motivating context to teach reading comprehension. Motivation and engagement play an important role in reading comprehension. The following teaching practices can support student motivation: making literacy experiences more relevant to students' interests, everyday lives, or important current events; providing a positive learning environment that promotes student choice and autonomy in learning; acknowledging and affirming student success (self-efficacy); encouraging collaboration with peers; and planning thematic units that draw connections between content areas. Teachers spark students' interests by choosing texts with themes that are relevant and engaging.

152 Meyer & Freedle, 1984
153 Murphy et al., 2009
154 Graham & Hebert, 2011; Wegenhart, 2015
155 Wegenhart, 2015
156 Shanahan et al., 2010

Writing

Good writers are good readers. Writing gives voice to children's inner thoughts, lived experience, and creative imagination and allows a way for them to be expressed and shared with the world. As a form of communication, writing can transcend time and is a way to pass stories from generation to generation. Writing is an essential component of children's learning, not only for the value it has for literacy development, but for the value it has as a medium for expression, discovery, and creativity. Writing nourishes the human spirit.

> "Children want to write. They want to write the first day they attend school. This is no accident. Before they went to school, they marked up walls, pavements, newspapers with crayons, chalk, pens or pencils…anything that makes a mark. The child's marks say, 'I am.'"
>
> Graves, 1983

Writing focuses students on phonics, comprehension, mechanics, developing voice or perspective, word choice, and communicating a perspective to others. Through writing, they learn more about the alphabetic principle and they also discover their writer's voice and learn to articulate their ideas, their opinions, and their feelings. Writing accelerates language and reading skills, and serves as a catalyst for students to solidify foundational skills and as a creative outlet for them to emulate story and text structure. Schools can deepen literacy learning by providing high-quality, standards-aligned[157] explicit instruction in writing throughout the school day, both integrated into content learning through disciplinary literacy practices and as its own discrete instructional time.

Writing and Reading as Reciprocal, Complementary Processes

Writing and reading are reciprocal practices that mutually reinforce a student's literacy learning.[158] Reading pulls words and ideas off a page to give them meaning; writing moves ideas, arguments, and dreams from the writer's heart and mind onto the page, to be shared with others. Reading is a receptive domain of literacy, while writing is the expressive or productive domain of literacy. Because reading and writing in English both require knowledge and familiarity with the alphabetic orthography of the language, it is not surprising that these two fundamental literacy skills are closely related. Table 4 includes examples of the similarity in how students process various information when writing and reading.

Table 4. **Common Ground Between Writing and Reading**

Strategic Processing	Writer	Reader
Searching for meaning	Generates ideas with an audience in mind	Uses print to construct meaning
Monitoring for meaning	Checks that the message makes sense	Checks that the message makes sense
Searching for structure	Anticipates the order of words based on how book language and oral language sound	Groups words together in phrases to represent the intended message

157 ODE, 2019
158 Sedita, 2019

Strategic Processing	Writer	Reader
Monitoring for structure	Checks the order of words supporting the intended message	Re-reads (out loud or holding the message in the mind) to check that the word order communicates the intended message
Searching for graphophonic information	Uses knowledge of how letters, words, and print work to record the message	Seeks out graphophonic input from print in relation to meaning and structure
Monitoring for graphophonic information	Checks and detects any discrepancies between anticipated message and graphophonic input	Checks and detects that the print represents the message
Self-correcting	Detects and corrects	Detects and corrects

Explicit instruction in writing is needed in addition to explicit instruction in reading, because although these language tasks may rely on similar processes, they are nonetheless independent skills that require students to apply their knowledge of the grapho-phonemic code, spelling, and other elements of reading.

The connection between reading and writing is also evident in the Oregon English Language Arts and Literacy Standards[159] for students in grades K-5.

Writing Skills

Writing skills can also be thought of in two interrelated groups, transcription and translation:[160]

Transcription (handwriting, spelling, conventions, keyboarding): Transcription is the process of transferring one's thoughts and ideas into words and putting those words on paper or typing them on a keyboard. Transcription skills include letter formation, handwriting and keyboarding fluency, spelling, and conventions, including punctuation and capitalization. These skills are the technical foundation of written composition. Students need explicit instruction in these skills and time to process them and develop and apply the skills for meaning. Spelling in English relies on attaching sounds to letters, breaking words into syllables, and attending to the parts of words that have meaning, such as roots, prefixes, and suffixes. Automaticity of transcription can accelerate written expression and increase both the length and quality of written work. Students who struggle with transcription skills may have difficulty expressing their ideas in writing.

Translation (grammar, sentence structure, writing process, text structure): Translation involves generating and organizing ideas into written words, phrases, sentences, and paragraphs. It focuses more on the process of writing, which includes planning, drafting, revising, and editing. Translating can be taxing for beginning writers, so direct instruction and time to practice are important for writing success. Students who have not mastered transcription skills might require greater teacher support throughout the planning process. Supports can include providing writing prompts, modeling translation behaviors, and providing sentence stems and paragraph frames along with graphic organizers. For students to achieve full mastery of writing, educators provide instruction across various genres (narrative, informative/explanatory, and opinion), with an explicit focus on the different text structures and sentence composition qualities of each genre.

159 ODE, 2019
160 Michigan Department of Education, 2021

Spelling

As with all literacy skill-building, each student has their own unique needs. Spelling reinforces other literacy learning. Learning the rules of spelling can help students understand phonics, orthography, morphology, and vocabulary.[161] Many of the same rules apply to reading as to spelling.[162] While English may seem to be less patterned than some languages, most word spelling can be accounted for by meaning, language of origin, part of speech, and sound-spelling combinations.[163] Students benefit from explicit instruction in the rules of spelling, so that they need not rely on memorization alone to be successful spellers. While most basal instructional materials include spelling words, these words will not necessarily meet the needs of all students. Rather, it is recommended that teachers find differentiated materials in order to engage in developmentally appropriate spelling instruction.[164]

Some research-based recommendations for teaching spelling include:[165]

- Establishing weekly routines for spelling instruction.
- Giving students ample opportunities to practice words and providing immediate feedback.
- Creating explicit connections between word knowledge and content learning.
- Providing students opportunities to generalize their spelling skills to writing.

Instructional Design for Teaching Writing

Four evidence-based recommendations for writing instruction follow:[166]

- **Provide time daily for students to write, including time for explicit instruction in writing skills.** This writing instruction should be appropriate to the students' grade level and can be embedded within other content areas of instruction through disciplinary literacy practices, such as science report writing, historical fiction as part of social science, or describing the process used to solve a math problem. School leaders and classroom teachers must ensure that sufficient time is dedicated each day for both writing instruction and student writing practice, with writing occurring across the curriculum. Instructional time at the elementary level should focus on increasing fluency in foundational skills including spelling and handwriting. However, instruction should not focus exclusively on the mechanics of writing; rather, it should also teach higher-level writing skills such as strategies for planning, writing, and revising text as well as other grade-specific standards.
- **Teach students to use the writing process for a variety of purposes** and to understand that planning and specific strategies help writing meet its goals.
    - **Writing strategies.** Although an informal instructional approach may be all the support some students need, many other students need explicit and scaffolded instruction from the teacher in order to become proficient writers. Teachers can develop a plan for the explicit instruction of writing strategies across the grades and within grades in order to address students' immediate growth opportunities. Strategy-based instruction has been shown to have a substantial effect on the quality of students' writing. Writing strategies can range from strategies for brainstorming and revising to strategies designed to develop writing-specific genres such as personal narratives, persuasive essays, or research reports. The ultimate goal of strategy development is for students to achieve automaticity in using these strategies independently. These strategies will, in essence, become the "invisible knowledge" that students carry in their heads while engaging in writing tasks.

161 Institute for Multi-Sensory Education (IMSE) Journal, 2020
162 Moats, n.d.
163 Moats, n.d.
164 Schlagal, 2007
165 Troia & Graham, 2003
166 Graham et al., 2012

    - **Diverse genres of writing.** Introduce students to multiple genres of writing beginning in the early elementary grades alongside a discussion about the different purposes those genres can accomplish. The practice of reading a variety of books to young children has been shown to support their beginning acquisition of genre knowledge, and, as genre knowledge grows, so do children's abilities to apply that knowledge to their own writing.[167]

- **Teach students to become fluent with handwriting, spelling, sentence construction, and typing.** Effortless proficiency in basic writing skills allows students to focus on organizing their thoughts and exploring deeper meaning making; elementary school is the time when students develop these essential skills. Many students who struggle with handwriting may also struggle with automatic keyboarding. Teachers should therefore provide explicit instruction in both handwriting and keyboarding.
- **Create an engaged community of writers.** Students who see themselves *as* writers feel greater motivation to apply the skills and internalize the writing process. Student learning is helped by sharing their written work with an authentic audience, seeing their words in print, collaborating on writing projects, and learning to give and receive feedback about writing.

KEY TAKEAWAYS

- Foundational skills are essential to breaking the code of reading; however, they are insufficient for deep literacy learning without the integration and connection to other literacy skills.
- As students master foundational skills, instructional time shifts toward the development of other literacy skills as students begin to use texts to learn content.
- Building background knowledge should be enacted in culturally responsive ways by asking questions like, "Whose knowledge is being privileged?" then ensuring multiple perspectives are included.
- Building vocabulary ensures students are able to make meaning of the words and comprehend the text they are reading.
- Building and expanding students' background knowledge allows them to comprehend the words they are reading as they develop foundational skills.
- Writing practice helps students solidify and make sense of foundational skills, allows them a creative outlet to emulate story and text structure, and creates opportunities to connect in meaningful ways with the world around them.
- Reading comprehension and writing instruction permeates all grades.

LEARN MORE

- Core (TIER 1) Instructional Strategies to Improve K-4 Reading Comprehension
- Early Literacy Development
- Self-Regulated Strategy Development
- Looking to Research for Literacy Success
- Promoting Preschool Writing
- Teaching Elementary School Students to Be Effective Writers
- Comprehension Research and Resources
- Importance of Writing Instruction

167 Donovan & Smolkin, 2006

Section 7: Core Instruction & Assessment

Core instruction is the highest-leverage investment for improving early literacy. Whether a teacher is using whole group instruction, differentiated small group instruction, guided instruction, or providing independent practice, the core literacy block provides critical access to standards-aligned learning experiences. Additionally, the use of high-quality instructional materials provides a common foundation for schools to align their curriculum to standards and collaborate on any needed adjustments or supplementary materials. When schools design professional learning systems that provide educators with opportunities to reflect on lesson design and examine instructional practices, literacy instruction is strengthened, and students benefit.[168] Consistent access to core instruction, which includes exposure to grade-level text, tasks, and talk, is a key equity lever for children learning to read and write.

Supporting Students in Accessing Core Instruction

All students should receive core instruction that is differentiated to address individual needs. While some students will have their needs met through core instruction alone, others may need the additional support provided through supplemental, targeted, skill-based small group instruction in addition to the core (core + more).

In order to reach and respond to the learning needs of each student, educators need to know what those needs are. It is through assessment that educators gain this knowledge and are therefore able to tailor the instructional experience. When instruction matches where students are in their learning and is provided in an inclusive, culturally and linguistically responsive, and identity-affirming context, it creates an optimal learning environment. Additional support and interventions may be needed to build upon core instruction to support individual student needs.

168 Gates Foundation, 2017

Core + More

Equitable access to core instruction necessitates that all educators understand the elements of instructional design. Educators need to know and understand how reading develops, how to align instruction to grade-level standards, how to identify where each student is on the learning progression, and how to effectively use differentiated practices and tiered instructional supports to move students forward in their literacy learning.

It is important to ensure coherence in high-quality instructional materials, strategies, language of instruction, and routines across the support continuum to avoid "curricular chaos" and to create a connected literacy learning experience for students. Instruction at all levels should be explicit and systematic, provided by highly-qualified educators, and focused on leveraging students' strengths while addressing their needs.

IS CORE+MORE REALLY TALKING ABOUT MULTI-TIERED SYSTEM OF SUPPORT (MTSS)?

The phrase Core+More captures the central purpose of MTSS as an organizing framework designed to responsively meet the strengths and needs of all students. It highlights the importance of every student receiving strong core instruction while also providing specific, targeted skill instruction as needed. Core+More describes the data-informed intensification of instruction that happens within a multi-tiered system of support.

"MTSS is a framework for how school districts can build the necessary systems to ensure that each and every student receives a high quality educational experience. It is designed to support schools with proactively identifying and addressing the strengths and needs of all students by optimizing data-driven decision-making, progress monitoring, and the use of evidence-based supports and strategies with increasing intensity to sustain student growth."[169]

Starting planning from the vantage point of how individuals learn makes instruction more effective for all. Application of the Universal Design for Learning Guidelines[170] is especially helpful in this, as they prompt educators to consider engagement, representation, action, and expression when designing instruction. High-quality core literacy instruction for all students can be supplemented and extended to support individual needs through differentiation and small-group instruction.

When core instruction and targeted, strategic support is insufficient to meet a student's individual needs, then more intensified and individualized support (core + more + more), based on progress and patterns of response, is needed. All instructional support for students with reading and writing difficulties should be provided in addition to high-quality core literacy instruction. An effective tiered instructional support plan will ensure that the right instruction is delivered with the right level of intensity and duration to the right students at the right time.

The National Center on Intensive Intervention Tools Chart provides information about published intervention programs that can aid in a district's design of a continuum of academic supports. The Florida Center on Reading Research's Student Center Activities[171] are sets of discrete low-resource activities that students can complete independently or in small groups, organized along the progression of foundational reading skills. These activities may be used to supplement core instruction in areas where student differentiation needs are not matching offerings within the district's curriculum.

169 DESE, 2020
170 CAST, 2018
171 Florida Center for Reading Research (FCRR), 2021

Assessment as an Accelerant for Learning and Prevention

The term "assessment" comes from the Latin term assidere, which means to "sit beside." It draws a picture of a child and teacher, connected through a relationship and focused on helping the child identify their strengths and their next learning steps. When assessing students, educators have the opportunity to uplift a child's sense of self and agency as a learner by highlighting what they can do well and what they are ready to learn next. The relationships between educator and student are nurtured through honoring the knowledge students bring from their own lived experiences and cultures, their home language, and interests. Assessment in its purest form serves to accelerate student learning, contribute to student efficacy and engagement, identify areas for further support, and deepen the relationship between teacher and learner.

Assessment Guiding Principles:[172] These overarching principles situate assessment practice within a larger set of values to ensure maximum access and learning opportunity for children.

- Assessments should be used to determine how to bring students into grade-level instruction, not whether to bring them into it.
- The formative assessment process is the strongest tool to support and accelerate learning and growth.
- Targeted checks using curriculum-based assessments will support instruction; use of diagnostic assessments and/or formative practices are essential.
- All assessments should be given within a larger context that supports students' social, physical, and emotional wellbeing, honors relationships, and uses culturally responsive practices.

Both general education teachers and specialists use assessment data to learn about student needs and offer increasing levels of support through differentiated core instruction within the general education setting. Progress monitoring data gathered through curriculum-based measures and other formative and interim assessment tools help general education teachers and specialists plan and adjust instruction.

ASSESSMENT AND MULTILINGUAL LEARNERS

Multilingual learners need effective and appropriate assessment and instruction. Lacking this, they risk becoming long-term English learners who suffer diminished opportunities to learn and fall so far behind their English-speaking peers that it is difficult for them to catch up and graduate high school. Literacy assessments that are designed for bilingual learners and responsive to their native language are desperately needed to promote effective literacy instruction for dual language learners and English learners to avoid the over or under-identification of multilingual learners for special education.

Adapted from Escamilla et al., 2022

Formal tests are designed for a specific purpose. It is important to consider the responsible uses described in Table 5; when used in other ways, these test results—especially the foundational skills screeners—could lead to inappropriate groupings that remove learning opportunities. Additionally, all tests include error, and no score should be deemed objectively true. When multiple methods are used for their intended purpose, the data can help educators understand where students are in the learning process overall and can identify the next instructional moves.

172 Adapted from Michigan Department of Education, n.d.

Formative Assessment Practices

Formative assessment information is immediately useful for instructional decision-making and provides important depth when interpreting test data. The cloth of effective early literacy instruction is woven with the threads of the formative assessment process.[173] Formative assessment is a planned process to elicit evidence of student learning in order to improve student understanding of the intended learning outcomes. Formative assessment is a process of collecting and responding. The information gained about student learning is used in the course of instruction to respond to and adjust instruction. In addition, formative assessment practices support students to become more self-directed learners.[174]

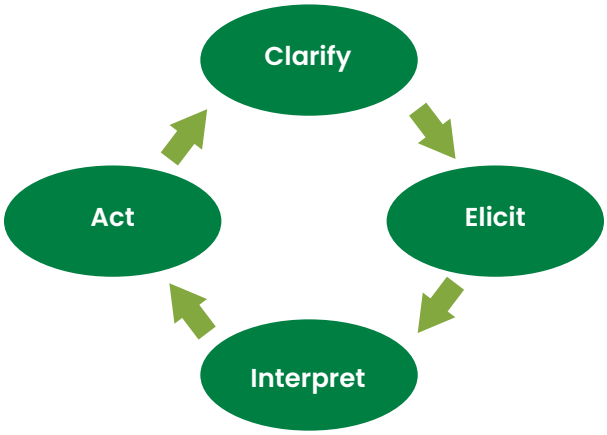
Formative assessment answers the questions:

- "Where are we going as students and teachers?"
- "Where are we now?"
- "How do we get to the learning target?"

The fundamental principles of the definition provided above is that formative assessment:

- is a planned, ongoing process
- occurs during teaching and learning
- intended to elicit and use evidence of student learning
- focused on disciplinary learning
- supports students becoming more self-directed learners

Figure 9. **Formative Assessment Process**



This planned, ongoing formative assessment process starts with **clarify**ing learning expectations, then **elicit**ing evidence of learning and **interpret**ing that evidence in order to understand the status of the student's learning. Based on this information, the educator and student can then make an informed decision about the next learning experience for the student (**act**). In early literacy instruction, this may look like showing a student how to shape their tongue to make a "t" sound and pressing the tongue against the front teeth, asking the student to show the teacher what that looks like, then asking the student to make the "t" sound and discussing how close to success they got.

Examples of formative assessment in practice:

- Journals or learning logs to show growth over time in a portfolio
- Academic conversations to explain new learning
- Graphic organizers to structure note-taking
- Student-teacher conference or small group discussions to recount learning

173 Smarter Balanced, 2022
174 Formative Assessment for Students and Teachers (FAST) State Collaborative on Assessment and Student Standards (SCASS), 2018

- Exit slips to show "I think..", "I wonder...", "I still want to know..."
- Fill-in-the-blank or "cloze" activity using sentence frames
- Reciprocal teaching
- Recording student language through technology
- Drawing or role playing
- Gallery walk of student work where students give each other feedback on stickies
- Word or concept sorts based on unit themes or student-created categories
- One word or one phrase response using whiteboards
- Self-checklist or peer-checklist
- Label or sequence visuals like pictures, photos or realia (real life objects)
- Student-generated questions for peers

Formative assessment practices rely on multiple feedback loops, including conversations between learners and their teachers. Providing and accepting feedback is most effective when conducted with an asset-based approach, as students who are on the edge of their learning need to know that they are capable of reaching the next level in their learning progression. When providing effective corrective feedback, educators communicate that they are holding the learner to high standards because they believe the student is capable and can meet those standards. They also provide the student with specific actionable steps to work on. This type of asset-based and actionable feedback is an effective strategy for all student learning, and especially important for students who have been historically underserved.[175]

ASSET-BASED FEEDBACK PROTOCOL[176]

1. Begin with rapport building check-in. Take time to connect.
2. State explicitly the purpose of your meeting and affirming your belief in the student's capacity as a learner. Provide evidence by citing progress and growth in other areas.
3. Validate the student's ability to master the learning target while acknowledging high demands of the task. Analyze the task together, identifying the easy and hard parts.
4. Deliver feedback that is specific, actionable, and timely. Restate what the final goal is and what mastery looks like and then show them where they are in relation to the goal.
5. Create space for them to react to what they heard and how they feel about it.
6. Provide specific actions to take to improve, and ways to track their progress.
7. Ask the student to paraphrase what they heard you say- what is wrong, what needs to be fixed, and how to go about fixing it.
8. Offer emotional encouragement and restate your belief in them. Do not skip this part.
9. Set up a time to follow-up and check progress.

The Formative Assessment Rubrics, Reflection, and Observation Tools to Support Professional Reflection on Practice is a peer assessment resource that educators can use to support one another in developing robust early literacy formative assessment practices in the classroom.

175 Cohen et al., 1999
176 Adapted from Hammond, 2014

Early Literacy Tests

Some tests are helpful for seeing how learning is progressing and finding out where to get curious about specific student needs. For example, this could include recording student oral reading skills and noting errors in a reading passage then tracking progress over several weeks. State and district summative tests, by contrast, show how well systems are meeting the needs of groups of students and can be used to identify patterns that speak to inequities and places where additional evidence and inquiry is needed. Norm-referenced tests compare a student to others; criterion-referenced tests compare a student to domain proficiency; and, individual, or ipsative assessment compares a student to their previous performance. Table 5 provides information about these different kinds of tests and purposes.

The Evidence-based Assessments in the Science of Reading Cheat Sheet speaks to the how, why, what, and when of early literacy assessments, as well as providing an analogy and example of each. In many ways, this "cheat sheet" effectively summarizes Table 5.

Table 5. **Applied Purposes and Uses of Common Early Literacy Tests**

Applied Purpose	Descriptions and Responsible Use
Universal Screening	**Description:** Help determine where to be curious and find out more about where student learning needs acceleration through diagnostic evaluation processes. Relatively fast and efficient to administer. These screenings may occur early in the year, mid-year, and at the end of year. **Responsible Use:** Most impactful when teachers observe or conduct the screening process and document specific areas of strength and identify those early literacy skills that need more attention by watching what students are able to do and where their learning edges are during testing. Universal screeners do not encompass the full breadth of English Language Arts standards; therefore, they should not be used as the *only* tool for placing students into reading-level groups or for determining program eligibility.
Diagnostic	**Description:** Informal or formal. Designed to assess specific skills or components of reading, such as phonemic awareness, phonics, fluency, comprehension, and vocabulary, that individual students may need more support with. Results inform core instruction and possible opportunities for support. **Responsible Use:** Identify specific skill areas that a student needs to master in order to expand further learning opportunities. *Used sparingly and intentionally. Few students need this kind of in-depth reading test, so use should be rare.*
Progress Monitoring	**Description:** Short, targeted assessment approaches that are aligned to a specific skill and can be given at regular intervals to track student change over time. **Responsible Use:** Reviewing a student's progress toward acquiring specific, discrete skills taught. Best when used efficiently and in combination with other sources of information to help guide instruction.

Applied Purpose	Descriptions and Responsible Use
Interim	**Description:** Periodically administered tests that target specific chunks of content, typically a unit or related set of units. This includes approaches that some educators call "classroom summative" tests, which come at the end of a unit or term, as they are within-school-year practices. What educators in Oregon often refer to as "Common Formative Assessments" are actually interim tests (formative assessment is a process, not a test). **Responsible Use:** The most effective tests can be used by students and educators alike, and are best used as tools to determine how well students responded to the instruction they just experienced. Interim tests are best used as tools in the hands of teachers, informing how well students are learning what is being taught periodically throughout the year.
State Summative	**Description:** Oregon's summative English language arts test blueprints include multiple standards: reading (40% of items), writing (40% of items), research (10%), and listening (10% of items). The test scores are thus indicative not just of reading, but of literacy. Oregon's state English language arts summative tests are criterion-referenced tests that do not assess foundational skills in literacy; they generally focus on comprehension and writing of grade-level text. State summative tests are designed to sample all grade-level standards in their full depth, breadth, and complexity within a specific content area or domain, providing evidence of how well curriculum and instruction have been designed to meet the reading, writing, research, and listening learning needs of all student groups annually as part of program evaluation. **Responsible Uses:** Program evaluation, longitudinal review of trends for student groups, identification of where to invest resources. State summative test results should not be used to set goals for teacher evaluation or to make high-stakes student decisions (e.g., course placement, Talented and Gifted identification, etc.).

Coherent, Comprehensive, & Continuous Assessment Systems

Strong assessment systems tend to the 3Cs of effective assessment: coherent, comprehensive, and continuous.[177]

- **Coherent:** All aspects of early literacy assessment and instruction align with Oregon's language arts standards. The assessment system provides clear information about learning, so educator instructional practices align with what students need to learn next.
- **Comprehensive:** The approach taken to early literacy assessment provides multiple types of tests (universal screening, diagnostics, progress monitoring, interim tests, and summative tests) and is rooted in robust formative assessment practices. Informed decisions can be made in the moment, periodically throughout the year, and annually to drive improvement of literacy curriculum and instruction.
- **Continuous:** Early literacy assessment allows for assessment practices that drive the collection and review of the evidence of reading and writing learning that connects to prior learning and identifies the next steps across the school year.

177 Marion et al., 2019

When the 3Cs are in place, the basic conditions are established for educators to use data and evidence from multiple sources to improve practice and make informed decisions about student learning. When clear alignment to the full depth, breadth, and complexity of standards is present across assessment practices, coherent responses to test data are feasible.

Leadership helps to create the conditions for classroom educators to be successful and reflective about their literacy instruction by 1) providing data review protocols and protocols for observing practice and reflecting and 2) creating time for grade-level data teams to meet and discuss both data and practice. In addition, another important condition is creating a data culture where unequal test results are seen as evidence of unequal learning experiences. In such a context, data sparks a determination to identify ways to improve the systems meant to serve students.[178]

KEY TAKEAWAYS

- Guaranteed access to quality core instruction matters; consistent, uninterrupted access to core instruction, inclusive of exposure to grade-level text, tasks, and talk is a core equity issue for children learning to read and write.
- It is important to ensure coherence in high-quality instructional materials, strategies, language of instruction, and routines across the support continuum to create a connected literacy learning experience for students.
- The formative assessment process is the strongest tool to support and accelerate learning and growth.
- To design effective literacy instruction for all students, educators need skill and understanding in several key areas: how reading develops, how to align instruction to grade-level standards, how to identify where each student is on the learning progression, and how to effectively use differentiated practices and tiered instructional supports to move all students forward in their literacy learning.
- All instructional support for students with reading and writing difficulties should be provided in addition to high-quality core literacy instruction.
- It is important to ensure coherence in high-quality instructional materials, strategies, and routines across the support continuum to create a connected literacy learning experience for students.
- It is through assessing student learning on multiple occasions using multiple methods that a true picture of student strengths and their learning edges are revealed.
- At their best, formative assessment practices and literacy tests can help learners understand where they are in the learning process and identify their next moves in reading and writing.

LEARN MORE

- Formative Assessment Resources
- Limitations of Norm-Referenced Tests
  - Training Materials
- Culturally Sensitive, Relevant, Responsive, and Sustaining Assessment
- Anti-Racist Assessment Practices

178 Cole, 2008

Section 8: Reaching All Learners

All students deserve to actively engage in literacy learning. This gives them the power to shape ideas through acts of reading, writing, speaking, and listening. In many ways this framework serves as a resource for the instructional core, or Tier 1, instruction. In this section, however, thoughtful adaptation for literacy instruction that meets the strengths and needs of all students is explored.

With appropriate support, careful planning, and adult mindsets that are asset-based, students can fully engage in the general education classroom during core literacy instruction. Successful adaptation may include: sheltering instruction, adapting materials, previewing learning, personalizing learning goals, peer tutoring, compacting curriculum, and co-teaching. Reaching all learners requires understanding and applying the ideas described in previous sections, while also adjusting and considering the unique strengths and needs of each student.

All students have the right to learn something new every day, whether they are in regular classrooms or in special education, language acquisition, or gifted programs. And every student will benefit from being pulled up to go beyond the curriculum at times.[179]

Supporting Multilingual Learners

Every student, whether they communicate in one language or multiple languages, is a language learner. From this lens, the inherent commonality around language learning helps to ensure that students who are navigating the world through more than one language are affirmed in the additional cognitive and socio-linguistic lift they navigate daily. When children are honored as multilingual learners and provided opportunities to build from their linguistic assets, it contributes to literacy growth, motivation, and efficacy.

179 Tomlinson et al., 2003

Oregon's Early Literacy Framework is primarily written from the lens of developing literacy for multilingual learners within an English instructional model. While best practice for supporting multilingual learners' literacy development is to build upon their linguistic repertoire through multilingual instructional programs such as dual language education, the majority of multilingual learners in Oregon currently learn to read in monolingual English settings. Wherever possible, best practices for multilingual learners participating in dual language education with biliteracy as the intended outcome is incorporated throughout the framework.

Multilingual learners deserve comprehensive literacy instruction alongside their monolingual peers, with the full guarantee of daily core instruction as an essential driver for literacy learning. The pervasive and misguided belief that multilingual learners must first demonstrate grade-level English proficiency before they can access grade-level work or text often results in multilingual learners being pulled out of core literacy instruction or assigned less rigorous tasks that reduce cognitive demand. This, in turn, creates less access to essential content and language-rich exposure, creating lasting impacts and long-term consequences for students' self-efficacy and literacy proficiency.[180] The cumulative effect of limiting exposure to content and language-rich learning experiences for multilingual learners has deleterious and far-reaching effects. While additional explicit instruction might be needed for students to gain literacy proficiency, interventions or English Language Development support should not come at the expense of students' access and exposure to quality, grade-level literacy learning. All students need opportunities to participate in challenging academic work that promotes deep disciplinary knowledge and encourages higher order thinking skills.[181]

Multilingual Learners in Monolingual English Settings

The majority of multilingual learners in Oregon are developing literacy in English instructional programs, as opportunities for dual immersion, native language learning, and/or bilingual programming have yet to be realized statewide. For multilingual learners in an English-only instructional context, language and literacy development must happen throughout the instructional day with continued and sustained opportunities to practice language across domains.

Comprehensive literacy instruction, inclusive of the following essential practices, supports multilingual learners in a monolingual English setting to develop proficiency in reading, writing, speaking, and listening. The same components that accelerate and support language and literacy development for multilingual learners benefit all students' language and content learning.[182] Simply put, instructional practices that support multilingual learners also support monolingual English speakers. These include but are not limited to:[183]

- Developing literacy within a comprehensive approach that includes language development, teaching foundational skills in context, and the integration of meaning-making across content areas.
- Strengthening oral language development through explicit connections to reading and writing instruction.
- Placing emphasis on comprehension as the primary goal of reading.
- Attending to the close relationship between reading, writing, listening, and speaking.
- Building upon and affirming students' home language and cultural practices.
- Providing sheltered instruction to build on students' background knowledge while leveraging comprehensible input as a core instructional strategy.

180 García & Kleifgen, 2018
181 García & Kleifgen, 2018
182 Escamilla et al., 2022
183 From Escamilla et al., 2022

- Recognizing that sociocultural factors play a major role in students' learning and promoting an asset-oriented school and classroom climate is essential to supporting literacy development.
- Encouraging families to continue literacy development in their home language through read-alouds and oral conversations.[184]

Building strong foundational reading skills in language comprehension and word recognition is important, but insufficient, for multilingual students' overall reading and literacy development.[185] Therefore, when designing literacy instruction to support multilingual learners, students' literacy skills and language development need to be supported. To more successfully facilitate English literacy acquisition for multilingual learners, effective literacy instruction emphasizes explicit teaching of both oracy and literacy.[186] Intentionally designing English literacy instruction to support multilingual learners includes a focus on linguistic transfer, including cognates; explicit instruction about phonemes that are not present within a student's home language; and incorporating students' home language(s) when possible through paired readings.[187]

Lastly, while multilingual learners in monolingual settings benefit from foundational skills that are taught and reinforced in the context of the core literacy block, it is not appropriate for foundational skill practice to comprise the entirety of English language development. Multilingual students benefit most from cognitively demanding context-embedded English language development instruction designed to develop vocabulary, scaffold discourse, build and reinforce reading and writing skills, and hone oral language skills.[188] English language development instruction should be intentionally aligned to English Language Proficiency standards[189] while taking into account each student's English language proficiency in order to design learning experiences that are within their zone of proximal development.

Multilingual Learners In Bilingual/Dual Immersion Settings

To recognize and build from the assets of multilingualism, understanding multilingual learners' lived experiences, how they learn, and how they acquire English is essential.[190] Literacy development for students with two or more languages is distinctly different from the literacy development of monolingual students. "The degree to which the dual language brain is leveraged or ignored spells a major difference between effective and ineffective/exclusionary literacy instruction for dual language learners."[191]

Multilingual learners who participate in dual language programs simultaneously develop literacy skills in their home language and in English. Dual language education promotes the explicit goal of biliteracy by developing foundational skills in the multilingual learner's home language, strategically aligning literacy instruction across two languages, and encouraging cross-languaging, transfer, and metalinguistic skills. Importantly, dual language classrooms incorporate assessments in two languages, building from the strengths of the home language to develop fluency in the second language.[192]

184 García & Kleifgen, 2018
185 Escamilla et al., 2022
186 Hoover et al., 2016
187 Cárdenas-Hagan, 2020
188 Cummins, 1984
189 Council of Chief State School Officers, 2014
190 Herrera et al., 2022
191 Escamilla et al., 2022
192 Abdelkader et al., 2022

Essential practices that promote biliteracy within dual language instruction include:

- Developing home language and literacy alongside English language and literacy.[193]
- Integrating oral language and literacy instruction into content-area teaching[194] in both home language(s) and English.
- Teaching academic vocabulary intentionally using a variety of instructional activities.[195]
- Providing regular, structured opportunities to develop written language skills, alongside small-group instruction in areas of literacy and English language development.[196]
- Leveraging cross-language connections that promote transfer and engage students in translanguaging.[197]
- Implementing assessment practices such as screeners, and formative and summative assessments in the student's home language and English.
- Encouraging families to continue literacy development in their home language through read-alouds and oral conversations.[198]

It is widely understood that students' English proficiency will take longer to reach in a dual immersion context than that of monolingual peers.[199] Assessment practices for multilingual learners supported in dual immersion settings must account for the 5-7 year timeline for multilingual learners to achieve parity with English speakers in terms of English literacy acquisition.[200] For this reason, it is essential that students are provided multiple ways to demonstrate literacy proficiency, that progress in their home language is assessed and affirmed, and that students are not erroneously identified for special education simply because of latent English development.[201]

While additional time, skills practice, oral language development, and explicit instruction may be necessary for students not yet reading in English at grade level, the student's access to quality, grade-level literacy learning should not be limited or replaced by remedial efforts.[202]

> "In general, education practitioners have had difficulty distinguishing between sociocultural/ sociolinguistic factors (including language development) and disabilities, which has prompted calls for specific training in this area."
>
> Herrera et al., 2022

193 August & Shanahan, 2006; Riches & Genesee, 2006
194 Baker et al., 2014
195 Baker et al., 2014
196 Baker et al., 2014
197 García, 2009a
198 García & Kleifgen, 2018
199 Lindholm-Leary & Howard, 2008
200 Lindholm-Leary & Howard, 2008
201 Lindholm-Leary & Howard, 2008
202 Kieffer, 2020; Kieffer & Thompson, 2018

While the literacy learning arc for students learning in multiple languages can be longer than students learning in monolingual instructional programs, the benefits are far-reaching. Impressively, the bilingual brain is stronger, more pliable, and demonstrates higher levels of synthesis and sense-making across content areas.[203] Moreover, research supports that students in dual immersion settings gain additional social, cognitive, and familial benefits associated with becoming fully biliterate.[204] Over time, multilingual learners participating in high-quality dual language programs perform at or above English-speaking students in English-only classrooms.[205] The benefits of biliteracy are compelling–dual immersion instruction is a significant lever for increased literacy outcomes in Oregon.

KEY TAKEAWAYS *FOR MULTILINGUAL LEARNERS*

- All students are language learners. Multilingual learners simply require an intentionality in language instruction that is ultimately of benefit to all students in the classroom.
- Multilingual learners deserve affirmation and intentional linkage between known language and new skills.
- All students have a right to core literacy instruction. Any needed language interventions must be offered outside core literacy instruction blocks.
- Multilingual learners desire and deserve challenging content and context embedded language development alongside any needed foundational language skills.
- Literacy development for those with two languages is different from the monolingual speaker. Maximizing learning requires knowledge of each student's language context.
- English proficiency may take longer to reach than that of monolingual peers. Assessment must be informed and nuanced to account for the possibility of language development range.
- Multilingual learners benefit from classroom settings where oral language use is emphasized, and student-to-student interaction is promoted.
- The benefits of multilingual language learning are varied and research supported.

LEARN MORE *FOR MULTILINGUAL LEARNERS*

- Bilingual Site for Educators and Families
- Translanguaging to Support Students' Bilingual and Multilingual Development
- Literacy for Multilingual Learners
- Supporting Early Literacy for Multilingual Learners
- Multilingual Learning Toolkit
- The Science of Reading Progresses: Communicating Advances Beyond the Simple View of Reading
- How Does the Science of Reading Apply to Teaching Multilingual Learners?

203 Lindholm-Leary & Howard, 2008
204 Baca, 2018
205 Hamayan et al., 2013

Supporting Students with Reading Difficulties, Reading Disabilities, & Dyslexia

Supporting students experiencing reading difficulties, such as dyslexia, is crucial to ensuring every child has the opportunity to thrive academically and personally. Dyslexia affects a portion of the population and can pose unique challenges for both students and educators. With comprehensive, evidence-based support, students with reading difficulties, including dyslexia, can achieve at the highest levels. Oregon has established a strong framework for early identification and prevention of reading difficulties through its dyslexia policies. Oregon dyslexia policies (OAR 581-022-2440[206] and OAR 581-002-1805[207]) require both teacher training[208] and universal screening[209] as part of a comprehensive model of assessment and support for all students.

Select resources from ODE related to dyslexia and students experiencing disability: Dyslexia Website, Guidance on Screening and Instructional Support, and Specially Designed Instruction and Least Restrictive Environment Considerations for IEP teams.

Oregon law requires universal screening for risk factors of reading difficulties, including dyslexia, beginning in kindergarten, although individual student circumstances could require earlier assessment of a child's strengths and needs. Identification of students with characteristics of dyslexia is a process that incorporates multiple steps and sources of information. Once universal screening results are analyzed, then students are provided with instructional support, progress monitoring, and additional assessment to guide more intensive instructional interventions. The success of this model depends upon the provision of explicit, systematic, evidence-based instruction provided by qualified educators across all tiers of support.

- **Step 1: Complete universal screening**. The role of universal screening in primary grades to identify students who are in need of reading instructional support has been widely studied. The old saying, "Just wait and they will catch up," does not hold up to all the empirical data and support for providing early intervention for struggling readers. Whenever possible, students should also be assessed in their native language, especially if they have had some formal native language instruction. Districts should gather additional information about the student's literacy background including exposure to English and the structure of the native language and use this information to help interpret screening results and to inform instruction.
- **Step 2: Provide instructional support for students who demonstrate the need for additional support and monitor their progress**. Schools should begin intervening early to address skill areas as indicated by the universal screening measures. Students should start receiving interventions of sufficient intensity based on student need as soon as possible. For many students, early intervention can be provided within the context of the core reading program through differentiated and small-group instruction. Other students may require additional instructional support beyond the core reading as described above. Student progress and growth should be closely monitored to see if the targeted intervention is effective for the student. This type of progress monitoring is targeted and specific for an individual student, and is more individualized than more general class progress monitoring described in Section 7: Core Instruction & Assessment.

206 Teacher Training Related to Dyslexia, 2018
207 Annual List of Dyslexia-Related Training Opportunities, 2018
208 ODE, 2018a
209 ODE, 2022a

- **Step 3: Administer informal diagnostic measures and connect with families to learn more about family history relative to difficulty learning to read or write for students who do not make adequate progress**. Administering informal diagnostic assessments that identify a student's specific areas of strength and need will provide educators with information that is needed to further inform instruction. Informal diagnostic assessment consists of completing a more in-depth skills development inventory on a narrow skill area. In addition to gathering informal diagnostic data, school teams should screen for a family history of difficulty in learning to read if a student demonstrates risk factors for reading difficulties, including dyslexia. Because dyslexia is neurobiological in origin and often runs in families, this family screening may provide important information related to the potential source of a student's reading struggle. To support family engagement and therefore children's learning, educators and schools should center these important conversations within culturally responsive and supportive partnerships.
- **Step 4: Intensify instructional support as needed based on student-level assessment data and continue monitoring progress.** Using the data collected from the informal diagnostic assessments, school teams should provide more intensive instructional support to those students who do not make adequate progress despite the provision of evidence-based support in addition to core instruction. Instructional support and intervention may be intensified by factors such as: providing more time, reducing group size, increasing engagement strategies, and addressing a broader range of skills.
- **Step 5: Begin Individualized Problem Solving/Data-Based Individualization to adapt the intervention as needed and continue progress monitoring for students who do not make adequate progress.** This data-informed approach involves collecting detailed information about the curriculum, instruction, environment, and learner characteristics to develop a comprehensive plan of support. In this phase of support, teams continue to collect diagnostic data and implement validated interventions but use adaptation strategies to further individualize the support. If student-level data indicate that additional accommodations or specialized instruction beyond tiered instructional supports may be required, school staff may refer a student for a 504 plan or special education evaluation.

Although it reflects another state context, Michigan Dyslexia Handbook: A Guide to Accelerating Learner Outcomes in Literacy includes many helpful resources:

- An explanation of dyslexia.
- A graphic showing the myths vs. facts about dyslexia.
- Best practices to prevent reading difficulties associated with the primary consequences of dyslexia.
- Information about the assessment practices needed to inform instruction and intervention methods for learners with dyslexia characteristics.

Special Education Eligibility Processes

Culturally responsive teaching and problem-solving are essential elements of inclusive and equitable learning environments that can support appropriate special education eligibility processes. The following recommendations aim to reduce disproportionality in special education eligibility due to racial and linguistic bias while still ensuring that all students receive the support they need. Through the use of culturally responsive and comprehensive, coherent systems of instruction and assessment, school teams can more accurately identify students who are experiencing a specific learning disability.

Students may need more support than general education provides in order to achieve grade-level literacy expectations. By employing fair and sensitive approaches to problem-solving that respect and incorporate the diverse cultural backgrounds of all students, educational teams can accurately discern between students who have a specific learning disability and those who have not yet demonstrated grade-level skills because they have not been given appropriate instruction.

For example, sometimes a student may not make expected progress or may not respond to interventions as measured by progress monitoring data. In this scenario, staff should continue providing core instruction and targeted interventions while also initiating a problem-solving process.[210] This process leads teams to develop a more intensive, data-based and individualized instructional support plan based on student strengths and areas of need. Implementing this support plan may lead to improvement in student performance and may prevent inappropriate referrals to special education. However, it is important to note that this process cannot delay a timely initial special education evaluation for children suspected of having a disability. If the need for a special education referral arises, the information gathered from the problem-solving process can inform the special education evaluation and eligibility process.

GUIDING QUESTIONS TO INTERRUPT BIAS WHEN CONSIDERING THE NEED FOR INITIAL EVALUATION FOR SPECIAL EDUCATION: [211]

How is the education team...

- considering perspectives other than the initial presentation of the student concern? *(Presenting Initial Concern)*
- operationalizing an area of need that is focused on instruction, classroom management, student skills, and/or teacher skills? *(Identifying the Area of Need)*
- identifying a low-inference, alterable, and measurable hypothesis that explains why the problem is occurring? *(Identifying a Hypothesis for Area of Need)*
- using strategies to mitigate implicit bias, including in the collection of data? (*Collecting Data)*
- considering all the data and identifying common themes to verify the problem and confirm the hypothesis? (*Interpreting Data)*
- selecting an evidence-based intervention based on what the data reflects? (*Selecting Evidence-Based Interventions)*
- using strategies to improve the cultural responsiveness of the intervention during selection and progress monitoring? (*Improving Cultural Responsiveness of Intervention)*

Supporting Students Experiencing Disabilities Through Special Education

Most students, including those experiencing disabilities, benefit from deep learning in the general education classroom with appropriate supports such as accommodations, adapted materials, individualized goals or objectives, and co-teaching. In some cases, students need more direct, explicit, and targeted literacy interventions. The Individuals with Disabilities Education Act (IDEA) mandates that students who experience disabilities have a free appropriate public education, often referred to as FAPE, that is individualized to meet their respective needs. As with all students, those who experience disabilities benefit most from inclusive, student-centered, and intentional instruction. When it is determined that students are eligible for special education services, they must have an Individualized Education Program (IEP), designed by an appropriate team, that enables access to a free appropriate public education in the least restrictive environment.

210 The IRIS Center, 2022
211 Newell, 2017

For students with specific reading and writing difficulties, the IEP provides an opportunity to work collaboratively to set goals for literacy and identify teaching and learning supports. A student experiencing a specific learning disability, such as dyslexia, may be eligible for an IEP if it is determined that special education is required. Additionally, not all disabilities impact literacy in the same way. Although reading disabilities (e.g., dyslexia) are the most common specific learning disability, there are a variety of other disabilities that can impact students' literacy trajectories.

Specially Designed Instruction and Related Services[212]

Students experiencing disabilities are general education students first and, unless another arrangement is required by their Individualized Education Program, they need access to whole group core instruction. In addition to general education support, Specially Designed Instruction and related services must be provided as mandated in each eligible student's IEP. In the context of literacy, related services may include speech-language therapy, occupational therapy, or physical therapy. Special education is intended to make high-quality core instruction accessible and enable students to meet their annual IEP goals.

IEP teams should take a broad view of instruction and carefully consider the special education required to enable the provision of free appropriate public education and access to the general curriculum for each eligible child. Special educators should adjust the content, methodology, or delivery of core instruction based on a student's IEP. Specially Designed Instruction should enhance and build upon general education curriculum and instruction.

Accessibility in the Early Literacy Classroom[213]

One way to increase access and remove barriers for students experiencing disabilities is through the use of accessible materials, formats, and technologies. Universally designed classrooms should include multiple means of access to materials for all students, not just those students with specific accommodations listed on IEPs. The National Center on Accessible Educational Materials offers four categories to describe accessibility.

- **Accessible educational materials** are print- and technology-based educational materials, including printed and electronic textbooks and related core materials that are designed or enhanced in a way that makes them usable across the widest range of learner variability, regardless of format (e.g., print, digital, graphic, audio, video). Accessible educational materials make literacy core instructional materials accessible to all learners.
- **Accessible formats**[214] provide the same information in another form to address the barriers text-based materials can present for some learners. Examples of accessible formats include audio, braille, large print, tactile graphics, and digital text conforming to accessibility standards.
- **Accessible technologies** are the hardware devices and software that provide learners access to the content in accessible digital materials. These technologies are designed to be flexible and provide the support that benefits everyone - they are universally designed.
- **Assistive technologies** are technological systems and services that assist a student who experiences a disability to access their environment, resources, or materials. Some examples of assistive technology in the literacy learning environment include text-to-speech, speech recognition, and screen readers.

212 ODE, n.d-f
213 AEM Center, n.d.
214 CAST, 2021

KEY TAKEAWAYS *FOR SUPPORTING STUDENTS WITH READING DIFFICULTIES, READING DISABILITIES AND DYSLEXIA*

- The aims of literacy instruction apply to all children; with modifications, accommodations, supports, and technologies, every child must have access to literacy learning.
- Early screening matters. Districts must universally screen for risk factors indicative of reading difficulties, including dyslexia, in kindergarten.
- Prevention of early reading difficulties must include increasingly intensified and individualized instructional support matched to students' areas of strength and need.
- To the maximum extent appropriate, all instructional support for students with reading and writing difficulties should be provided *in addition to* high-quality core literacy instruction.
- Instructional supports must be informed by multiple data sources and matched to areas of strength and need.
- Identifying where each student is on the learning progression supports effective use of differentiated practices and tiered instructional supports.
- Ensuring accessibility through alternative formats and technology is an important way to enhance access.
- Through the use of culturally responsive and comprehensive, coherent systems of instruction and assessment, school teams can more accurately identify students who are experiencing a specific learning disability.

LEARN MORE FOR SUPPORTING STUDENTS WITH READING DIFFICULTIES, READING DISABILITIES AND DYSLEXIA

- MTSS for Reading Component Module Series
- The Universal Design for Learning Guidelines
- Literacy in the Inclusive Classroom
- Intensifying Literacy Instruction - Essential Practices
- High Leverage Practices in Special Education
- Data-Based Individualization: A Framework for Intensive Intervention
- The Pre-Referral Process: Procedures for Supporting Students with Academic and Behavioral Concerns
- Intensive Intervention (Part 1): Using Data-Based Individualization To Intensify Instruction
- Intensive Intervention (Part 2): Collecting and Analyzing Data for Data-Based Individualization
- Considerations When Planning Literacy Instruction for Students with Intellectual Disabilities

Talented & Gifted Students

Gifted readers often develop reading skills easily and become proficient readers at an early age. It is not unusual for gifted readers to process text quickly, comprehend above-grade level text, and sustain reading for an extended period of time. Gifted readers may be highly verbal and use advanced language and vocabulary in any language with ease. They may also excel in creative writing, literary analysis, oral communication, linguistic and vocabulary development, and multilingual learning.

Early informal and formal classroom assessment may reveal students who already meet or exceed grade-level expectations for reading, writing, and other literacy skills. A child who is beyond grade- level proficiency in the area of reading or writing may or may not be officially identified as Talented and Gifted, yet deserves learning opportunities that foster their academic growth and provide appropriate rigor. Contrary to commonly held beliefs that talented and gifted students may be fine without additional instructional support, "gifted students have special needs; they are at risk of learning the least in the classroom."[215]

While there are several areas of giftedness identification, students who are gifted in reading and language share some common characteristics:[216]

- Reading early and at an advanced level.
- Using metacognitive processes (thinking about thinking) in reading.
- Reading with enthusiasm for topics of interest.
- Demonstrating advanced language skills in any language and in any domain (i.e., oral, reading, and writing).

Multilingual learners are underrepresented in Talented and Gifted programs for many problematic reasons, including assessments contingent on proficiency in English and educator bias. Using native language ability and achievement assessments as indicators of potential giftedness, in addition to family interviews, are important pathways for Talented and Gifted identification of multilingual learners. Perhaps even more importantly, educators must develop new ways of seeing multilingual children as gifted, bringing an asset-based perspective that honors the incredible strength of the multilingual brain.

Giftedness can have varying meanings across cultures. Some researchers have re-defined giftedness among English language learners. Gifted English learners can display a wide range of skills, for example, the ability to:

- Acquire a second language at an accelerated rate
- Respect and appreciate languages and cultures that differ from their own
- Perform well in mathematics
- Switch between English and their native language with ease, sometimes referred to as code-switching
- Interpret the English language
- Grasp and use American idioms and expressions
- Adapt behaviors so that they are culturally relevant and appropriate

REL Northwest[217]

215 Choice & Walker, 2011
216 Reis, 2012
217 Regional Educational Laboratory Northwest, n.d.

Table 6. **Supporting Gifted and Talented Readers**

Instead of This:	Do This:
Treating all gifted readers as a homogenous group who all love to read…	Acknowledge that gifted and talented readers are a diverse group with varied intellectual, emotional, cultural, and linguistic differences. Some may be reluctant readers, despite their giftedness.
Assuming gifted and talented readers are experts at text comprehension, and do not need specific reading instruction…	Provide instructional strategies for developing deeper insights into the subtleties of literary selections, understanding nuances of meaning, and mastering advanced-level informational content. Even though most gifted and talented readers have highly developed comprehension skills, especially in comparison to peers of their age, they still benefit from specific reading strategies.
Allowing gifted readers to be entirely autonomous in their learning and self-selecting all of their reading materials…	Encourage students to broaden their repertoire of reading material to ensure access to complex content, vocabulary, genre and text structure. While choice in reading materials is one of the essential components of a reading program for gifted and talented readers, it should be balanced with teacher-assigned reading
Providing talented readers with the same instruction…	Differentiate according to advanced readers' strengths and needs.

While many of the strategies listed below are appropriate for all students, they are especially effective for supporting literacy growth for Talented and Gifted students:[218]

- Utilize assessment practices to determine curriculum compacting.[219]
- Provide access to challenging reading materials that include both depth and complexity.
- Deepen reading comprehension skills using a framework such as Webb's depth of knowledge to increase the complexity of thinking.[220]
- Model and expand students' metacognitive processes (thinking about thinking) while they are actively reading text.
- Develop critical thinking and analysis skills through reading and comparing a variety of genres and modes and encouraging writing in response to reading.
- Include representation of students' identity by offering diverse, multicultural literature across multiple genres.
- Intentionally provide opportunities for group discussion of selected texts, using readiness grouping or precision pairing designed to drive and elevate student discourse and growth.
- Foster student agency by providing opportunities for students to choose texts based on genre preference or advanced study on topics of interest.
- Encourage creative reading behaviors, including writing and dramatic interpretation.

218 Wood, 2008
219 National Association for Gifted Children, 2014
220 Webb, 1997; Webb, 2002

To meet the strengths and needs of gifted learners, differentiated instruction should account for their current proficiency level, depth of knowledge, critical and creative thinking skills, and accelerated rates of learning. Not all literacy-gifted students are the same; each student needs appropriately designed instructional strategies that reflect their learning profile.[221] Differentiation is critical for all students, and especially for students who are considered twice-exceptional, also referred to as "2E." Students who are twice-exceptional are gifted, and may also experience a special need or disability. When planning for literacy instruction for twice-exceptional students, coordination between general education staff, special education specialists, and the Talented and Gifted coordinator is critical to ensure that children who are twice-exceptional are provided appropriate targeted support.[222]

KEY TAKEAWAYS *FOR TALENTED AND GIFTED*

- Multilingual learners are disproportionately underrepresented in Talented and Gifted programs. It is important, therefore, for educators to be responsive to ways that multilingual learners demonstrate giftedness.
- Students may enter the classroom meeting and exceeding grade-level benchmarks; they deserve access to strategic instructional practices that provide appropriate academic challenges and opportunities to foster academic growth.
- Differentiating instruction, including depth of knowledge, critical and creative thinking skills, and accelerated rates of learning is critical to sustain engagement for gifted readers.
- Ultimately, giftedness is more than a reading level or an enrichment activity. When teachers look at a gifted student's needs, they need to assess the whole student, and be aware of students who may be twice-exceptional.

LEARN MORE *FOR TALENTED AND GIFTED*

- Improving the Identification of English Learner Students for Talented and Gifted Programs
- Advanced Learner Multi-Tiered System of Support Guide
- National Association for Gifted Children: A Position Statement
- Gifted and Dyslexic: Identifying and Instructing the Twice Exceptional Student
- Booklists for Talented Readers
- Talented and Gifted Education (from ODE)
- Tips for Identifying Gifted English Learner Students

221 Wood, 2008
222 National Association for Gifted Children, 2015

Appendix A: Acknowledgments

Thank you, first and foremost, to every Oregon student, our most important focus. As you strive forward in writing, reading, speaking, listening, and thinking deeply, you inspire those around you. The world wants to hear your voice, which is why Oregon cares about your literacy achievement.

Thank you to families and caregivers; as your child's first teacher you are seeding language and literacy through song, story, and the languages of your home.

Thank you to every educator and literacy leader making literacy come alive for Oregon children, taking ideas from paper into practice. You are doing powerful and important work; we see you and honor you.

Thank you to everyone who read the Preview Draft version of Oregon's Early Literacy Framework and provided feedback and suggestions. Additionally, thank you to all 152 participants who participated in more than 21 focus groups to provide feedback on the framework. Your input made the final version of the framework stronger and better.

Thank you to the specialists within the Oregon Department of Education whose work directly connects to literacy and who tirelessly contributed to this effort—sharing their insights, feedback, and synthesizing the latest research. Thank you, too, to countless ODE colleagues who helped in the creation of this document. It would not have been possible without you!

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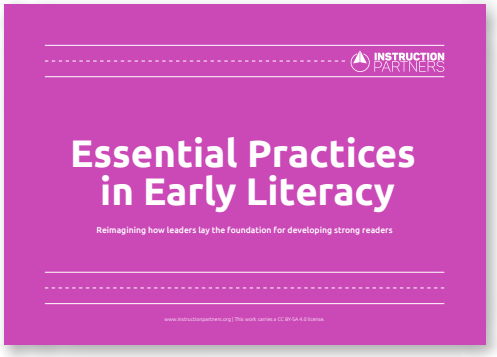
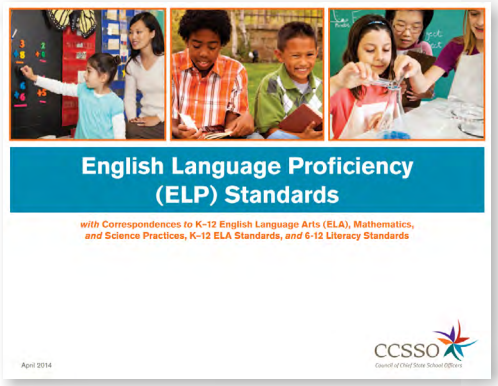
Thank you to each state who came before in updating their state-wide literacy framework, and thank you, especially, to those who generously provided permission for us to build upon their work. Our gratitude to the Michigan Department of Education, the Massachusetts Department of Elementary and Secondary Education, and the Tennessee Department of Education.

We are also grateful for and credit the work done by the National Committee for Effective Literacy and their generosity in terms of time and content. Likewise, we are thankful to the Instruction Partners for creating such a thoughtful playbook for implementing early literacy practices and for openly licensing it.

Thank you to the many reviewers who shared their professional expertise to inform this document as professors, practitioners, scholars, and literacy coaches. We are especially grateful to Dr. Anita Archer, Dr. Rachel Bhansari, Dr. Julie Esparza Brown, Dr. Ronda Fritz , Dr. Claude Goldenberg, Dr. Amanda Kibler, Dr. Dot McElhone, and Dr. Audrey Lucero for reviewing and providing feedback and enhancing the quality and validity of this resource.

Thank you to Governor Kotek for her call to action around literacy learning in Oregon, recognizing that when students develop essential early literacy skills it makes all other learning possible. With a focus on centering families as children's first teachers, ensuring classrooms are culturally responsive, and highlighting the importance of supporting educators in on-going professional learning, Governor Kotek is clear that Oregon must commit to early literacy success. Her advocacy for literacy and endorsement of this framework is foundational to realizing real change for young readers and writers in Oregon.

Appendix B: Companion Guidance Documents & Resources

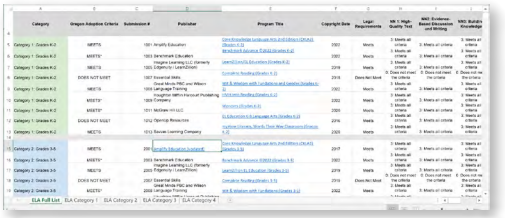
Document	Description
	Instruction Partner's Early Literacy Implementation Playbook provides ready-to-use, step-by-step guidance. Early literacy leaders and educators can use this playbook to strengthen and monitor literacy development in their school or system, whether building the essential implementation practices from scratch or tuning up what they already have in place.
	English Language Arts and Literacy Standards: Oregon's most recent English Language Arts and Literacy standards were adopted in 2019. These standards are grounded in research and align with the science of reading. They set the expectations for classroom teaching outcomes.
	English Language Proficiency Standards: The State Board of Education approved the latest English Language Proficiency standards in October 2013. The English Language Proficiency Standards highlight and amplify the critical language, knowledge about language, and skills using language that are necessary for multilingual learners to be successful in schools.

Document

Description

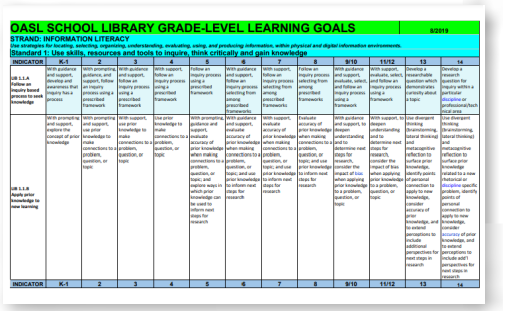
[Oregon's Dyslexia-Related Requirements]: Oregon's dyslexia legislation outlines two main requirements for school districts: universal screening to identify students with risk factors of dyslexia and training at least one teacher in each K-5 school in content in the following three areas:

- Using evidence-based practices to systematically and explicitly teach the foundational skills in reading;
- Understanding and recognizing dyslexia; and,
- Intensifying instruction to meet the needs of students with severe reading difficulties, including dyslexia.



[English Language Arts Approved Instructional Materials]: The State Board of Education adopted the English Language Arts approved Instructional Materials list in October of 2021. The list includes core basal materials for grades K-2, 3-5, 6-8, and 9-12.

Soon to be revised [Early Learning/Kindergarten Standards]: The Oregon Department of Education and the Early Learning Division leadership created a statewide workgroup to align Oregon's early learning and kindergarten standards. Developing clear and consistent expectations for what children should know and be able to do as they transition from early learning into kindergarten is foundational to improving children's transition from early learning settings into kindergarten and ultimately invigorating K–3 instruction to ensure that 95 percent of children read proficiently by the end of grade 3.



The Oregon Association of School Libraries' [School Library Standards] were updated in 2019, including strands for information literacy, reading engagement, and social responsibility. Additionally, the standards include grade-level learning goals for grades K through 14.

Appendix C: Glossary

For alignment, we have defined the following terms as they are used within the Oregon Early Literacy Framework.

- **ALPHABETIC PRINCIPLE:** sounds in speech (phonology) relate intentionally and conventionally to the letters of the English alphabetic writing system (i.e., orthography). English has a deep orthography where levels of phonology and awareness of meaningful units (morphology) are critical to learning to read. Levels of phonology are the word, syllable, onset-rime (medial vowel and final consonant as in *-at* in *cat*), and phoneme. Phonemes are the minimal unit of meaningful sound (e.g., the medial vowels in *pin* and *pen* are distinct phonemes denoting different words in most dialects of English but not in all dialects). Morphemes are the minimal units of meaning: prefixes, suffixes (inflectional or derivational), roots (*flex* in *flexible*), and base words (which can stand alone without other morphemes). The morphophonemic nature of English becomes apparent when noticing that *signal* consists of the base word *sign* plus the suffix *-al* (Foorman, 2023).
- **ASSESSMENT:** the wide variety of methods or tools that educators use to evaluate, measure, and document the academic readiness, learning progress, skill acquisition, or educational needs of students.[223]
- **TEXT COMPLEXITY:** the level of difficulty in reading and understanding a text based on a series of factors: the readability of the text, the levels of meaning or purpose in the text, the structure of the text, the conventionality and clarity of the language, and the knowledge demands of the text.[224] Complex texts are texts that provide an appropriate level of rigor aligned with grade-level expectations.
- **COGNATE:** words in two languages that share a similar meaning, spelling, and pronunciation.[225]
- **CORE INSTRUCTION:** high-quality instruction in the general education setting that is aligned to grade-level standards, centered around grade-level-aligned materials, and inclusive of every student in the classroom, regardless of performance level.[226] Sometimes also referred to as Tier I Instruction, this is the primary prevention for reading and writing difficulty. It maximizes learning by providing access to peer learning models, the classroom teacher, and grade-level aligned texts and tasks.
- **COMPREHENSION:** intentional thinking about and understanding of the content of a text (comprehension is a summative skill that is supported by a student's aptitude in the other four pillars). One of the Five Pillars of Reading.[227]
- **CULTURALLY RELEVANT PEDAGOGY:** helps students to accept and affirm their cultural identity while developing critical perspectives that challenge inequities that schools (and other institutions) perpetuate.[228]
- **CULTURALLY RESPONSIVE:** the implicit recognition and incorporation of the cultural knowledge, experience, and ways of being and knowing of students in teaching, learning, and assessment. This includes identifying, valuing, and maintaining a high commitment to: students' cultural assets in instruction and assessment; diverse frames of reference that correspond to multifaceted cultural perspectives/experiences; and behaviors in the classroom that can differ from White-centered cultural views of what qualifies as achievement or success.[229]

223 Great Schools Partnership, 2015
224 Louisiana Department of Education, 2014
225 Colorín Colorado, 2007
226 Bowen, 2021
227 National Reading Panel, n.d.
228 Ladson-Billings, 1995
229 ODE, n.d.-a

- **CULTURALLY SUSTAINING PEDAGOGIES:** "[seeks] to perpetuate and foster–to sustain–linguistic, literate, and cultural pluralism as part of schooling for social transformation."[230]
- **DECODING:** Translating a word from print to speech by using knowledge of phoneme-grapheme, or sound-symbol correspondences.
- **DIAGNOSTIC TEACHING:** teaching that individualizes instruction based on information collected from the continuous assessment that includes a combination of informal diagnostic assessments and lesson observation.[231]
- **DYSLEXIA:** a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate or fluent word recognition, or both, and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.[232]
- **EARLY LITERACY:** refers to the skills outlined by Oregon's English Language Arts Standards for grades K-5 inclusive of reading foundational skills (e.g., print concepts; phonological awareness; phonics and word recognition; fluency); comprehension; language and vocabulary; writing; speaking and listening. These standards are reflective of the literacy skills and knowledge that begin developing prior to students' entry into kindergarten and which will continue to develop over time and lay a foundation for further and more advanced literacy development in later grades.
- **ENCODING:** translating speech into print (writing) using knowledge of phoneme-grapheme, or sound-symbol correspondences.
- **ENGLISH LEARNER:** Oregon House Bill 3499, passed in 2015, defines English Learner as a student who has limited English language proficiency because English is not the native language of the student or the student comes from an environment where a language other than English has had a significant impact on the student's level of English language proficiency.[233] More recently, the term Multilingual Learners is sometimes preferred, as it decenters English and is more inclusive of all students who speak two or more languages.
- **EVIDENCE-BASED LITERACY PRACTICES:** refers to instructional practices with a proven record of success based on reliable, trustworthy, and valid evidence that when the instructional practices are implemented with fidelity, students can be expected to make adequate gains in literacy achievement.[234] [235]
- **EXECUTIVE FUNCTION SKILLS:** higher-order self-regulatory neurocognitive processes used for complex tasks. These skills include cognitive flexibility, working memory, inhibitory control, attention, and planning.[236]
- **EXPLICIT INSTRUCTION:** direct, face-to-face teaching that involves teacher explanation, demonstration, and the provision of ongoing corrective feedback.[237]
- **EXPLICIT, SYSTEMATIC INSTRUCTION:** code-based foundational reading instruction that moves early readers and writers along a continuum of skills in the areas of print concepts, phonological awareness, phonics and word recognition, and fluency, which are key areas represented in the Oregon English Language Arts and Literacy Reading Foundational Skills Standards for students in grades K-5.[238]

230 Paris & Alim, 2017
231 ODE, 2018c
232 Dyslexia-Related Training: Definitions, 2018
233 HB 3499, 2015
234 Dyslexia-Related Training: Definitions, 2018
235 ODE defines evidence-based in a range of ways given the complex bodies of work across the K-12 system.
236 Dawson & Guare, 2018; Diamond, 2012; Duke & Cartwright, 2021; Johann & Karbach, 2019
237 Dyslexia-Related Training: Definitions, 2018; ODE, 2018c
238 Dyslexia-Related Training: Definitions, 2018

- **FLUENCY:** reading text accurately and with sufficient pace, so that deep comprehension is possible. One of the Five Pillars of Reading.[239]
- **FOCAL GROUP:** aligned with Student Success Act: "students of color; students experiencing disabilities; emerging bilingual students; and students navigating poverty, homelessness, and foster care; and other students who have historically experienced disparities in our schools."[240]
- **FOUNDATIONAL SKILLS:** print concepts, phonological awareness, phonics and word recognition, and fluency. For a deeper dive around Foundational Skills Key Concepts and Terms, reference Achieve the Core's: Reading Foundational Skills Key Concepts and Terms.
- **FUNDS OF KNOWLEDGE:** bodies of information developed within historical and cultural contexts that provide individuals and households the knowledge they need to maintain their well-being.[241]
- **GRAPHEME:** the smallest unit of sound within our language system. A phoneme combines with other phonemes to make words.[242]
- **PHONEME-GRAPHEME CORRESPONDENCE:** matching of a spoken sound (phoneme) to its corresponding letter or group of letters (grapheme).[243]
- **HIGH-QUALITY INSTRUCTIONAL MATERIALS:** instructional materials that include specific learning goals and lessons aligned to content standards, student-centered approaches to inquiry-based learning, research-based teaching strategies, teacher support materials, and embedded formative assessments to effectively help teachers implement instructional units and courses that are integrated, coherent, and sequenced.[244]
- **INCLUSIVE TEACHING:** any number of teaching approaches that address the needs of students with a variety of backgrounds, learning modalities, and abilities. These strategies contribute to an overall inclusive learning environment in which all students perceive to be valued and able to succeed.[245]
- **LINGUISTICALLY RESPONSIVE INSTRUCTION:** teaching practices that support the learning, development, and engagement of children from diverse linguistic backgrounds. It includes support for continued development of children's home or tribal languages by authentically incorporating children's languages into the learning environment.[246]
- **LITERACY:** identifying, understanding, interpreting, creating, computing, and communicating using visual, audible, and digital materials across disciplines and in any context. It includes reading and writing, and also thinking, listening, and speaking.[247]
- **MORPHOLOGY:** the knowledge of meaningful word parts in a language, including prefixes, suffixes, and/or root words. Knowledge of word structure and how words are formed is linked to both greater vocabulary development and stronger reading comprehension. Research has shown that in children as young as first grade, knowledge of word parts has influenced their literacy development.[248]
- **MORPHOLOGICAL AWARENESS:** knowledge of the parts of words, such as prefixes, suffixes, and root words. Instruction in morphology is suggested to be an important complement to instruction in phonics and phonological awareness.[249]

239 National Reading Panel, n.d.
240 ODE, n.d.-a
241 Moll et al., 1992; Nguyen & Commins, 2020; Velez-Ibanez & Greenberg, 1992
242 University of Florida Literacy Institute, n.d.
243 University of Florida Literacy Institute, n.d.
244 ODE, 2022b
245 Center for Teaching Innovation, n.d.
246 Early Childhood Learning Center, 2019
247 International Literacy Association, n.d.
248 Foorman et al., 2016; DESE, 2023b; Prince, 2010; Wolter & Green, 2013; Wolter et al., 2009
249 DyslexiaHelp, n.d.

- **MULTILINGUAL LEARNER:** a student who, by reason of foreign birth or ancestry, speaks or understands languages other than English, speaks or understands little or no English, and/or requires support in order to become proficient in English.[250]
- **ORTHOGRAPHY:** a language's conventional spelling system.
- **ORTHOGRAPHIC MAPPING:** a process that involves the brain making connections between phonemes (sounds) and graphemes (spelling): this is what an emerging reader is doing when they confront a new word. Orthographic mapping is the process of forming connections between graphemes and phonemes, in order to store memories of spelling bonded to the pronunciation of words. Orthographic mapping is what allows readers to automatically comprehend what they are reading, so they can focus on content and meaning. Once words are "mapped" into the reader's memory, there is no longer need for decoding letter by letter or grapheme by grapheme. Foundational reading instruction that assists learners in successfully decoding and mapping words can build a lifetime of reading success.[251]
- **PHONEMES:** a letter or letter combination that spells a phoneme; can be one, two, three, or four letters in English (e.g., e, ei, igh, eigh).[252]
- **PHONICS:** the associations between sounds and print. One of the Five Pillars of Reading.[253]
- **PHONOLOGICAL AWARENESS:** sensitivity to, or awareness of, the sound structure of words. One of the Five Pillars of Reading.[254]
- **PRAGMATICS:** In linguistics (the study of language) pragmatics is a specialized branch of study, focusing on the relationship between natural language and users of that language.[255]
- **RESEARCH-BASED LITERACY PRACTICES:** refers to models, theories, and practices that are based on the best research available in the particular field of study. These practices differ from evidence-based in that they have not been researched in a controlled setting to measure for efficacy.
- **SCIENCE OF READING:** neurological and cognitive science studies of how brains process written words,"[256] and includes a broad collection of research from multiple fields of study including cognitive science, learning sciences, literacy research, and instructional science and research broadly.[257]
- **SEMANTICS:** the meaning and interpretation of words, signs, and sentence structure.
- **SOCIAL EMOTIONAL LEARNING (SEL):** the process through which children and adults learn to pay attention to their thoughts and emotions, develop an awareness and understanding of the experience of others, cultivate compassion and kindness, learn to build and maintain healthy relationships, and make positive, prosocial decisions that allow them to set and achieve their positive goals.[258]
- **SYNTAX** The branch of grammar dealing with the way in which linguistic elements (such as words) are put together to form constituents (such as phrases or clauses)**.**[259]
- **SYSTEMATIC INSTRUCTION:** a carefully planned sequence of instruction with lessons that build on previously taught information, from simple to complex.[260] Systematic instruction builds on scaffolding as student knowledge grows.[261]

250 NYSED, 2019
251 Ehri, 2022
252 University of Florida Literacy Institute, n.d.
253 National Reading Panel, n.d.
254 National Reading Panel, n.d.
255 MasterClass, 2021
256 Shanahan, 2021
257 National Center on Improving Literacy, 2022
258 ODE, n.d.-a
259 Merriam-Webster, (n.d.), Definition 1
260 Dyslexia-Related Training: Definitions, 2018; ODE, 2018c
261 The Meadows Center for Preventing Educational Risk, 2020

- **TARGETED UNIVERSALISM:** setting universal aims that are pursued by universal and targeted processes to achieve those aims.[262] Applying Targeted Universalism provides an operational pathway to lead for educational change in a way that bridges relationships and perspectives while maintaining dedicated and precise attention on focal students and their families.[263]
- **TIME IMMEMORIAL:** a point of time in the past that was so long ago that people have no knowledge or memory of it.
- **TRANSLANGUAGING:** "the discourse practices of bilinguals, as well as to pedagogical practices that use the entire complex linguistic repertoire of bilingual students flexibly in order to teach rigorous content and develop language practices for academic use."[264]
- **UNIVERSAL DESIGN FOR LEARNING (UDL):** a framework to improve and optimize teaching and learning for all people based on scientific insights into how humans learn.[265] UDL provides a research-based framework for teachers to incorporate flexible materials, techniques, and strategies for delivering instruction and for students to demonstrate their knowledge in a variety of ways.[266] Teaching materials and methods are the focus of change, instead of placing the burden on students to adapt to the curriculum.[267]
- **VOCABULARY:** The part of semantics concerning word meanings and word relations.. One of the Five Pillars of Reading.[268]
- **WELL-ROUNDED EDUCATION:** an education that includes the arts, humanities, sciences, social sciences, language arts, and math. Background knowledge in these subjects allows students to transfer the ability to read into other subjects and experiences that require them to make meaning of what they read. Therefore, a content-rich curriculum is not just a necessary building block for educational attainment but for comprehension beyond the classroom.[269]

262 ODE, 2022c
263 ODE, 2022c
264 Marrero-Colón, 2021
265 CAST, 2022
266 The IRIS Center, 2009
267 CAST, 2013
268 National Reading Panel, n.d.
269 Jimenez & Sargrad, 2018

Appendix D: Reading Research & References

Appendix D contains sources cited within Oregon's Early Literacy Framework, as well as sources that inform our work more broadly.

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OREGON
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Tab: START HERE

Select your institution from the drop down list to the right:	2180-Portland SD 1J

Please provide contact information for the person completing this budget	
Name	Emily Glasgow
Phone	503-729-4763
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Tab 2 - Inventory

Type of Material (Dropdown Menu)	If other, please describe	Title of literacy assessments, tools, curricula and digital resources	Name of Vendor / Developer / Publisher	Print or Digital (Dropdown Menu)	Grades - Enter all Applicable Grades	Was this adopted from the 2022 SBE Adopted Materials for English Language Arts (ELA) and Literacy list or through an Independent Adoption? (Dropdown Menu)	If adopted instructional material are from the 2022 SBE Adopted Materials for English Language Arts (ELA) and Literacy list, please indicate which one from the list below. (Dropdown Menu) (If Applicable)	If Independent adoption, did your school board use the SBE ELA Adoption Criteria? (Dropdown Menu) (If Applicable)	Date of Adoption	Is this your student growth assessment? (Dropdown Menu)	Please describe any planned changes or updates for materials that are not currently research-aligned. If your school board did NOT use the SBE ELA Adoption Criteria, this question is required for your core curriculum. Please include the anticipated date of new adoption. (If Applicable)
Core Materials		integrated PreK curriculum	Tools of the Mind	Both	PreK	Independent Adoption		No	2016	No	We are piloting the use of Heggerty as a phonemic awareness supplement to Tools of the Mind with hopes of adding this supplement to all 51 of our PreK classrooms in Fall 2024.
Formative Assessment Materials		developmental assessment	Desired Results Developmental Profile (DRDP)	Digital	PreK	Independent Adoption		No	2022	Yes	
Core Materials		phonemic	Heggerty	Both	K-2	Independent Adoption		Yes	2022	No	Extending to PreK in Fall 2024.
Core Materials		phonics curriculum	Wilson Fundations	Print	K-3	Independent Adoption		Yes	2019	No	
Core Materials		decodable texts	Great Minds Geodes	Both	K-3	State Board of Education Adoption	Great Minds PBC and Wilson Langauge Training | Wit & Wisdom with Fundations and Geodes (Grades K-2)		2022	No	
Core Materials		ELA curriculum	Great Minds Wit & Wisdom	Both	K-5	State Board of Education Adoption	Great Minds PBC and Wilson Langauge Training | Wit & Wisdom with Fundations and Geodes (Grades K-2)		2022	No	
Professional Development & Coaching		foundational skills/comprehension assessment	MAP Reading Fluency	Digital	K-2	Independent Adoption		Yes	2023	Yes	
Student Growth Assessment		comprehension assessment	MAP Reading Growth	Digital	"3-5"	Independent Adoption		Yes	2018	Yes	
Intervention/Acceleration Materials		intervention curriculum	Wilson Fundations, Just Words, Intervention	Both	K-5	Independent Adoption		Yes	2021	No	
Intervention/Acceleration Materials		intervention supplement	Lexia	Digital	K-5	Independent Adoption		Yes, No	2023	No	Was used as a core supplement up until 2023, when we shifted to use as an intervention resource only.
Extended Learning Programs	Professional development for **Summer 2024 Acceleration Academies** educators @ PPS sites (grades 1-3)										

Tab: Budget 23-24

Grant Allowable Use Category							Overall Literacy Budget (23-24)
		--	--	--	--	**Total Allocation 2023-24** (Autofill from Start Here tab):	**$3,281,865.69**
		--	--	--	--	Total Budgeted Amounts (Autosum):	$3,281,865.69
						Unbudgeted (Autocalculate):	($0.00)
	Proposed Investment	FTE	FTE Type	Allowable Use Code	Object Code	4th or 5th Grade Expenditure	Literacy Budget (23-24)
Purchasing Curricula & Materials	Initial purchase of Heggerty **phonemic awareness curriculum** (digital and hard copy) for 51 PreK classroom teachers and PreK coaching staff			CRCM	4XX		$110,000.00
Professional Development & Coaching	Initial **Heggerty PD** for PreK pilot teachers			CTPD	31X		$850.00
Professional Development & Coaching	Initial **Heggerty PD** for PreK pilot teachers (extended hours)			CTPD	13X		$1,800.00
Professional Development & Coaching	Year-long sequence of asynchronous and synchronous **Science of Reading PD** for up to 20 PK-5 school staffs, instructional coaches, and PreK educators (research modules and research-to-practice modules applying knowledge to adopted HQIM)--*PK-3 staff only*			PDC	31X		$1,168,000.00
Professional Development & Coaching	Year-long sequence of asynchronous and synchronous **Science of Reading PD** for up to 20 PK-5 school staffs and PreK educators (research modules and research-to-practice modules applying knowledge to adopted HQIM)--*4-5 staff only*			PDC	31X	Yes	$340,000.00
Professional Development & Coaching	Substitute coverage in participating **Science of Reading** schools to allow for monthly completion of asynchronous modules			PDC	12X		$500,000.00
Extended Learning Programs	Curriculum and home reading supplies in preparation for Summer 2024 **Early Kindergarten Transition** program @ 18 PPS sites			ELPO	4XX		$150,000.00
Extended Learning Programs	Literacy curriculum for **Summer 2024 Acceleration Academies** @ PPS sites (grades 1-3)			ELPSS	4XX		$50,000.00
Extended Learning Programs	Professional development for **Summer 2024 Acceleration Academies** educators @ PPS sites (grades 1-3)			ELPSS	13X		$100,000.00
High-Dosage Tutoring	**High-dosage tutoring** for up to 200 students in need of Tier 3 intervention (2nd & 3rd grade, two 10-week cycles)			SGHDT	13X		$697,215.69
Administrative Costs	**Indirect charge** (PPS Grants Accounting support)				690		$164,000.00

Tab: Budget 24-25

Grant Allowable Use Category							Overall Literacy Budget (24-25)
		--	--	--	--	Total Allocation 2024-25 (Autofill from Start Here	$3,415,819.39
		--	--	--	--	Total Budgeted Amounts (Autosum):	$1,534,034.39
						Unbudgeted	$1,881,785.00
	Proposed Investment	FTE	FTE Type	Allowable Use Code	Object Code	4th or 5th Grade Expenditure	Literacy Budget (24-25)
Purchasing Curricula & Materials	Heggerty **phonemic awareness curriculum** for 51 PreK teachers and PreK coaches (annual digital licenses)			CRCM	4XX		$6,000.00
Professional Development & Coaching	**Heggerty PD** for all PreK teachers			CTPD	31X		$850.00
Professional Development & Coaching	**Heggerty PD** for all PreK teachers (extended hours)			CTPD	13X		$6,820.00
Professional Development & Coaching	Substitute coverage for school-based **Wit & Wisdom unpacking/internalization days** led by school-based instructional coaches (sub days/school to be used at discretion of Principal/ILT)--*K-3 staff only*			CTPD	12X		$195,364.39
Hiring	**Early Literacy Coaches** (part-time literacy coach for each school participating in Science of Reading PD--role is to coach/support "bridge to practice" of new learning in K-3 ELA lessons	6	Literacy Coach	PDC	111		$552,600.00
Hiring	***Early Literacy Coaches*** *(part-time literacy coach for each school participating in Science of Reading PD--role is to coach/support "bridge to practice" of new learning in K-3 ELA lessons- FRINGE*			PDC	2XX		$197,400.00
Hiring	**Early Literacy Specialist** (TOSA supporting cadre of Early Literacy Coaches and Science of Reading PD school cadre)	1	Literacy Specialist	PDC	111		$110,520.00
Hiring	***Early Literacy Specialist*** *(TOSA supporting cadre of Early Literacy Coaches and Science of Reading PD school cadre)-FRINGE*			PDC	2XX		$39,480.00
Extended Learning Programs	Professional development for **Summer 2024 Acceleration Academies** educators @ PPS sites (grades 1-3)			ELPO	111		$202,620.00
Extended Learning Programs	Continuation of **Early Kindergarten Transition** program at 18 PPS sites (focus on early literacy skills and school readiness for priority families and students)--*classified salaries*			ELPO	112		$110,520.00
Extended Learning Programs	*Continuation of* ***Early Kindergarten Transition*** *program at 18 PPS sites (focus on early literacy skills and school readiness for priority families and students)--FRINGE*			ELPO	2XX		$111,860.00

Date: January 25, 2024

To: PPS Board of Education

From: Lisa Merrick, Senior Manager, Government Relations

Subject: Recommended Legislative Priorities for the 2024 Session

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BACKGROUND

The Legislature will convene for the 2024 short session from February 5 to March 10. Only lasting 35 days, short sessions are designed to handle emergencies and to rebalance state budgets, which are adopted during longer sessions that occur during odd-numbered years. Given the short timeframe, short sessions are not well suited to manage complex policy bills.

KEY SESSION DATES

November 9, 2023: Deadline to introduce Legislative Measures
January 10-12, 2024: January Legislative Days (informational sessions held at the Capitol)
February 5, 2024: Legislative Session begins
February 7, 2024: Quarterly Revenue Forecast
March 10, 2024: Legislature adjourns

2024 LEGISLATIVE SESSION PREVIEW

During the upcoming legislative session, the Legislature is positioned to address some significant issues including potential changes to Measure 110, housing production, wildfire relief, and winter road maintenance.

Given the recent PPS strike, the Legislature will also begin having conversations on education funding, specifically around the Quality Education Model. Conversations about broader structural changes to the State School Fund and Oregon's education funding system are expected to take place over the interim period leading up to the 2025 long session through workgroups convened by Governor Kotek's office.

Governor Kotek has called on the Legislature to approve a $600 million investment on housing and homelessness next year, which will cover housing production and rental assistance costs.

She is also seeking funding for the Employment Related Day Care program as well as $50 million in one-time funding for summer learning programs.

PREVIEW OF PROPOSED EDUCATION BILLS

Below is some high-level information about some of the education bills that are expected to move forward this session. More information about these bills and additional education legislation that is introduced will be provided to Board Directors regularly throughout the session.

- School Board transparency legislation: requires school boards to stream and post recorded meetings and meeting minutes online and allow for remote participation.
- Omnibus Senate Education Committee bill: includes but not limited to Quality Education Model (QEM) changes, merge TSPC and ODE, and technical changes to SB 283 (2023 Education workforce bill).
- Education finance bill: OEA sponsored legislation to make some small changes to the CSL calculation and cap ending school balances at 10%.
- Updates to SB 819 (Abbreviated Day legislation from 2023 session): technical changes brought forward by ODE and Senator Gelser Blouin to improve the bill's implementation.

RECOMMENDED LEGISLATIVE PRIORITIES FOR PPS

- $51 million in additional funding from the State School Fund for the 2023-25 biennium to preserve teaching position and classroom supports.
- $50 million in statewide funding for high-quality summer 2024 programs.
- $6 million in funding for Regional Inclusive Services (RIS) and $22 million for Early Intervention Early Childhood Special Education (EI/ECSE).
- Legislation to establish a youth advisory committee, made up of members of each ESD region, at the Department of Education.
- Legislation to require the Oregon Department of Education to update their administrative rules to align with a federal USDA rule expanding the Community Eligibility Provision, this would enable more schools to offer school meals, free of charge, to all students.
- A direct $500,000 allocation to PPS for planning, design, real estate professional services for Phase 3 Planning of a potential Prophet Educational Center relocation.
- Additional funding to provide robust academic and enrichment programming including instructional specialists and high dosage tutoring.
- Resources and policies that support the emotional and mental health needs of all students, including investments to expand, sustain, and diversify the youth behavioral health workforce.
- Legislation to remove the percentage cap (11%) on the amount of funds that are distributed from the State School Fund to school districts for students eligible for special education along with a higher level of funding for special education services.
- Investments in climate-resilient school infrastructure that can support communities during extreme weather events.

Note: Given that PPS is projected to have more time before hitting the statutory limit on its local option levy revenue collection, staff recommends moving forward the local option levy policy forward in the 2025 session, rather than the 2024 session as previously discussed. During the short session, the Government Relations team can coordinate an informational session on the PPS local option levy issue.

LEGISLATIVE ENGAGEMENT AND ADVOCACY

Throughout the session, the Government Relations team will coordinate opportunities for the Board of Education and certain PPS staff members to engage with the Legislature and advocate for PPS's legislative priorities. The legislative engagement and advocacy plan will include a Board of Education lobby day and DSC and PPS student advocacy opportunities.

STAFF RECOMMENDATION

Staff recommends that the Board of Education adopt the Legislative Agenda for the 2024 Session.

RESOLUTION No. 6844

2024 Portland Public Schools Legislative Agenda

RECITALS

A. The Oregon Legislature will convene for the 2024 Legislative Session from February 5, 2024 - March 10, 2024.

B. The Portland Public Schools Board recognizes that political and legislative advocacy is essential for the District's ability to affect education public policy in the state of Oregon.

C. The Portland Public Schools Legislative Agenda is aligned with the 2023-25 PPS budget, the District's mission and strategic plan, and the Board goals to eliminate student gaps in opportunities and outcomes.

D. Portland Public Schools will advocate for funding to mitigate PPS budget cuts, to support summer learning programs statewide, to invest in the Prophet Center relocation, to support Regional Inclusive Services and Early Intervention/Early Childhood Special Education (EI/ECSE) programs, to strengthen Special Education services, to expand the youth Behavioral workforce, to build up climate resilient education infrastructure, and to scale up academic and enrichment programming statewide.

E. The District will support the creation of a Youth Collaborative at the Oregon Department of Education that carves out space for youth voices in statewide decisions and policymaking.

F. The District will support legislation to expand the Community Eligibility Program statewide.

G. The Legislative Agenda was developed through consultation with district staff, board members, and other state-wide associations and partners.

H. The Board of Education recognizes the need for the Legislature to urgently address Oregon's education funding challenges. The Legislature must revise the methodology used to calculate school districts' costs, respond to students' greater mental health and social emotional needs, fund the Quality Education Model, and take steps to improve student outcomes, specifically to reduce the unacceptable opportunity gaps between white students and underserved students of color. The Board will be advocating for additional education funding and ultimately transforming the statewide education funding system.

RESOLUTION

1. The Board adopts the 2024 Legislative Agenda as the formal position of the Board of Education for the 2024 Regular Legislative Session.

2024 LEGISLATIVE AGENDA

ADVOCACY PRIORITIES

Portland Public Schools' legislative and funding priorities call for cultivating rigorous, high quality, and joyful academic learning experiences and disrupting racial inequities to create vibrant environments for all students to demonstrate excellence. The 2024 Legislative Agenda is aligned with PPS Board Goals to eliminate student gaps in opportunities and outcomes. Our advocacy priorities will allow us to leverage the District's role as a meaningful member of local, state, and national communities. In addition to the issues identified below, the Office of Government Relations will continue to support and advocate for legislative proposals and initiatives that are consistent with the PPS Strategic Plan and bring more investments to our schools and communities. The Government Relations team will pursue the necessary policy and funding flexibilities in 2024 as new issues arise.

SHORT-SESSION FUNDING PRIORITIES

- $41 million in additional funding from the State School Fund for the 2023-25 biennium
    - Portland Public Schools faces a budget gap because of the labor contract it signed in fall 2023 with the Portland Association of Teachers. The district will need to identify $10 million in savings this school year and $31 million next year. PPS requests $41 million in funding from the state school fund to help preserve many teaching positions and classroom supports.
- $50 million for statewide summer 2024 academic programs
    - Many students are still struggling academically, emotionally, and socially in the pandemic. Additional funding from the state can support PPS in offering summer learning opportunities through our summer acceleration academies and school-community partnerships.
- $22 million for statewide Early Intervention/Early Childhood Special Education (EI/ECSE) programs
    - These programs provide required services to youth 0-5. Referrals decreased during the pandemic, but with caseloads now increasing, $22 million is needed to shore up the program.

- $500,000 for the Prophet Education Center relocation
    - PPS requests a direct $500,000 allocation to PPS for planning, design, and real estate professional services for Phase 3 Planning of a potential Prophet Educational Center relocation.
- PPS advocates for additional funding to provide robust academic and enrichment programming including instructional specialists and high dosage tutoring.
- PPS advocates for resources and policies that support the emotional and mental health needs of all students, including investments to expand, sustain, and diversify the youth behavioral health workforce.
- PPS advocates for removing the percentage cap (11%) on the amount of funds that are distributed from the State School Fund to school districts for students eligible for special education along with a higher level of funding for special education services.
- PPS advocates for investments in climate-resilient school infrastructure that can support communities during extreme weather events.

SHORT-SESSION POLICY PRIORITIES

- Youth Collaborative: PPS supports legislation that will establish a youth advisory committee, made up of members of each ESD region, at the Department of Education in the Senate Omnibus bill.
- Community Eligibility Provision: PPS supports legislation that requires the Oregon Department of Education to adopt administrative rules that align with a recent federal USDA rule expanding the Community Eligibillity Provision, which would increase the number of schools that offer school meals, free of charge, to all students.

LONG-TERM FUNDING AND POLICY PRIORITIES

- PPS will advocate for the Governor and Legislature to review and make structural changes to the state school funding formula to better address the needs of diverse, urban school districts, and support school districts in areas with higher costs of living. PPS will also call upon the state to fully fund the Quality Education Model.
- PPS will call upon the Legislature to increase or remove the statutory limit on local option revenue collections, so that school districts can maintain revenue as their voters intend or explore additional ways to generate revenue without facing a reduction in state school fund dollars.

RESOLUTION No. 6834

Resolution to Adopt Ethics and Conflict of Interest Policy xx.xx.xxx-P

RECITALS

A. On December 11, 2023 the Board Policy Committee reviewed and considered the proposed Ethics and Conflict of Interest Policy xx.xx.xxx-P.

B. On January 9, 2024, the Board presented the first reading of the Ethics and Conflict of Interest Policy.

C. Pursuant to District policy, the public comment was open for at least 21 days, and there was no public comment received during the comment period.

RESOLUTION

The Board hereby adopts the Ethics and Conflict of Interest xx.xx.xxx-P policy and instructs the Superintendent to amend any relevant administrative directives to conform to this adopted policy.

Portland Public School District 1st Reading

DATE OF FIRST READING: January 09, 2024

PUBLIC COMMENT FOR

New Policy

Policy x.xx.xxx-P:

Ethics and Conflict of Interest Policy

The Portland Public School District is providing Notice of Proposed Revised Policy and Public Comment to offer interested parties reasonable opportunity to submit data or comments on the proposed policies noted below.

Public comment may be submitted in writing directly to the district or through the district website noted below. Written comments must be submitted by 5:00pm on the Last Date for Comment listed below.

Open for Comment until at least: January 30, 2024

Summary: **Adoption of a new Ethics and Conflict of Interest Policy.**

1st Reading by: **Director Julia Brim-Edwards**
Portland Public School Board, Policy Committee Chair

Recommended for a 1st Reading by:
Portland Public Schools Board of Education, Policy Committee

Draft Policy Web Site: http://www.pps.net/draftpolicies

Contact: **Rosanne Powell,** Senior Board Manager
Address: P.O. Box 3107, Portland, OR 97208-3107
Telephone: 503-916-3741
E-mail: schoolboard@pps.net

Draft Policy Comment Form: https://forms.gle/VqYbmVA36qqADj6n6

Included in Packet	Page
Staff Report	03
Draft Policy	04

Portland Public Schools
501 N Dixon St. / Portland, OR 97217

STAFF REPORT

Date: December 14, 2023

To: School Board

From: Mary Kane, Senior Legal Counsel

Subject: Proposed new policy- Ethics and Conflict of Interest Policy xx.xx.xxx-P

BACKGROUND

A proposal to adopt this new policy was heard and discussed by the Policy Committee during September-December 2023. The recommendation was made for a new policy on government ethics, and the District considers it best practice.

ANALYSIS OF SITUATION

Oregon Revised Statutes Chapter 244 are the laws relating to government ethics for public officers and employees. District officials and staff members currently follow ethics laws. The new policy is recommended to help translate statutory language into a user-friendly guidance for District staff.

FISCAL IMPACT

There is no fiscal impact.

COMMUNITY ENGAGEMENT

There was no community engagement other than discussion in the Policy Committee public meeting.

STAFF RECOMMENDATION

Staff recommends the adoption of this policy.

ATTACHMENTS

A. Ethics and Conflict of Interest Policy x.xx.xxx-P

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

1. Purpose

Board members and employees are expected to perform the District's business with integrity and accountability to the law and the community we serve; as responsible stewards of the District's resources; and without undue or the perception of undue influence in the performance of our jobs. Board members and employees have been entrusted with the important task of educating our community's children and should strive to live up to the highest ethical standards.

This policy establishes ethical standards of conduct for Board members and employees, whether elected or appointed, paid or unpaid, and sets forth conduct that is incompatible with such standards. Violations of this policy may subject employees to discipline, up to and including dismissal.

2. Definitions

"Actual Conflict of Interest" means any action, decision, or recommendation by a person acting in a capacity as a District representative, the effect of which is to the private financial benefit or avoidance of financial detriment to the person or the person's relative(s) or any business with which the person or a relative of the person is associated unless the financial benefit or detriment arises out of the following:

a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
b) Any action in the person's official capacity, which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.
c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

"Confidential Information" means specific information, rather than generalized knowledge, that is shared only with a specific person or persons within the District, including information made confidential by law.

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

“District action” means (i) a decision, determination, finding, ruling, purchase order, grant, payment, award, license, contract, transaction, sanction, approval or denial, authorization, or other similar action, or (ii) any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such matter that the Board member or employee believes, or has reason to believe, is one to which the District is, or will be a party or is one in which the District has a direct and substantial interest.

“Gift or Gratuity” means anything with an aggregate value in excess of $50 to a Board member or District employee from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision, authorization, or vote of that Board member or District employee.

“Member of household” means any person who resides with the District employee or Board member.

“Potential Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private financial benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the financial benefit or detriment arises out of the following:

a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
b) Any action in the person’s official capacity, which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged.
c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

“Participate” means to personally and substantially consider, investigate, advise, recommend, approve/disapprove, authorize, decide, or take other similar action.

“Reasonable travel expenses” are those expenses that either (1) do not exceed the District-established per diem for travel or (ii) are otherwise reimbursable under District policy.

Ethics and Conflict of Interest Policy

"Relative" means spouse or domestic partner, child, step-child, parent, step-parent, sibling, step-sibling, child-in-law of the employee; or the parent, step-parent, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the employee. Relative also includes any individual for whom the employee has a legal support obligation, whose employment provides financial benefits to the employee, or who receives any direct benefit from the employee's public employment.

3. Code of Ethics

All Board members and District employees shall act with trust, equity, and accountability.

a. Trust. All Board members and District employees shall treat their office as a public trust. They should avoid the appearance of impropriety and conflicts of interest, and take District Actions and implement policies in good faith as equitably as possible.

b. Equity. Board members and District employees will create an inclusive environment that reflects and supports the racial and ethnic diversity of our student population, employees, and community.

c. Accountability. Board members and employees will strive to carry out their work efficiently and transparently.

4. Gifts

State law limits Gifts and Gratuities to Board members or employees, their relatives, and members of their household. Gift or gratuity does not include the following items:

a. Anything of value that is received as District property and used for District purposes (such as textbooks and classroom supplies);

b. Discounts available to an individual as a member of an employee group, occupation or similar broad-based group;

c. A plaque, trophy, or other honoraria;

d. Unsolicited awards for professional achievement;

e. Reimbursement to the District for enrollment and course fees and reasonable travel expenses incurred by the District in connection with a Board member's or employee's speech, presentation, or appearance made in an official capacity; provided that the reimbursement is memorialized in writing;

f. Campaign contributions that are solicited or received and reported by an elected official or candidate in accordance with applicable law; and

g. Employee or Board compensation.

5. **Conflicts of Interest.**

All Board members and District employees must disqualify themselves from participating in District Actions in which they have an actual conflict of interest.

This means, among other things, that:

a. Use of Position. Board members and District employees may not use their position to obtain financial gain or avoidance of financial detriment for themselves, as well as for their relatives and members of their households. Additionally, Board members are prohibited from being compensated by the District as an employee or contractor, and no Board member or employee may benefit under any District contract for which they participated in the authorization for two years following Board service or employment, respectively.

b. Sale of instructional or training materials. Employees may not claim, promote, or sell instructional, training, or other materials and/or equipment to third parties developed on District time or District property nor may they promote or sell instructional, training, or other materials they developed on their own time to the District. Exceptions may be granted under exceptional circumstances with the written consent of the Superintendent.

c. Confidential Information. Board members and employees may not use confidential information gained in the course of or by reason of their position or activities for personal gain or advantage to them or their relatives or members of their household.

d. Interest in Contracts. Board members and employees, along with their relatives and members of their household, may not take District Action related to any District contract for which they have a financial interest.

e. Use of District Time. A District employee may not perform any duties related to an outside job during their regular scheduled or actual working hours unless leave is approved pursuant to District procedures; nor may an employee use any District facilities, equipment, resources or materials in performing outside work.

Retaliation Prohibited. Retaliation or threats of retaliation, both direct and indirect, for good-faith reporting of possible violations of this policy or ORS chapter 244 are prohibited. Any employee found to have engaged in any such conduct shall be subject to disciplinary action.

Notice.

1. Board Member. If a Board member has a potential or actual conflict of interest, they should state the conflict at the meeting when the agenda item is raised.

2. Employee. If an employee has an actual conflict of interest, they must notify a supervisor in writing of the nature of the conflict. The supervisor should assume responsibility for or reassign the matter creating the conflict. If an employee has a potential conflict of interest, they should notify a supervisor in writing of the nature of the potential conflict of interest, and the supervisor will determine if any reassignment of the matter creating the potential conflict is appropriate.

6. **Avoiding the Appearance of Conflicts of Interest**

Board Members and District employees should avoid the appearance of a conflict of interest when feasible.

7. **Complaints Against Employees**

Concerns that an employee is engaged in a District Action for which they have an actual conflict of interest shall be reported to the employee's supervisor (who should report it to Human Resources) or Human Resources. If the employee is the Superintendent, the concern shall be raised to the Board Chair.

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

8. Annual Training for Board Members and Senior District Leadership

Each year, Board members and senior District staff members shall complete a District-sponsored training on ethics, including conflicts of interest, public meetings laws, and public records laws. Each Board member and senior District staff shall certify in writing completion of the training.

Legal Reference: ORS Chapter 244
History: Adopted __/2024

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

1. Purpose

Board members and employees are expected to perform the District's business with integrity and accountability to the law and the community we serve; as responsible stewards of the District's resources; and without undue or the perception of undue influence in the performance of our jobs. Board members and employees have been entrusted with the important task of educating our community's children and should strive to live up to the highest ethical standards.

This policy establishes ethical standards of conduct for Board members and employees, whether elected or appointed, paid or unpaid, and sets forth conduct that is incompatible with such standards. Violations of this policy may subject employees to discipline, up to and including dismissal.

2. Definitions

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a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
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c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

"Confidential Information" means specific information, rather than generalized knowledge, that is shared only with a specific person or persons within the District, including information made confidential by law.

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

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“Potential Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private financial benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the financial benefit or detriment arises out of the following:

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b) Any action in the person’s official capacity, which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged.
c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

“Participate” means to personally and substantially consider, investigate, advise, recommend, approve/disapprove, authorize, decide, or take other similar action.

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3. Code of Ethics

All Board members and District employees shall act with trust, equity, and accountability.

a. Trust. All Board members and District employees shall treat their office as a public trust. They should avoid the appearance of impropriety and conflicts of interest, and take District Actions and implement policies in good faith as equitably as possible.

b. Equity. Board members and District employees will create an inclusive environment that reflects and supports the racial and ethnic diversity of our student population, employees, and community.

c. Accountability. Board members and employees will strive to carry out their work efficiently and transparently.

4. Gifts

State law limits Gifts and Gratuities to Board members or employees, their relatives, and members of their household. Gift or gratuity does not include the following items:

a. Anything of value that is received as District property and used for District purposes (such as textbooks and classroom supplies);

b. Discounts available to an individual as a member of an employee group, occupation or similar broad-based group;

c. A plaque, trophy, or other honoraria;

d. Unsolicited awards for professional achievement;

e. Reimbursement to the District for enrollment and course fees and reasonable travel expenses incurred by the District in connection with a Board member's or employee's speech, presentation, or appearance made in an official capacity; provided that the reimbursement is memorialized in writing;

f. Campaign contributions that are solicited or received and reported by an elected official or candidate in accordance with applicable law; and

g. Employee or Board compensation.

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This means, among other things, that:

a. Use of Position. Board members and District employees may not use their position to obtain financial gain or avoidance of financial detriment for themselves, as well as for their relatives and members of their households. Additionally, Board members are prohibited from being compensated by the District as an employee or contractor, and no Board member or employee may benefit under any District contract for which they participated in the authorization for two years following Board service or employment, respectively.

b. Sale of instructional or training materials. Employees may not claim, promote, or sell instructional, training, or other materials and/or equipment to third parties developed on District time or District property nor may they promote or sell instructional, training, or other materials they developed on their own time to the District. Exceptions may be granted under exceptional circumstances with the written consent of the Superintendent.

c. Confidential Information. Board members and employees may not use confidential information gained in the course of or by reason of their position or activities for personal gain or advantage to them or their relatives or members of their household.

d. Interest in Contracts. Board members and employees, along with their relatives and members of their household, may not take District Action related to any District contract for which they have a financial interest.

e. Use of District Time. A District employee may not perform any duties related to an outside job during their regular scheduled or actual working hours unless leave is approved pursuant to District procedures; nor may an employee use any District facilities, equipment, resources or materials in performing outside work.

Retaliation Prohibited. Retaliation or threats of retaliation, both direct and indirect, for good-faith reporting of possible violations of this policy or ORS chapter 244 are prohibited. Any employee found to have engaged in any such conduct shall be subject to disciplinary action.

Notice.

1. Board Member. If a Board member has a potential or actual conflict of interest, they should state the conflict at the meeting when the agenda item is raised.

2. Employee. If an employee has an actual conflict of interest, they must notify a supervisor in writing of the nature of the conflict. The supervisor should assume responsibility for or reassign the matter creating the conflict. If an employee has a potential conflict of interest, they should notify a supervisor in writing of the nature of the potential conflict of interest, and the supervisor will determine if any reassignment of the matter creating the potential conflict is appropriate.

6. **Avoiding the Appearance of Conflicts of Interest**

Board Members and District employees should avoid the appearance of a conflict of interest when feasible.

7. **Complaints Against Employees**

Concerns that an employee is engaged in a District Action for which they have an actual conflict of interest shall be reported to the employee's supervisor (who should report it to Human Resources) or Human Resources. If the employee is the Superintendent, the concern shall be raised to the Board Chair.

Board Policy x.xx.xxx-P

Ethics and Conflict of Interest Policy

8. Annual Training for Board Members and Senior District Leadership

Each year, Board members and senior District staff members shall complete a District-sponsored training on ethics, including conflicts of interest, public meetings laws, and public records laws. Each Board member and senior District staff shall certify in writing completion of the training.

Legal Reference: ORS Chapter 244
History: Adopted __/2024

RESOLUTION No. 6835

Amending the District's Public Contracting Rules to Address Statutory and Administrative Rule Changes and Amending Special Class Procurements

RECITALS

A. The Board of Directors of School District No. 1J, Multnomah County, Oregon ("District") acts as the Local Public Contract Review Board ("Board") pursuant to ORS 279A.060.

B. ORS 279A.065 empowers public contracting agencies to adopt rules of procedure for public contracts, and the District has adopted such rules ("2019 Rules").

C. ORS 279A.065(5)(b) requires a local contracting agency to review its rules for revision each time the Attorney General modifies the Model Rules for Public Contracts. The Attorney General updated the Model Rules in 2021 and 2023 in light of amendments to the Public Contracting Code in the 2021 and 2023 legislature sessions.

D. ORS 279B.085 authorizes the Board to declare certain public contracts or classes of contracts for goods and services as special procurements exempt from the competitive procurement process otherwise required by ORS Chapter 279B, upon certain findings.

E. The Board deems it necessary and advisable to adopt updated rules ("2024 Rules") to address these statutory and rule changes, to improve the format and usability of the District's rules, and to provide for greater public transparency in regard to the District's procurement procedures.

RESOLUTION

1. The Board hereby adopts the 2024 Rules attached hereto as Exhibit A as the District's Public Contracting Rules.

2. The Board adopts the class special procurements enacted in the 2024 Rules set forth in Exhibit A, based on the findings in the attached Exhibit B.

3. The District's 2024 Rules supersede and replace the District's 2019 Rules for procurements advertised or first solicited on or after the effective date of this Resolution. Procurements advertised or first solicited prior to the effective date of this Resolution shall continue to be processed under the 2019 Rules.

Exhibit A

PORTLAND PUBLIC SCHOOLS

2024 PUBLIC

CONTRACTING RULES

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PPS DIVISION 45

DISTRICT CONTRACTS GENERALLY

PPS 45-0000 Generally

Except as expressly provided in other School Board Policies, PPS divisions 45, 46, 47, 48, and 49 (collectively, the "Portland Public Schools Public Contracting Rules") govern all District Contracts. These division 45 rules address delegation of contracting authority under ORS 279A.075 and 332.075, Ethics in Contracting, and procurement from Qualified Rehabilitation Facilities. Divisions 46, 47, 48, and 49 govern Public Contracts as defined in ORS chapters 279A, 279B, and 279C (the Public Contracting Code). Except as otherwise expressly provided in School Board Policy or these rules, these division 45 rules apply to all District Contracts, including Public Contracts as defined in the Public Contracting Code.

PPS 45-0100 Definitions

As used in the Public Contracting Code and divisions 45, 46, 47, 48, and 49 of these rules, and except as otherwise provided in School Board Policy:

(1) "District Contract" means all Contracts entered into by the District, including Public Contracts subject to the Public Contracting Code and divisions 46, 47, 48, and 49, and all other Contracts or agreements entered into by the District. For the purpose of these Public Contracting Rules, "District Contract" does not include settlements of lawsuits or other claims against the District that continue to be governed by Board Policy 8.60.021-P, or the purchase, conveyance, acceptance, sale, or lease of real property or an interest in real property.

AUTHORITY TO APPROVE AND EXECUTE DISTRICT CONTRACTS

PPS 45-0200 Authority to Approve District Contracts; Delegation of Authority to Superintendent

(1) The District is the Contracting Agency within the meaning of the Public Contracting Code.

(2) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under these rules shall be exercised and performed by the School Board, and the powers and duties of the District under the rules shall be exercised and performed by the Superintendent.

(3) Except as provided in section (4) of this rule or as otherwise expressly authorized in these rules, the School Board shall approve all District Contracts.

(4) Pursuant to ORS 279A.075 and 332.075(3), and except as expressly limited by other School Board Policy, the School Board delegates to the Superintendent the authority to enter into and approve payment on District Contracts in the following circumstances:

- **(a)** The District Contract is within appropriations made by the School Board and is not a collective bargaining agreement or a Service Contract that includes the provision of labor performed by employees of the School District, as defined in ORS 332.075(3); and
- **(b)** In any of the following circumstances:
  - **(A)** The total amount payable by the District under the individual District Contract does not exceed $150,000;
  - **(B)** The District Contract is for routine and customary expenditures, including but not limited to payroll, payroll taxes and benefits, utility bills, and postage;
  - **(C)** Advance authorization has been given by the School Board for the Superintendent to execute a particular District Contract or class of District Contracts;

(D) The District Contract is an Emergency Procurement;

(E) The District Contract is a change order or Contract amendment to a prior-approved Contract authorized under these rules;

(F) An offer of judgment made in the course of litigation in with the District is a party when the Superintendent and general counsel determine that such an offer is in the best interest of the District or is to the District's tactical advantage; or

(G) These rules otherwise expressly authorize the Superintendent to approve the Contract.

(5) The Superintendent may designate in writing any District employee or employees to exercise all or a portion of the Superintendent's powers and duties under these rules.

(6) If the Superintendent authorizes an offer of judgment pursuant to PPS 45-0200(4)(b)(F) in an amount exceeding $25,000, the superintendent shall request that the general counsel draft a lawyer-client privileged memo to the School Board to explain the legal basis for the offer of judgment.

(7) No district employee or official shall authorize and no contractor shall undertake any work under a district contract prior to full execution of the contract by all authorized signatories. Notwithstanding the forgoing, the Superintendent may authorize work to begin under a contract prior to full execution in the following circumstances:

(a) The contract is an intergovernmental agreement pursuant to ORS chapter 190, the parties have agreed in principal to the terms of the contract, and the only remaining step is circulation of the Contract for approval; or

(b) The contract is an amendment that is subject to approval of the Board of Education because it will increase the cost of the contract above the superintendent's contract approval authority, but the Board approval process will cause a delay in work completion that will prevent timely delivery of essential services. For the purposes of this exception, "essential services" means goods, services, personal services, or construction services necessary for a school to open on time, a class to start on time, a class or program to complete on time, to comply with conditions of grant that is otherwise at risk of loss, or other services critical to timely and complete education of district students. The Superintendent will only authorize such work in cases where the delay is caused by factors outside of the District's control and that could not have been identified when the contract was first negotiated.

ETHICS IN CONTRACTING

PPS 45-0300 Policy

These rules supplement and do not replace the Oregon Government Ethics Law (ORS 244.010 through 244.400). These rules are designed to accomplish the policy of ORS 244.010 that service as a public official is a public trust and that implementation of District Contracting under these rules and the Public Contracting Code should be free of undisclosed conflicts or undue influence.

PPS 45-0305 Ethics in the Solicitation and Award of District Contracts

District officers who participated in the process of development, selection, and award of District Contracts shall comply with the following rules:

(1) Definitions:

(a) **"Business"** means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, and any other legal entity operated for economic gain, but excluding any income producing, not-for-profit corporation that is tax exempt

under section 501(c) of the Internal Revenue Code with which the District officer or relative is associated only as a member or board director or in a non-remunerative capacity. If the business is privately held, the District official or relative is "associated with the business" if the Person is a director, officer, owner, or employee, or in which the Person owns or has owned stock, debt instruments, stock options, or other form of equity interest worth more than $1,000 in the preceding calendar year. If the business is publicly held, the District official or relative is "associated with the business" if the Person is a director or officer or owns or has owned $100,000 or more of stock, debt instruments, stock options, or other form of equity interest in the preceding calendar year. If the District official is required to file a statement of economic interest, "business" also includes a business listed as a source of income as required under ORS 244.060(3).[1]

(b) **"Conflict of interest"** means any action, decision, or recommendation by a District officer in the course of participating in a procurement under these rules that would ("actual conflict of interest") or could ("potential conflict of interest") be to the private pecuniary benefit or detriment of the District officer, a relative of the District officer, or a business with which the District officer or relative is associated. For the purpose of this requirement:

(c) **"District officer"** means any person who is serving the District as an elected official, appointed official, employee, or agent, whether or not the person is compensated for those services.

(d) **"Gift"** means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions. "Gift" also includes something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(e) **"Relative"** means:

(A) The District officer's spouse or domestic partner;

(B) Children of the District officer, spouse, or domestic partner;

(C) Siblings, spouses of siblings, or parents of the public official, spouse, or domestic partner;

(D) Any individual for whom the District officer has a support obligation;

(E) Any individual for whom the District officer provides benefits related to the public official's public employment or from whom the District officer receives benefits; and

(F) Any person who resides with the public official.

(2) Disclosure of Conflict of Interest Required. Any District official participating in a District procurement, whether for goods or services, Personal services, Public Works, Public Improvements, or any other District Contract shall disclose actual or potential conflicts of interest.

(a) Appointed District Officials. An appointed District official shall disclose actual or potential conflicts of interest in writing to the District official's appointing authority (the person who has hire-and-fire authority over the official). This writing shall disclose the nature of the conflict and request the appointing authority to dispose of the matter. The appointing authority shall respond in writing by designating an alternate to dispose of the matter or directing the District officer to dispose of the matter as directed by the appointing authority.

[1] The only District officials required to file a statement of economic interest are the Superintendent and the chief financial officer.

(b) Elected District Official or Officials Who Serve on Advisory Boards or Commissions. Such District officials shall publicly announce an actual or potential conflict of interest prior to taking any action on the matter giving rise to the conflict. If the conflict is an actual conflict of interest, the public official shall refrain from participating in the decision or discussion of the issue. If the conflict is only a potential conflict of interest, the public official may participate in the debate and decision following disclosure of the potential conflict.

(3) Gifts. District officers are prohibited from soliciting or receiving gifts with an aggregate value of in excess of $50 in a calendar year from any single source that could reasonably be known to have a legislative or administrative interest in any matter subject to the decision or vote of the District official. For the purpose of this section, a District official is considered a decision-maker in the procurement process if he or she makes decisions or recommendations in regard to the drafting of the procurement, the Solicitation process, the opening, review, or scoring of the Solicitation, or a recommendation or decision to award, correct, or reject a solicitation, or response to or resolution of a protest.

(4) Use of Office for Personal Gain Prohibited. District officers, employees, and agents are prohibited from using their official position for personal gain.

(5) Use of Confidential District Information for Gain Prohibited. District officers, employees, and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal financial gain.

PPS 45-0310 Additional Standards of Conduct for Procurement of District Contracts Funded in Whole or in Part by Federal Award

In addition to compliance with ORS 244 and PPS 45-0300 to 45-0305 with District employees, officers and agents in the selection, award, or administration of any contract shall comply with 2 CFR 318(c)(1) regarding procurement of District Contracts funded in whole or in part by Federal award:

(1) No District employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if such person has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of such persons immediate family, such persons partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. A district employer, officer, or agent shall notify such person's appointing authority and shall immediately cease participation in all procurement or award activities relating to or management of such contract.

(2) District officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts supported by a Federal award. This section shall not apply to items that are excluded from the definition of "gift" in ORS 244.020.

(3) A district employer, officer, or agent who violates any of the standards set forth in PPS 45-0310 will be subject to discipline up to and including termination.

PPS 45-0315 Penalties

Any District employee, officer, or agent that fails to comply with PPS 45-0300 to 45-0310 can face investigation or penalty under ORS chapter 244 and/or adverse employment action up to and including termination.

PROCUREMENT FROM QUALIFIED REHABILITATION FACILITIES ("QRF")

PPS 45-0405 QRF Definitions

(1) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services that the State procurement Office has determined to be qualified under OAR 125-055-0015.

(2) "QRF Procurement List" means a listing of those nonprofit agencies for disabled individuals who currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 through 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Contracting Agencies such as the District.

PPS 45-0410 Required Procurement of QRF Products or Services

(1) As required by ORS 279.850(1), if the District intends to procure a Product or service that is listed on the QRF Procurement List, the District shall procure that Product or service, at the Price determined by the State of Oregon Procurement Office, from a QRF if the Product or service is of specifications appropriate to the District's procurement needs and is available within the time required by the District.

(2) The most current QRF Procurement List may be reviewed at the State of Oregon procurement Office Web site at https://dasapp.oregon.gov/qrf/index.aspx.

(3) The Public Contracting Code does not apply to QRF procurements pursuant to ORS 279A.025(4). QRF procurements are therefore exempt from divisions 46, 47, 48, and 49 of these rules.

PPS 45-0500 Contract Extensions

Except as otherwise provided in these rules:

(1) A Current Contract May Be Extended to Complete the Contract Work. If it appears that a District Contract will expire according to its terms before the work provided under the Contract will be completed, the Superintendent may extend the Contract for such period of time necessary to complete the work.

(2) An Expired Contract May Be Reinstated to Complete the Contract Work. If a District Contract inadvertently expires according to its terms before the work provided under the Contract is completed, the Superintendent may reinstate the Contract for such period of time necessary to complete the work. The reinstated Contract shall be deemed to begin upon the expiration of the prior Contract and end upon the termination date set forth in the extension.

(3) A Contract Extension May Not Include Substantive Amendments to the Contract. An extension may not be used to amend or change the scope of the Contract or increase the price of the Contract, except as otherwise may be allowed in these rules. Contract amendments are subject to PPS 46-0480, 47-0800, or 49-0910, depending on the type of Contract.

END OF DIVISION 45

PPS DIVISION 46

PUBLIC CONTRACTING RULES APPLICABLE TO ALL PUBLIC CONTRACTS AND PERSONAL SERVICES CONTRACTS

PPS 46-0000 Generally

These division 46 rules are intended to implement the provisions of ORS 279A applicable to all public procurements, and the provisions of the Uniform Guidance for all District Contracts supported in whole in part by a Federal award. Division 46 also addresses delegation of contracting authority under ORS 279A.075 and 332.075, Contracts for Personal services, and ethics in District Contracting.

PPS 46-0100 Application

(1) Pursuant to ORS 279A.065(5), the District hereby adopts its own public contracting rules ("rules" or "a rule"). Pursuant to ORS 279A.065(1), the Attorney General's Model Rules do not apply to the District. Pursuant to ORS 279A.065(5), the District adopts these rules. These rules consist of the following four divisions:

- **(a)** Division 46 applies to all Public Contracts and implements ORS 279A.
- **(b)** Division 47 applies only to Public Contracts for goods or services and implements ORS 279B.
- **(c)** Division 48 applies only to Public Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying services and related service contracts and implements ORS 279C.100 through 279C.125
- **(d)** Division 49 applies only to Public Contracts for Construction services and implements ORS 279C.300 through 279C.910.

(2) Most of these rules are adapted from the Attorney General's Model Rules and the numbering generally tracks the numbering in OAR Chapter 137 divisions 46, 47, 48, and 49. Except where these rules differ from the Model Rules, the District intends its rules to be interpreted consistently with the Model Rules.

(3) These rules apply to Public Contracts first advertised on or after January 1, 2024.

(4) The District shall review the rules each time the Attorney General modifies the Model Rules to ensure compliance with statutory changes. The District may adopt other rules, and modify as necessary, to carry out the provisions of the Public Contracting Code pursuant to ORS 279A.070.

PPS 46-0110 Definitions

As used in the Public Contracting Code and divisions 45, 46, 47, 48, and 49 of these rules, unless the context or a specifically applicable definition requires otherwise:

(1) **Addendum** or **Addenda** means an addition to or deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) **Administering Contracting Agency** means a governmental body in this state or in another jurisdiction that solicits and establishes the Original Contract for procurement of goods, services, or Public Improvements in a Cooperative Procurement. Administering Contracting Agency includes, for Interstate Cooperative Procurements, any governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations, to enter into Public Contracts.

(3) **Award** means, as the context requires, either the act or occurrence of the District's identification of the Person with whom the District shall enter into a Contract following the resolution of any protest of the District's selection of that Person and the completion of all Contract negotiations.

(4) Benefit Company means a corporation or a limited liability company that is incorporated, organized, formed or created under ORS 60.754 and the corporation's articles of incorporation state that the corporation is a benefit company subject to ORS 60.750 to 60.770.

(5) Bid means a written response to an Invitation to Bid.

(6) Bidder means a Person who submits a Bid in response to an Invitation to Bid.

(7) Brand Name or Equal Specification is defined in ORS 279B.200(1) and means a specification that uses one or more manufacturers' names, makes, catalog numbers, or similar identifying characteristics to describe the standard of quality, performance, functionality, or other characteristics needed to meet the District's requirements, and that authorizes Offerors to offer goods or services that are equivalent or superior to those named or described in the specification.

(8) Brand Name Specification is defined in ORS 279B.200(2) and means a specification limited to one or more products, Brand Names, makes, manufacturers' names, catalog numbers, or similar identifying characteristics.

(9) CFR means the Code of Federal Regulations of the United States of America.

(10) Class Special Procurement is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065, and 279B.070, and is for the purpose of entering into a series of Contracts over time or for multiple projects for the acquisition of a specified class of goods or services.

(11) Closing means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(12) Code means the Public Contracting Code.

(13) Competitive Sealed Bidding is a procurement process where a Contract is awarded based on price pursuant to the lowest Responsive and Responsible bidder.

(14) Competitive Range means the Proposers with whom the District shall conduct discussions or negotiations if the District intends to conduct discussions or negotiations in accordance with PPS 47-0261 or 49-0650.

(15) Contract means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by the District of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(16) Contract Price means, as the context requires, the maximum monetary obligation that the District either will or may incur under a Contract, including bonuses, incentives, and contingency amounts, if the Contractor fully performs under the Contract.

(17) Contract Review Board or **Local Contract Review Board** means the District Board of Directors acting as the Local Contract Review Board for the District under ORS 279A.060.

(18) Contracting Agency is defined in ORS 279A.010(1)(b) and means a Public Body authorized by law to conduct a procurement. Contracting Agency includes, but is not limited to, the Director of the Oregon Department of Administrative services and any Person authorized by a Contracting Agency to conduct a procurement on the Contracting Agency's behalf. Contracting Agency does not include the judicial department or the legislative department.

(19) Contractor means the Person with whom the District enters into a Contract and is interchangeable with "Consultant" and "Provider."

(20) Cooperative Procurement is defined in ORS 279A.200 and means a procurement conducted by an Administering Contracting Agency on behalf of one or more governmental bodies. "Cooperative Procurement" includes, but is not limited to, multi-party Contracts and Price Agreements. "Cooperative Procurement" does not include an agreement formed among only governmental bodies under ORS chapter 190 or other legal authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.

(21) Cooperative Procurement Group means a group of authorized Contracting Agencies or other governmental body, domestic or foreign, joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements pursuant to ORS 279A.200.

(22) Days means calendar days, except as otherwise specified in these rules.

(23) Designated Procurement Officer means the individual designated and authorized by the Superintendent to perform certain procurement functions described in these rules.

(24) Descriptive Literature means the written information submitted with the Offer that addresses the goods and services included in the Offer.

(25) District means School District No. 1J, Multnomah County, Oregon, doing business as Portland Public Schools.

(26) Disqualification means a disqualification, suspension, or Debarment pursuant to ORS 200.065, 200.075, or 279A.110, or PPS 46-0210.

(27) Electronic Advertisement means the District's Solicitation Document, Request for quotes, Request for Information, or other document inviting participation in the District's procurements available over the Internet via (a) the World Wide Web or some other internet protocol or (b) the District's electronic procurement System.

(28) Electronic Offer means a response to the District's Solicitation Document or Request for quotes submitted to the District via (a) the World Wide Web or some other internet protocol or (b) the District's electronic procurement System.

(29) Electronic Procurement System means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer that enables Persons to send Electronic Offers and the District to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a procurement.

(30) Emergency means circumstances that:

- **(a)** Could not have been reasonably 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.

(31) Emergency Procurement means a sourcing method pursuant to ORS 279B.080.

(32) Energy Savings Performance Contract means a Public Contract between the District and a Qualified Energy service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(33) Engineer is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(2).

(34) Facsimile means an exact reproduction or copy of graphic or verbal material converted into electrical signals that are transmitted via telephone to produce a paper copy of the material on the receiving fax machine.

(35) Federal Award is defined in 2 CFR §200.38 and means, depending on the context, in either paragraph (a) or (b) of this section:

(a)

(i) The Federal financial assistance that that the District receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR §200.101 Applicability (such as the State of Oregon); or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that the District receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR §200.101 (Applicability).

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR §200.40 (Federal financial assistance), or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) "Federal award" does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

(36) Findings is defined in ORS 279C.330 and means the justification for an exemption from competitive Bidding for a Contract for a Public Improvement that includes, but is not limited to, information regarding:

(a) Operational, budget, and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(37) Flexible Services Contractor Pool or **FSCP** is a list of qualified contractors determined pursuant to a Request for Qualifications or other method of competitive solicitation with whom the Superintendent may enter into a Contract as provided for in these rules.

(38) Fringe Benefits is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund, or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday

pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide Fringe Benefits, but only when the Contractor or subcontractor is not required by other federal, state, or local law to provide any of these benefits.

(39) Good-Faith Dispute is defined in ORS 279C.580 and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective Work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment, and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(40) Goods is defined in ORS 279A.010(1)(i) and means supplies, equipment, materials, and personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified herein.

(41) Goods and Services or **Goods or Services** is defined in ORS 279A.010(1)(j) and means any combinations of any of the items identified in the definitions of "goods" and "services."

(42) Grant is defined in ORS 279A.010(k) and means:

(a) An agreement under which the District receives money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the District and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which the District provides money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal laws or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by the District is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) Grant does not include a Public Contract:

(A) For a Public Improvement or Public Works, as defined in ORS 279C.800, or

(B) For Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) The District pays moneys that the District has received under a Grant, and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the District.

(43) Interstate Cooperative Procurement is defined in ORS 279A.200 and means a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations to enter into Public

Contracts and in which one or more of the participating governmental bodies are located outside of their state.

(44) Invitation to Bid or **ITB** means the Solicitation Document issued to invite Offers from prospective Contractors under either ORS 279B.055 or 279C.335.

(45) Joint Cooperative Procurement is defined in ORS 279A.200 and means a Cooperative Procurement that identifies:

(a) The participating governmental bodies or the Cooperative Procurement Group;

(b) The Contract requirements or estimated Contract requirements for Price Agreements.

(46) Land Surveyor is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(5).

(47) Life Cycle Cost means the total cost to the District of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

(48) Life-Cycle Costing means the various quantifiable cost factors, in addition to the acquisition cost of goods or services (also referred to in this rule as "product, equipment, and service, separately or in any combination thereof").

(49) Locality is defined in ORS 279C.800 and means the following district in which the Public Works, or the major portion thereof, is to be performed: District 2, composed of Clackamas, Multnomah, and Washington Counties.

(50) Lowest Responsible Bidder means the lowest bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(c) Has not been Debarred or disqualified by the District under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised Contract is a Public Improvement Contract.

(51) Model Rules means the Attorney General's Model Rules of Procedure for Public Contracting as required under ORS 279A.065.

(52) Nonprofit Procurement Organization means a local, state, or national organization formed as a tax-exempt entity under the United States Internal Revenue Code for the purpose of conducting large-scale or volume-competitive procurements as an agent for its governmental and/or nonprofit members in order to obtain the most favorable pricing or terms.

(53) Nonresident Bidder is defined in ORS 279A.120 and means a bidder who is not a resident bidder.

(54) OAR means the Oregon Administrative Rules.

(55) Offer means a written offer to provide goods or services in response to a Solicitation Document.

(56) Offeror means a Person who submits an Offer.

(57) Opening means the date, time, and place specified in the Solicitation Document for the public opening of Offers.

(58) ORS means the Oregon Revised Statutes.

(59) Original Contract is defined in ORS 279A.200(f) and means the initial Contract or Price Agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.

(60) Permissive Cooperative Procurement is defined in ORS 279A.200 and means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.

(61) Person means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(62) Personal Services means the services or type of services performed under a Personal services Contract as defined in PPS 46-0500.

(63) Personal Services Contract or **PSC** is a Contract primarily for Personal services as designated in these rules. Personal services contract does not include a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100).

(64) Prevailing Rate of Wage is defined in ORS 279C.800 and means the rate of hourly wage, including all Fringe Benefits, paid in the Locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(65) "Price Agreement means a Public Contract for the procurement of goods or services at a set price with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide goods or services in which the District does not guarantee a minimum or maximum additional purchase.

(66) Procurement is defined in ORS 279A.010(1)(w) and means the act of purchasing, leasing, renting, or otherwise acquiring goods or services. Procurement includes each function and procedure undertaken or required to be undertaken by the District to enter into a Public Contract, administer a Public Contract, and obtain the performance of a Public Contract under the Public Contracting Code.

(67) Procurement Description is defined in ORS 279B.005(1)(b) and means the words used in a solicitation to describe the goods or services to be procured. "Procurement Description" includes specifications attached to or made a part of the Solicitation.

(68) Product Sample means the exact goods or a representative portion of the goods offered in an Offer, or the goods requested in the Solicitation Documents as a sample.

(69) Proposal means a written response to a Request for proposal.

(70) Proposer means a Person who submits a proposal in response to a Request for proposal.

(71) Public Agency is defined in ORS 279C.800(5) and means the State of Oregon or any political subdivision thereof, or any county, city, district, authority, public corporation, or entity, and any instrumentality thereof organized and existing under law or charter.

(72) Public Body is defined in ORS 279A.010(1)(y) and has the meaning given that term in ORS 174.109.

(73) Public Contracting is defined in ORS 279A.010(1)(aa) and means procurement activities described in the Public Contracting Code relating to obtaining, modifying, or administering Public Contracts or Price Agreements.

(74) Public Improvement is defined in ORS 279A.010 and means a project for construction, reconstruction, or major renovation on real property by or for the District. "Public Improvement" does not include:

(a) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(75) Public Improvement Contract means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(76) (a) Public Works is defined in ORS 279C.800 and includes, but is not limited to:

(A) 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;

(B) A project that uses $750,000 or more funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure, or improvement of any;

(C) A project that uses funds of private entity for construction a privately owned road, highway, building, structure, or improvement of any type a public agency will use or occupy 25 percent or more of the square footage of the completed project;

(D) Notwithstanding the provisions of ORS 279C.810 (Exemptions) (2)(a), (b) and (c), a device, structure or mechanism, or a combination of devices, structures or mechanisms, that:

(i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures or buildings that a public body, as defined in ORS 174.109 ("Public body" defined), owns; or

(E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (Exemptions) (2)(b) and (c), construction, reconstruction, painting or major renovation of a road, highway, building, structure or improvement of any type that occurs, with or without using funds of a public agency, on real property that a public university listed in ORS 352.002 (Public universities) owns.

(b) Public Works does not include:

(A) Reconstructing or renovating privately owned property that a public agency leases; or

(B) A private nonprofit entity's renovation of publicly owned real property that is more than 75 years old if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a Public Agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

(77) Purchase Order means the District's document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. The District's use of a Purchase Order shall comply with the Public Contracting Code and these rules.

(78) Purchasing Contracting Agency is defined in ORS 279A.200(1)(h) and means a governmental body that procures goods, services, or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

(79) QBS means the qualifications-based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services and Related services Contracts under certain circumstances.

(80) Recycled Materials means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(81) Recycled Product is defined in ORS 279A.010(1)(ii) and means all materials, goods, and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste, with not less than 10 percent of its total weight consisting of Post-consumer Waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(82) Request for Proposal or **RFP** is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(83) Request for Qualifications or **RFQ** means a written document issued by the District to which Contractors respond in writing by describing their experience with and qualifications for the services, Personal services, or Architectural, Engineering or Land Surveying services, or Related services, described in the solicitation document.

(84) Request for Quotes means a written or oral request for prices, rates, or other conditions under which a potential Contractor would provide goods or perform services, Personal services, or Public Improvements described in the request.

(85) Responsible means meeting the standards set forth in PPS 47-0640 or 49-0390(2), and not Debarred or disqualified by the District under PPS 47-0575 or 49-0370.

(86) Resident Bidder is defined in ORS 279A.120 and means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state, and has stated in the bid whether the bidder is a "Resident bidder."

(87) Responsible Offeror means a Person who has submitted an Offer and met the standards set forth in PPS 47-0500 or PPS 49-0390(2), and who has not been Debarred or disqualified by the District under PPS 47-0575 or 49-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.

(88) Responsive means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(89) Responsive Offer means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(90) Retainage is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the Contract by the District.

(91) Revenue Contract means a Contract where the District is providing goods or services to another party for compensation. Revenue Contracts are typically intergovernmental agreements with other education or education-related social service providers, or Contracts with other community partners in furtherance of the District's educational mission.

(92) School Board means the District Board of Directors acting as the governing body of the District pursuant to ORS chapter 332.

(93) Secondary Waste Content or **Secondary Waste Materials** is defined in ORS 279A.010(1)(jj) and means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process, such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(94) Services is defined in ORS 279A.010(1) and means services other than Personal services designated under PPS 46-0500 and ORS 279A.055.

(95) Signature means any written mark, word, or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a written document to which the Person intends to be bound.

(96) Signed means, as the context requires, that a written document contains a signature or that the act of making a signature has occurred.

(97) Solicitation Document means an Invitation to Bid, a Request for proposals, Request for quotes, or other similar document issued to invite Offers from prospective Contractors under ORS chapter 279B or 279C. The following are not "Solicitation Documents" unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole-source notice, an approval of a Special procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(98) Solicitation file is a physical or electronic file containing documents relating to a specific procurement or procurements that is maintained in the District's procurement Division or in another District department or division that is responsible for the procurement.

(99) Specifications means, with respect to goods or services, any description of the physical or functional characteristics of, or of the nature of, goods or services to be procured by the District, including any requirement for inspecting, testing, or preparing goods or services for delivery and the quantities or qualities of materials to be furnished under the Contract. See ORS 279B.200(3). With respect to Public Improvements, "specifications" generally means any description of the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.

(100) Superintendent means the District Superintendent or the Superintendent's designee.

(101) Uniform Guidance means 2 CFR Part 200—Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal awards. The Uniform Guidance applies to all District Contracts funded in whole or in part by Federal award.

(102) :

(a) **Veteran** means an individual who Served on active duty with the Armed Forces of the United States:

(A) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(B) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(C) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(D) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(E) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(i) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions;

(ii) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs;

(iii) Is a disabled veteran, as defined in ORS 408.225; or

(iv) Has been a reserve officer or member of a National Guard unit for at least five years before the individual seeks a certification under ORS 200.055.

(b) As used in paragraph (a) of this subsection, “active duty” does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(103) Work means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.

(104) Writing means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(105) Written means existing in writing.

PPS 46-0120 Policy

The District shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these rules.

PPS 46-0130 Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, the District shall exercise all rights, powers, and authority related to Public Contracting in accordance with the Public Contracting Code and these rules.

(2) The District may make a procurement without competitive sealed bidding, competitive sealed Proposals, or other competition required under ORS 279B.050 through 279B.085 or PPS 47-0255 through 47-0670, provided the procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347), or other federal law that is, as determined by the Local Contract Review Board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002, in effectuating or promoting transfers of property to the District.

(3) Except as expressly provided herein, these rules do not apply to the Contracts or classes of Contracts described in ORS 279A.025(2), including the following District Contracts:

(a) Contracts between the District and:

(A) Another Contracting Agency;

(B) The Oregon Health and Science University;

(C) A public university listed in ORS 352.002;

(D) The Oregon State Bar;

(E) A governmental body of another state;

(F) The federal government;

(G) An American Indian tribe or an agency of an American Indian tribe;

(H) A nation, or a governmental body in a nation, other than the United States; or

(I) An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

(iii) An American Indian tribe or an agency of an American Indian tribe;

(iv) A nation other than the United States; or

(v) A governmental body in a nation other than the United States.

(b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance, or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

(c) Insurance and service Contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection;

(d) Grants;

(e) Contracts for professional or expert witnesses or Consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a Public Body is or may become interested;

(f) Acquisitions or disposals of real property or interest in real property;

(g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(h) Contracts for the procurement or distribution of textbooks;

(i) Procurements by the District from an Oregon Corrections Enterprises program;

(j) Contracts, agreements, or other documents entered into, issued, or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a Public Body;

(B) Program loans and similar extensions or advances of funds, aid, or assistance that a Public Body makes to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by a Public Body as authorized by law, and other financial transactions of a Public Body that by their character cannot practically be established under the competitive Contractor selection procedures of ORS 279B.050 through 279B.085;

(k) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303, and 243.565;

(l) Contracts for employee benefit plans as provided in ORS 243.860 through 243.886; or

(m) Any other Public Contracting of a Public Body specifically exempted from the Code by another provision of law.

(4) Rules adopted to implement ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to Contracts made with qualified non-profit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 through 279.855.

MINORITIES, WOMEN, AND EMERGING SMALL BUSINESSES

PPS 46-0210 Subcontracting to and Contracting With Emerging Small Businesses; Disqualification

(1) For the purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or

(b) The Contractor certifies in a signed writing to the District that a substantial number of the subcontractor's employees, or subcontractors that will manufacture or provide the goods or perform the services or Personal services under the Contract reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the District shall determine in each particular instance what proportion of a Contractor's or subcontractor's employees or subcontractors constitutes a substantial number.

(2) The District shall include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the District, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a women-owned business, an emerging small business or a veteran-owned business.

(3) Disqualification.

(a) The District may disqualify a Person from consideration for award of the District's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract under ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (4)(b) and (c) of this rule.

(b) The District shall provide written notice to the Person of a proposed Disqualification. The District shall deliver the written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the District intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in writing within the time stated in the notice and that if the District does not receive the Person's written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The District shall schedule a hearing upon the District's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, The District shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing. The Contract Review Board may hold the hearing or may designate a hearings officer to conduct the hearing.

(d) Notice of Disqualification. The District shall provide written notice of the Disqualification to the Person. The District shall deliver the written notice by person service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(4) Contract and Subcontract Conditions. If the District awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8)[2] and 200.045(3),[3] or awards a Contract under ORS 279A.100:[4]

(a) The District shall provide, as a material condition of the Contract:

(A) That the Contractor shall maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor shall promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or ORS 279C.570 and 279C.580, whichever apply to the Contract;

(C) That the Contractor shall include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

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[2] A bidder or proposer that the Governor's Policy Advisor for Economic and Business Equity determines has undertaken both a policy and a practice of actively pursuing participation by minority-owned businesses, women-owned businesses, businesses that veterans own or emerging small businesses in all of the bidder's or proposer's bids or proposals, both public and private.

[3] A bidder or proposer has made good faith efforts to encourage required participants to participate by taking all of the actions list in ORS 200.045(3).

[4] An affirmative action program adopted under ORS 279A.100 for goods and services contracts or any other contract under $50,000.

(D) That the District may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the District shall verify the Contractor's and any subcontractor's compliance with Subsection (5)(a) of this rule.

(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

CONTRACT PREFERENCES

PPS 46-0300 Preference for Oregon Goods or Services

(1) Tiebreaker Preference and Award When Offers Identical. Under ORS 279A.120, when the District receives Offers identical in price, fitness, availability, and quality and chooses to award a Contract, the District shall award the Contract based on the following order of precedence:

(a) The District shall award the Contract to the Offeror among those submitting identical Offers who is offering goods or services, or both, or Personal services that are manufactured, produced, or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers and they all offer goods or services, or both, or Personal services, that are manufactured, produced, or to be performed in Oregon, the District shall award the Contract by drawing lots among the identical Offers. The District shall provide the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the District receives identical Offers and none of the identical Offers offer goods or services, or both, or Personal services, that are manufactured, produced, or to be performed in Oregon, then the District shall award the Contract by drawing lots among the identical Offers. The District shall provide to the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.

(2) Determining if Offers Are Identical. The District shall consider Offers identical in price, fitness, availability, and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability, and quality if the Bids are Responsive and offer the goods or services, or both, or Personal services, described in the Invitation to bid at the same price.

(b) Proposals received in response to a Request for proposal are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for proposal.

(c) Offers received in response to a Special procurement conducted under ORS 279B.085 are identical in price, fitness, availability, and quality if, after completing the contracting procedure approved by the Contract Review Board, the District determines, in writing, that two or more Proposals are equally advantageous to the District.

(d) Offers received in response to an intermediate procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the District in accordance with ORS 279B.070(4).

(3) Determining if Goods or Services or Personal Services Are Manufactured or Produced in Oregon. In applying section (1) of this rule, the District shall determine whether a Contract is predominantly for goods, services, or Personal services and then use the predominant purpose to determine if the goods, services, or Personal services are manufactured, produced, or performed in Oregon. The District may request, either in a Solicitation Document, following Closing, or at any other time the District determines is appropriate, any information the District may need to determine if the goods, services, or Personal services are manufactured or produced in Oregon. The District may use any reasonable criteria to determine if goods, services, or Personal services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the District applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the District shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, the District may provide, in a Solicitation Document for goods, services, or Personal services, a specified percentage preference of not more than 10 percent for (i) goods fabricated or processed entirely in Oregon or services or Personal services performed entirely in Oregon or (ii) for goods or services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754 and has the majority of the benefit company's regular, full-time workforce located in this state, if the goods or services cost not more than five percent more than the goods or services available from a contractor that is not a benefit company. When the District provides for a preference under this section and more than one Offeror qualifies for the preference, the District may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The District may establish a preference percentage higher than 10 percent by written order that finds Good Cause to establish the higher percentage and that explains the District's reasons and evidence for finding Good Cause to establish a higher percentage. The District may not apply the preferences described in this section in a procurement for Emergency Work, minor alterations, ordinary repairs or maintenance of public improvements, or construction Work that is described in ORS 297C.320.

PPS 46-0310 Reciprocal Preferences

(1) When evaluating Bids pursuant to PPS 47-0255 through 47-0257, 49-0390, or PPS 49-0640 through 49-0660, the District shall add a percentage increase to the Bid of a Nonresident bidder equal to the percentage, if any, of the preference that would be given to that bidder in the state in which the bidder resides. The District may rely on the list prepared and maintained by the Oregon Department of Administrative services pursuant to ORS 279A.120(4) to determine whether the Nonresident bidder's state gives preference to in-state bidders and the amount of such preference.

PPS 46-0320 Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring the District to award a Contract to the lowest or best Offeror, and in accordance with section (2) of this rule, the District may give preference to the procurement of goods manufactured from Recycled Materials whenever the District uses competitive sealed bidding or competitive sealed Proposals and as set forth in this rule.

(2) In comparing goods from two or more Offerors, if at least one Offeror Offers goods manufactured from Recycled Materials and at least one Offeror does not, the District may select the Offeror offering goods manufactured from Recycled Materials if each of the following four conditions exists:

(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 5 percent, or a higher percentage if a written determination is made by the District and set forth in the Solicitation Document. For purposes of making the foregoing determination, the District shall consider the costs of the goods following any adjustments the District makes to the price of the goods for purposes of evaluation pursuant to PPS 46-0310.

(3) Offerors shall certify in their Offers:

(a) The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and

(b) Both the post-consumer and Secondary Waste Content thereof.

(4) To be eligible for a preference under ORS 279A.125 and this rule:

(a) The Offeror shall indicate which materials and supplies contain verifiable recycled content; and

(b) Such products shall meet the requirements of ORS 279A.125 and this rule.

(5) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(6) Offers that contain false information about (a) the percentage of Recycled Product, post-consumer, and Secondary Waste Content or (b) verifiable recycled content, shall be rejected as non-responsive, and the Offeror offering false information may be deemed non-responsible.

PPS 46-0330 Solicitations and Specifications to Comply With School Board Environmental and Sustainability Policies.

The District shall develop specifications for and procure goods, services, and Public Improvements in compliance with the applicable School Board environmental and sustainability policies, including, but not limited to Board Policy 3.30.080-P (Resource Conservation), 3.30.082-P (Environmentally Sustainable Business Practices), and 8.80.010-P (High Performance Facility Design), and related Administrative Directives adopted by the Superintendent.

COOPERATIVE PROCUREMENT

PPS 46-0400 Authority for Cooperative Procurements

(1) The District may participate in, sponsor, conduct, or administer any of the following:

(a) Joint Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of goods or services using a source-selection method substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085, or to establish Original Contracts or Contracts for Public Improvements that use a competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.

(b) Permissive Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of goods or services only, using a source-selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(c) Interstate Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of goods or services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(2) The District shall determine, in writing, whether the Solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085 in accordance with ORS 279A.200(2). This written documentation shall be maintained in the District's Solicitation file.

PPS 46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If the District is an Administering Contracting Agency of a Cooperative Procurement, the District may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the District. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement shall pay administrative fees to the Administering Contracting Agency, whether each Person shall enter into a written agreement with the District, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. When acting as an Administering Contracting Agency, the District may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these rules.

(2) If the District is acting as a Purchasing Contracting Agency and enters into a Contract based on a Cooperative Procurement, the District shall comply with the Code and these rules, including, without limitation, those sections of the Code and these rules that govern:

- **(a)** The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;
- **(b)** The advertisement of the Solicitation Document related to the Cooperative Procurement; and
- **(c)** Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

PPS 46-0420 Joint Cooperative Procurements

(1) **Applicability**. The District may participate in, sponsor, conduct, or administer a Joint Cooperative Procurement for the purchase of goods or services or Public Improvements. The District shall comply with the procedures set out in ORS 279A.210 and these rules to procure goods or services or Public Improvements using a Joint Cooperative Procurement. Only the Participating agencies listed in the Solicitation and original Contract Documents may enter into a Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

(2) **Solicitation Requirements**. The District may administer or participate in a Joint Cooperative Procurement only if:

- **(a)** The Administering Contracting Agency's solicitation and award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060, or 279B.085, or uses a competitive Bidding process substantially equivalent to the competitive Bidding process in ORS 279C;
- **(b)** The Administering Contracting Agency's solicitation and the Original Contract or Price Agreement identifies the Cooperative Procurement Group or each participating Purchasing Contracting Agency and specifies the estimated Contract requirements; and
- **(c)** No material change is made in the terms, conditions, or prices of the Contract between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

PPS 46-0430 Permissive Cooperative Procurements

(1) Applicability. The District may only participate in, sponsor, conduct, or administer a Permissive Cooperative Procurement for the purchase of goods or services, but not for Public Improvements. The District shall comply with the procedures set out in ORS 279A.215 and these rules to procure goods or services using a Permissive Cooperative Procurement. A Permissive Cooperative Procurement is not a Joint Cooperative Procurement.

(2) Solicitation Requirements. The District may establish or participate in a Contract or Price Agreement through a Permissive Cooperative Procurement only if:

(a) The Administering Contracting Agency's solicitation and award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The Administering Contracting Agency's solicitation and the Original Contract allow other Contracting Agencies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract;

(c) The Contractor agrees to extend the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency; and

(d) No material change is made in the terms, conditions, or prices of the Contract or Price Agreement between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

PPS 46-0440 Required Public Notice if Permissive Cooperative Procurement Is Over $250,000

(1) The District shall publish a notice of its intent to enter into a Contract through a Permissive Cooperative Procurement if the District estimates that it will spend in excess of $250,000 for the purchase of the goods or services to be acquired under the Contract.

(2) For purposes of determining if the District shall give a notice of intent, the District shall spend in excess of $250,000 for goods or services procured under the Contract if:

(a) The District intends to make payments, in aggregate, over the term of the Contract in excess of $250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;

(b) The District's Contract expressly provides for payment, whether a fixed or maximum price, in excess of $250,000; or

(c) At the time the District enters into the Contract, the District reasonably contemplates, based on historical or other data available to the District, that the total payments it will make for the goods or services, or Personal services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(3) The notice of intent shall contain the following information:

(a) A description of the procurement;

(b) An estimated amount of the procurement;

(c) The name of the Administering Contracting Agency, and

(d) A time, place, and date by which comments shall be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement.

(4) The notice shall be published:

(a) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of Invitations to Bid or Requests for Proposals; and

(b) No fewer than seven days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(5) Vendors shall submit comments within seven days after the notice of intent is published.

(6) If the District receives comments on its intent to establish a Contract, the District shall, prior to establishing a Contract or Price Agreement:

(a) Make a written determination that establishing a Contract is in the best interest of the District.

(b) Provide a copy of the written determination to all vendors that submitted comments.

PPS 46-0450 Interstate Cooperative Procurements

(1) Applicability. The District may only participate in an Interstate Cooperative Procurement for the purchase of goods or services pursuant to ORS 279A.220 and these rules to procure goods or services, but not Public Improvements.

(2) Solicitation Requirements. The District may establish a Contract or Price Agreement through an Interstate Cooperative Procurement only if:

(a) The Administering Contracting Agency's solicitation and award process for the Original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The Administering Contracting Agency's solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract; and

(c) The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency.

PPS 46-0460 Advertisements of Interstate Cooperative Procurements

The District may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative Procurement lists the District, or the Cooperative Procurement Group of which the District is a member, as a party that may establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The District;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group of which the District is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with PPS 46-0460(1), the District gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement.

(a) The notice of intent shall contain the following information:

(A) A description of the procurement;

(B) An estimated amount of the procurement;

(C) The name of the Administering Contracting Agency, and;

(D) A time, place, and date by which comments shall be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Interstate Cooperative Procurement.

(b) The notice shall be published:

(A) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of ITB or RFP; and

(B) No fewer than seven days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(c) Vendors shall submit comments within seven days after the notice of intent is published.

(d) If the District receives comments on its intent to establish a Contract, the District shall, prior to establishing a Contract or Price Agreement:

(A) Make a written determination that establishing a Contract is in the best interest of the District.

(B) Provide a copy of the written determination to all vendors that submitted comments.

PPS 46-0470 Protest and Disputes; Cooperative Procurements

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a Solicitation Document related to a Cooperative Procurement, or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425, unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of the District or other Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of the District or any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

PPS 46-0480 Contract Amendments; Cooperative Procurements

The District may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in PPS 47-0800 or PPS 49-0910, as applicable.

PERSONAL SERVICES CONTRACTS

PPS 46-0500 Personal Services Contract Definition

(1) Pursuant to ORS 279A.055(2), a Contract for Personal services ("PSC") is a Contract primarily for the provision of Services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of services depends on attributes that are unique to the service provider.

(2) PSCs that fall within the definition in section (1) of this rule include, but are not limited to, the following:

- **(a)** Contracts for services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant, or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying services and other construction-related professional services subject to division 48 of these rules;
- **(b)** Contracts for services as an artist in the performing or fine arts, including any Person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
- **(c)** Contracts for services that are specialized, creative, or research-oriented;
- **(d)** Contracts for educational services;
- **(e)** Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and
- **(f)** Contracts for other professional or technical consulting services not listed above.

(3) The Contract Review Board delegates to the Superintendent the discretion to decide whether a particular type of Contract or service falls within the definition of "Personal Services Contract" as set forth in Sections (1) and (2) of this rule.

(4) The District shall not use PSCs to obtain and pay for the services of an employee. A PSC may be used only to obtain and pay for the services of an independent Contractor.

PPS 46-0505 Personal Service Contract Formal Selection Procedures

The District shall use a formal selection procedure if the estimate contract amount of personal services contract is greater than $250,000. All formal RFP and RFQ solicitations shall comply with the requirements for competitive sealed Proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the Sealed proposal procurement methods set forth in PPS 47-0260 to 47-0263.

PPS 46-0510 PSC Informal Selection Procedures

The District may use an informal selection process to obtain Personal services when a formal selection process is not required.

(1) The informal selection process shall solicit responses/Proposals from at least three qualified Contractors offering the required services. If three Proposals are not reasonably available, fewer will suffice, but the District shall make a written record of the effort made to obtain at least three Proposals.

(2) The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including, but not limited to, each Proposer's:

(a) Particular capability to perform the services required;

(b) Experienced staff available to perform the services required, including each Proposer's recent, current, and projected workloads;

(c) Performance history;

(d) Approach and philosophy used in providing services;

(e) Fees or costs;

(f) Geographic proximity to the project or the area where the services are to be performed; and

(g) Work volume previously awarded by the District, with the object of effecting an equitable distribution of Contracts among qualified Contractors. But distribution shall not violate the policy of selecting the most highly qualified Contractor to perform the services at a fair and reasonable price.

Written confirmation of solicitation attempts and responses with Contractor names and addresses shall be maintained in the District's Solicitation file.

PPS 46-0515 Other Approved Solicitation Methods

(1) Request for Qualifications. An RFQ may be used to determine that competition does not exist for a particular service, to establish a list of qualified Contractors for RFPs or for informal solicitations under these rules, or to establish an FSCP as provided in PPS 46-0520.

(a) The RFQ shall at least describe the particular specialty desired, the qualifications the Contractor shall have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed with references concerning past performance; and any other information necessary to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed services. The RFQ shall include the date, time, and place of the meeting.

(c) Unless the RFQ establishes that competition does not exist or that Contracts will be individually negotiated with Contractors in an FSCP, each Contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal or Price quote in response to the District's subsequent RFP.

(2) Price Agreements. The District may enter into Price Agreements for Personal services. Such Price Agreements shall be solicited as otherwise required by these rules based on the maximum Contract amount.

(3) Cooperative Procurement. The District may contract for Personal services pursuant to a Cooperative Procurement in compliance with PPS 46-0400 to 46-0480.

PPS 46-0520 Flexible Services Contractor Pool

The Superintendent may establish an FSCP for a particular class of services where the need for such services is ongoing in nature, where it is difficult to anticipate the service need, time, amount, or availability of Contractors, or where service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these rules. An FSCP shall comply with the following requirements:

(1) Solicitation to Create an FSCP. An FSCP can be established pursuant to an RFQ, an RFP, competitive quotes, or such other method of competitive procurement as the Superintendent deems to be appropriate given the services to be procured.

(a) The Superintendent shall document in the Solicitation file the reasons for establishing an FSCP consistent with this rule. This documentation shall be reviewed and approved by the Director of procurement as demonstrating that the procurement qualifies for use of an FSCP under these rules.

(b) The solicitation shall describe the class of Contracts that can be awarded to Contractors in the FSCP. The District may not award Contracts outside the designated class of Contracts to the FSCP.

(c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(d) The solicitation may request a binding Price quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(e) The solicitation may set or limit the value of the work performed by the FSCP.

(2) Contracting for Work From an FSCP.

(a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual projects within the established scope of the work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual projects will be offered, negotiated, and awarded sequentially to Contractors on the FSCP list. Once the superintendent has offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The project is for Work that is a continuation of, addition to, or connected with Work previously performed by a Contractor on the list and such prior experience means that it is in the best interest of the District to award the Contract to the Contractor that performed the prior Work.

(D) The nature of the project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in writing in the Solicitation file.

(b) An FSCP established under this section will expire after three years from the date of Closing of the Solicitation, unless reestablished as provided in this rule.

(c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of work or any Work at all.

(d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of work from other Contractors through any other procurement method authorized under these rules.

(e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of work.

PPS 46-0525 PSC Selection by Negotiation

The Superintendent may procure Personal services with Contractors through direct negotiation in any of the following circumstances:

(1) The Contract Price is not more than $75,000.

(2) The Superintendent has established an FSCP pursuant to PPS 46-0520(2) for a particular class of projects, and the Contractor is on the FSCP list.

(3) The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such Work include insurance brokerage/agent of record services, medical services, and audit services.

(4) The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such services can include, but are not limited to, education services, academic and staff coaching, school sports officiation, and community relations.

(5) The Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(6) A Contract for which a non-District funding source, e.g., a Grant or a federal, state, or city contract, identifies the Contractor in the funding award or makes a funding award conditioned upon the service being performed by a specific Contractor. The following shall be documented to the Solicitation file:

(a) The name of the external funding source;

(b) The background on how the funding source selected the Contractor(s); and

(c) A copy of the funder's document naming the Contractor.

(7) A Contract where the student, parent, or other third-party participant selects the service provider and the process for selecting qualified Contractors has been approved in advance by the Director of procurement.

(8) The Contract is entered into pursuant to an emergency declared by the Superintendent.

(9) The Contract is for the provision of child care services to District students where the Contractor is paid directly by a non-District funding source (generally parents).

(10) The Contract is for the provision of tutoring to eligible District students attending private schools as per Title I.

(11) The Contract is for interim staff or temporary staffing services.

(12) The Contract is for the provision of therapeutic placement with outside agencies or programs to meet needs identified in a student's Individualized Education Program ("IEP").

(13) The Contract is for legal services. For the purposes of this section, "legal services" means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.

(14) The Contract is for services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, laboratory technicians and those with specific license or unique skill to administer treatments for the health and well-being of people."

PPS 46-0530 PSC Contract Requirements

District PSCs shall contain the mandatory Contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the Contract involves lawn or landscape maintenance, ORS 279B.225.

PPS 46-0535 PSC Contract Amendments

(1) The District may amend any Personal services Contract if the District, in its sole discretion, determines that the amendment is within the scope of the Solicitation and that the amendment would not materially impact the field of competition for the Personal services described in the final form of the original procurement document. In making this determination, the District shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the procurement document were re-issued to include the additional services.

(2) The District may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.

(3) All amendments to Contracts shall be in writing, shall be signed by an authorized representative of the Consultant and the District, and shall receive all required approvals before the amendments will be binding on the District.

(4) Amendments That Would Cause a Contract to Exceed the Superintendent's Authority. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 shall be approved by the School Board except as provided in PPS 45-0200(7)(b).

PROCUREMENT OF CONTRACTS FUNDED IN WHOLE OR IN PART BY FEDERAL AWARD

PPS 46-0600 General Rule: Federal Law Prevails in Case of Conflict

When a District contract involves federal funds that require compliance with federal statutes or regulations, the federal statutes and regulations govern over any conflicting provisions in these rules or the State of Oregon Public Contracting Code. See ORS 279A.030. Notwithstanding the foregoing, when both state and federal prevailing rates of wage apply to a particular, the District shall require payment not less than the higher of the applicable state or federal prevailing rate of wage. See ORS 279C.830.

PPS 46-0605 Procurements Subject to the Uniform Guidance

Procurement of contracts supported in whole or in part by Federal award are generally subject to the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 to 200.326. PPS 46-600 to 625 are intended to comply with Uniform Guidance and supersede other District procurements with regard to procurement of contracts supported in whole or in part by Federal award.

PPS 46-0610 General Procurement Standards for Contracts Subject to the Uniform Guidance

If the District contract is supported in whole or in part by a Federal award, the following provisions apply to the Contract:

(1) The District shall apply the procedures in these rules to avoid acquisition of unnecessary or duplicative items. The District shall consolidate or break out procurements when necessary to make a more economical

purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(2) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the District is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(3) The District is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(4) The District shall include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(5) The District shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(6) The District shall maintain records sufficient to detail the history of the particular procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(7) Time and Material Contracts

(a) The District may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. For the purposes of this section "time and materials type contract" means a contract whose cost to the District is the sum of:

(A) The actual cost of materials; and

(B) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(b) All time and materials contract shall include a ceiling price that the contractor exceeds at its own risk.

(c) The District shall conduct sufficient oversight of a time a time and materials type contract to obtain reasonable assurance that the contractor is using efficient methods and cost controls.

PPS 46-0615 Required Competition

All procurement transactions for contracts supported in whole or in part by federal award shall be conducted in a manner providing full and open competition consistent with the standards of this section.
(1) Contractors that develop or draft specifications, requirements, statements of work, and invitations to Bid or requests for proposals shall be prohibited from competing for such procurement.

(2) The District shall not unreasonable restrict competition by:

(a) Imposing unreasonable prequalification requirements;

(b) Requirement unnecessary experience and excessive bonding;

(c) Allowing or requiring non-competitive pricing practices between firms or affiliated companies;

(d) Awarding non-competitive contracts to consultants that are on retaining contracts;

(e) Allowing organizational conflicts of interest;

(f) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; or

(g) Taking any arbitrary action in the procurement process.

(3) The District may not apply any statutory or administratively imposed state or local geographical preferences except where allowed or mandated by applicable federal statutes. Nothing in this section preempts state licensing requirements. In addition, contracts for architectural and engineering services may include geographical location as a selection criterion provided its applications leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(4) A District procurement shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, but should not be so detailed or restrict that it unduly restricts competition; and

(b) Identify all requirements that bidders or proposers shall fulfill and all other factors to be used in evaluating bids or proposals.

(5) The District shall ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the District shall allow potential bidders to qualify during the Solicitation period.

PPS 46-0620 Procurement by Micro-Purchases

procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. The current micro-purchase threshold is set at $10,000, but is periodically adjusted. The most current threshold is set forth at 48 CFR Subpart 2.101 (Definitions). To the extent practicable, the District shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable.

PPS 46-0625 Procurement by Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. The Simplified Acquisition threshold is set at $250,000, but is periodically adjusted. The most current threshold is set forth at 48 CFR Subpart 2.1. If small purchase procedures are used, the District shall obtain price or rate quotation from an adequate number of qualified sources.

PPS 46-0630 Procurement by Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) supported by a Federal award shall be awarded to the responsible bidder whose Bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed Bid method is the preferred method for procuring construction, if the conditions in paragraph (1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(a) A complete, adequate, and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business; and

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(a) Bids shall be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids shall be publicly advertised;

(b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(c) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids shall be opened publicly;

(d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which Bid is lowest. Payment discounts will only be used to determine the low Bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is a sound documented reason.

PPS 46-0635 Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used for contracts supported by a Federal award, the following requirements apply:

(1) Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be considered to the maximum extent practical;

(2) Proposals shall be solicited from an adequate number of qualified sources;

(3) The District shall establish a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Notwithstanding ORS 279C.100 to 279C.124 and OAR division 48, qualifications-based selection can only be used in procurement of A/E professional services.

PPS 46-0640 Procurement by Noncompetitive Proposals

procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only for contracts supported by a Federal award when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or

(4) After solicitation of a number of sources, competition is determined inadequate.

PPS 46-0645 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

(1) The District shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (f) of this section.

PPS 46-0650 Procurement of Recovered Materials

The District and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PPS 46-0655 Contract Cost and Price

(1) The District shall perform a cost or price analysis in connection with every procurement action supported by a Federal award in excess of the Simplified Acquisition Threshold including contract modifications. The District shall make independent estimates before receiving bids or proposals.

(2) The District shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR Subpart E—Cost Principles. The District may reference its own cost principles that comply with the Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

PPS 46-0660 Federal Awarding Agency or Pass-Through Entity Review

At the request the Federal awarding agency or the pass-through entity, the District shall make available all relevant procurement documents for review as required by 2 CFR section 200.324.

PPS 46-0665 Bonding Requirements

For construction or facility improvement contracts or subcontracts supported by a Federal award exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the Bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

PPS 46-0670 Mandatory Contract Provisions

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the District under a Federal award shall contain provisions covering the following, as applicable.

(1) Contracts for more than the Simplified Acquisition Threshold (see Subsection 5) shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(2) All contracts in excess of $10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(4) Davis-Bacon Act, as Amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be

required to pay wages not less than once a week. The non-Federal entity shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract shall be conditioned upon the acceptance of the wage determination. The non-Federal entity shall report all suspected or reported violations to the Federal awarding agency. The contracts shall also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity shall report all suspected or reported violations to the Federal awarding agency.

(5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended. Contracts and subgrants of amounts in excess of $150,000 shall contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) shall not be made to parties listed on the government-wide exclusions in the System for award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties Debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress,

or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(10) Additional Requirements of the Specific Federal Award. In addition to the requirements of this section, a specific Federal award may contain other procurement requirements or mandatory contract clauses. The District officer, employee, or agent that is responsible for procurement of a contract subject to a Federal award shall review the requirements of the specific Federal award and shall incorporate such requirements into the procurement process or proposed contract.

END OF DIVISION 46

PPS DIVISION 47

PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR SERVICES OTHER THAN PERSONAL SERVICES

PPS 47-0000 Generally

These division 47 rules implement ORS 279B applicable to public procurements for goods or services, or both.

PPS 47-0250 Methods of Source Selection

(1) Except as permitted in these rules, the District shall award a Public Contract for goods or services, or both, by one of the following sourcing methods:

- **(a)** Competitive sealed bidding (also known as Invitation to Bid or ITB) pursuant to ORS 279B.055 and PPS 47-0255 and 47-0257;
- **(b)** Competitive sealed Proposals (also known as Request for proposal or RFP) pursuant to ORS 279B.060 and PPS 47-0260 through 47-0263;
- **(c)** Small procurements ($25,000 or less) pursuant to ORS 279B.065 and PPS 47-0265;
- **(d)** Intermediate procurements (more than $25,000 to $250,000) pursuant to ORS 279B.070 and PPS 47-0270;
- **(e)** Sole-source procurement pursuant to ORS 279B.075 and PPS 47-0275;
- **(f)** Emergency Procurement pursuant to ORS 279B.080 and PPS 47-0280;
- **(g)** Special procurement pursuant to ORS 279B.085 and PPS 47-0285, including the Class Special Procurements set forth in PPS 47-0288; or
- **(h)** Cooperative Procurement pursuant to ORS 279A.200 and PPS 46-0400 through 46-0480.

PPS 47-0252 Procurement of Service Contracts Over $250,000 in Compliance With ORS 279B.030 Through 279B.036

(1) Unless the District determines that it is not feasible to perform the services with the District's own personnel and resources pursuant to section (4) of this rule, before conducting a procurement of a Contract for services with an estimated Contract Price that exceeds $250,000 the District shall conduct a written cost analysis in accordance with section (2) of this rule. The cost analysis shall compare an estimate of the District's cost in performing the services with an estimate of the cost that a potential Contractor would incur in performing the services. The District may proceed with the procurement only if it determines that the District would incur more cost in performing the services with its own personnel and resources than in procuring the services from a Contractor. For the purposes of this section, "Contract for services" does not include:

- **(a)** Contracts for Personal services as defined in PPS 46-0500.
- **(b)** Contracts for services exempted from compliance with the Public Contracting Code by ORS 197.025 or other state statute.
- **(c)** Procurements for Client services as defined in OAR 125-246-0110. "Client services" means any services that directly or primarily support a Client, whether or not the Client is the recipient through the provision of voluntary or mandatory services. Client services also means any goods that are incidental or specialized in relation to any services defined in this section. Client services may include, but are not limited to (where these terms are used in another statute, they shall have that meaning):

(A) Housing, including utilities, rent, or mortgage, or assistance to pay utilities, rent, or mortgage;

(B) Sustenance, including clothing;

(C) Employment training or skills training to improve employability;

(D) Services for people with disabilities;

(E) Foster care or foster care facilities;

(F) Residential care or residential care facilities;

(G) Community housing;

(H) In-home care, including home-delivered meals;

(I) Medical care, services, and treatment, including, but not limited to:

(i) Medical, dental, hospital, psychological, psychiatric, therapy, vision;

(ii) Alcohol and drug treatment;

(iii) Smoking cessation;

(iv) Drugs, prescriptions, and non-prescriptions; or

(v) Nursing services and facilities.

(J) Transportation or relocation;

(K) Quality of life, living skills training;

(L) Personal care;

(M) Legal services and expert witness services;

(N) Religious practices, traditions, and services, separately or in any combination thereof; and

(O) Educational services. The term "Client services" does not include benefits or services provided as a condition of employment with an agency.

(2) In the cost analysis required under section (1) of this rule, the District shall consider cost factors that include the following:

(a) Cost of Using the District's Own Personnel and Resources. When estimating the District's costs of performing the services, the District shall consider cost factors that include:

(A) Salary or wage and benefit costs for District employees who would be directly involved in performing the services to the extent those costs reflect the proportion of the activity of those employees in the direct provision of services. The costs include those salary or wage and benefit costs of the employees who inspect, supervise, or monitor the performance of the services to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject services.

(B) The material costs necessary to the performance of the services, including the costs for space, energy, transportation, storage, equipment, and supplies used or consumed in the provision of the services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting, and delivering the services.

(D) Any costs related to stopping and dismantling a project or operation because the District intends to procure a limited quantity of services or to procure the services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the services. These costs exclude the District's indirect overhead costs for existing salaries or wages and benefits for administrators, and costs for rent, equipment, utilities, and materials except to the extent that the costs are attributable solely to performing the services and would not exist unless the District performs the services.

(F) ORS 279B.003 (1)(a) provides that an estimate of the District's costs of performing the services includes the costs described in Sections (A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the services. For example, if the District has accounted for its actual costs for performing the services under consideration, or reasonably comparable services in a relatively recent services project, the District may consider those actual costs in making its estimate.

(b) Costs of a Potential Contractor. When estimating a Contractor's costs of performing the services, the District shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and employees:

(i) Who work in the industry or business most closely involved in performing the services; and

(ii) Who would be necessary and directly involved in performing the services or who would inspect, supervise, or monitor the performance of the services;

(B) The material costs necessary to the performance of the services, including costs for space, energy, transportation, storage, raw and finished materials, equipment, and supplies used or consumed in the provision of the services; and

(C) The miscellaneous costs related to performing the services, including, but not limited to, reasonably foreseeable fluctuations in the costs for the items in Sections (A) through (C) of this rule.

(D) ORS 279B.033 (1)(a) provides that an estimate of the District's costs of performing the services includes the costs described in Sections (A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the services. For example, if the District, in the reasonably near past, received Bids or Proposals for the performance of services under consideration, or reasonably comparable services, the District may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the District may consider what it actually paid out under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. The District shall take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the services.

(3) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the District to perform the services and the estimated costs a potential Contractor would incur in performing the services under section (5)(c), the District may proceed with the procurement only if the District would

incur more cost in performing the services with the District's own personnel and resources than it would incur in procuring the services from a Contractor.

(4) Exceptions.

(a) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated for the District to perform the services exceed the estimated a potential Contractor would incur in performing the services is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under section (2)(b)(A) of this rule are lower than the salary or wage and benefit costs for employees of the District estimated in section (2)(a)(A) of this rule, the District may not proceed with the procurement.

(b) Exception Based on Lack of District Personnel and Resources; Reporting. In cases in which the District determines that it would incur less cost in providing the services with the District's own personnel and resources, the District may nevertheless proceed with the procurement if, at the time the District intends to conduct a procurement, the District determines that it lacks personnel and resources to perform the services within the time the District requires them. When the District conducts a procurement under this section, the District shall:

(A) Make and keep a written determination that it lacks personnel and resources to perform the services within the time the District requires them and the basis for the District's decision to proceed with the procurement.

(B) Provide to the Contract Review Board, each calendar quarter, copies of each written cost analysis and written determination.

(5) Provision of Services by District Not Feasible. The District may proceed with a procurement of a Contract for services without conducting a cost analysis required under Sections (1) and (2) of this rule if the District makes written findings that use of the District's own personnel or resources to perform the services is not feasible. Reasons include, but are not limited to, the following.

(a) The District lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the services. In making the finding, the District shall compare the District's capability, experience, or expertise in the field most closely involved in performing the services with a potential Contractor's capability, experience, or expertise in the same or a similar field.

(b) Special circumstances require the District to procure the services by Contract. Special circumstances may include, but are not limited to, the following:

(A) The terms under which the District receives a Grant or other funds for use in a procurement require the District to obtain services through an independent contractor;

(B) Other state or federal law requires the District to procure services through an independent contractor;

(C) The procurement is for services that are incidental to a Contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(D) The District cannot accomplish policy, administrative, or legal goals, including, but not limited to, avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the District's existing personnel or Persons that the District could hire through a regular or ordinary process would not be suitable;

(E) The procurement is for Emergency services pursuant to PPS 47-0280;

(F) The procurement is for services, the need for which is so urgent, temporary, or occasional that attempting to perform the services with the District's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services;

(G) The services that the District intends to procure will be completed within six months after the date on which the Contract for the services is executed; or

(H) Any other circumstances, conditions, or occurrences that would make the services, if performed by the District's own employees and resources, incapable of being managed, utilized, or dealt with successfully in terms of the quantity, timeliness of completion, success in obtaining desired results, or other reasonable needs of the District.

PPS 47-0255 Competitive Sealed Bidding; One-Step Solicitations Competitive Sealed Bidding

(1) Generally. The District may procure goods or services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section (2) of this rule. The District shall provide public notice of the competitive sealed bidding solicitation as set forth in PPS 47-0300.

(2) Invitation to Bid. In accordance with ORS 279B.055(2), an Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by written Addendum.

(B) A procurement description;

(C) The form and instructions for submission of Bids, including the time, date, and place that Bids are due, and any other special information, e.g., whether Bids may be submitted by electronic means (see PPS 47-0330 for required provisions of electronic Bids);

(D) The time, date, and place of Opening;

(E) Key contact information as follows:

(i) The office or location where the Solicitation Documents may be reviewed;

(ii) The name of the person designated for receipt of Bids;

(iii) The name and title of the person designated by the District as the contact person for the procurement, if different from the person designated to receive Bids.

(F) A statement that each bidder shall identify whether the bidder is a "resident bidder," as defined in ORS 279A.120(1);

(G) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See PPS-46-0210(2)); and

(H) How the District shall notify bidders of Addenda, and how the District shall make Addenda available (see PPS 47-0430);

(I) A time, date, and place that prequalification applications, if any, shall be filed, and the classes of work, if any, for which bidders shall be prequalified in accordance with ORS 279B.120;

(J) The following statements:

(i) "The District may cancel the procurement or reject any or all Bids in accordance with ORS 279B.100."

(ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.

(b) District Need to Purchase. The character of the goods or services that the District is purchasing including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by ORS 279B.055(2)(c), the District's description of its need to purchase shall:

(A) Identify the scope of the work to be performed under the resulting Contract, if the District awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the District for Good Cause specifies otherwise, the scope of work shall require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the District is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The District shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information that the District has available concerning future use; and

(C) If the District intends to award Contracts to more than one bidder pursuant to PPS 47-0600(4)(c), the District shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award.

(d) Applicable Preferences Pursuant to ORS 279B.055(6)(b).

(A) Preference for Oregon goods or services pursuant to ORS 279A.120 and PPS 46-0300 and PPS 46-0310; and

(B) Preference for Recycled Materials pursuant to ORS 279A.125 and PPS 46-0320.

(e) Terms and Conditions. All contractual terms and conditions in the form of Contract provisions that the District determines are applicable to the procurement. As required by ORS 279B.055(2)(h), the Contract terms and conditions shall specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The District's reduction or withholding of payment under the Contract;

(B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional Work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(f) Whether Bid Security Is Required.

(g) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the Solicitation file the basis for the determination of Good Cause for specification otherwise. The District shall have Good Cause to specify otherwise under the following circumstances:

(A) The use or purpose to which the goods or services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(B) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, services, or information technology including hardware, services, or software with which the goods or services will be used, integrated, or coordinated;

(C) The circumstances of the industry or business that provides the goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments that a reliable highest prevalent standard does not exist or has not been developed;

(D) Any other circumstances in which the District's interest in achieving economy, efficiency, compatibility, or availability in the procurement of the goods or services reasonably outweighs the District's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the goods or services to be delivered under the resulting Contract.

PPS 47-0257 Competitive Multistep Sealed Bidding; Multistep Solicitations

(1) Generally. The District may procure goods or services by using multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. multistep sealed bidding is a phased procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive Sealed Bidding, inviting bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract shall be awarded to the lowest Responsible bidder.

(3) Public Notice. When The District uses multistep sealed bidding, the District shall give public notice for the first phase in accordance with PPS 47-0300. Public notice is not required for the second phase. However, the District shall give notice of the second phase to all bidders, inform bidders of the right to protest Addenda issued after the initial Closing under PPS 47-0430, and inform bidders excluded from the second phase of the right, if any, to protest their exclusion under PPS 47-0720.

(4) Procedures Generally. In addition to the procedures set forth in PPS 47-0300 through 47-0490, the District shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. The District shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this rule. In addition to the requirements set forth in PPS 47-0255(2), the multistep Invitation to Bid shall state:

(A) That the Solicitation is a multistep sealed Bid procurement and describe the process that the District shall use to conduct the procurement;

(B) That the District requests unpriced submittals and that the District shall consider price Bids only in the second phase and only from those bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether bidders shall submit price Bids at the same time as unpriced submittals and, if so, that bidders shall submit the price Bids in a separate sealed envelope; and

(D) The criteria to be used in the evaluation of unpriced submittals.

(b) Evaluation. The District shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the District does not cancel the Solicitation, the District shall invite each eligible bidder to submit a price Bid.

(b) The District shall conduct phase two as any other competitive sealed Bid procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

PPS 47-0260 Competitive Sealed Proposals

(1) Generally. The District may procure goods or services by competitive sealed Proposals as set forth in ORS 279B.060. The District shall use a Request for proposal to initiate a competitive sealed proposal. The Request for proposal shall contain the information required by ORS 279B.060(2) and by section (2) of this rule. The District shall provide public notice of the Request for proposal as set forth in PPS 47-0300.

(2) Request for Proposal. In accordance with the provisions required by ORS 279B.060(2), the Request for proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by written Addendum.

(B) A procurement description.

(C) A time, date, and place that prequalification applications, if any, shall be filed, and the classes of work, if any, for which bidders shall be prequalified in accordance with ORS 279B.120.

(D) The form and instructions for submission of Proposals, and any other special information, e.g., whether Proposals may be submitted by electronic means (see PPS 47-0330 for required provisions of electronic Proposals);

(E) The time, date, and place of Opening;

(F) The office where the Solicitation Document may be reviewed;

(G) Key contact information, as follows;

(i) The name of the Person designated for receipt of Proposals.

(ii) The name and title of the person designated by the District as the contact Person for the procurement, if different from the Person designated to receive Proposals.

(H) Proposers' certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) (See PPS 46-210(2); and

(I) How the District shall notify Proposers of Addenda and how the District shall make Addenda available. (See PPS 47-0430.)

(J) The following statements:

(i) "The District may cancel the procurement or reject any or all Proposals in accordance with ORS 279B.100."

(ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.

(b) District Need to Purchase. The character of the goods or services the District is purchasing including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by ORS 279B.060(2)(c), the District's description of its need to purchase shall:

(A) Identify the scope of the work to be performed under the resulting Contract, if the District awards one; and

(B) Outline the anticipated duties of the Contractor under any resulting Contract; and

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services that are subject to ORS 279C.100 through 279C.125 or PPS 46-0500 through 46-0525, or the District for Good Cause specifies otherwise, the scope of work shall require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the District is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.

(B) The District shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e), including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Proposals will be evaluated in the subsequent tiers. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible the criteria shall:

(i) Afford the District the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;

(ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and

(iii) Permit the District to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the District of entering into a Contract based on each proposal, considering information available to the District and subject to the understanding that the actual Contract costs may vary as a result of the Statement of work ultimately negotiated or the quantity of goods or services for which the District contracts.

(C) If the District's solicitation process calls for the District to establish a competitive Range, the District shall generally describe, in the Solicitation Document, the criteria or parameters that the District shall apply to determine the competitive Range. The District, however, subsequently may determine or adjust the number of Proposers in the competitive Range in accordance with PPS 47-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), and 282.210.

(A) Preference for Oregon goods or services, pursuant to ORS 279A.120 and PPS 46-0300 and PPS 46-0310;

(B) Preference for Recycled Materials, pursuant to ORS 279A.125 and PPS 46-0320; and

(C) Performance within the state of public printing, binding, and stationery Work, pursuant to ORS 282.210.

(e) Contractual Terms and Conditions. All contractual terms and conditions the District determines are applicable to the procurement. The District's determination of contractual terms and conditions that are applicable to the procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the District will not include in the Request for proposal because the District either will reserve them for negotiation or will request Proposers to offer or suggest those terms or conditions. (See PPS 47-0260(3).)

(f) Consequences of Failure to Perform. As required by ORS 279B.060(2)(h), the Contract terms and conditions shall specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The District's reduction or withholding of payment under the Contract;

(B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(g) Whether proposal security is required.

(3) The District may include the applicable contractual terms and conditions in the form of Contract provisions or legal concepts to be included in the resulting Contract. Further, the District may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under PPS 47-550(8), but the District may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent that those terms and conditions do not materially conflict with the applicable Contract

terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under PPS 47-0730.

(4) For multiple award Contracts, the District may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under PPS 47-0730.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the Solicitation file the basis for the determination of Good Cause or for specifying otherwise. The District shall have Good Cause to specify otherwise when the District determines that:

(a) The use or purpose to which the goods or services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the goods or services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going services with which the goods or services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the District's interest in achieving economy, efficiency, compatibility, or availability in the procurement of the goods or services reasonably outweighs the District's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the goods or services to be delivered under the resulting Contract.

(6) Optional Proposal Requirements.

(a) As provided in the Request for proposal or in written Addenda issued thereunder, the District may conduct site tours, demonstrations, individual or group discussions, and other informational activities with Proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements or to consider and respond to requests for modifications of the proposal requirements. The District shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.

(b) For purposes of evaluation, when provided for in the Request for proposal, the District may employ methods of Contractor selection that include, but are not limited to:

(A) An award or awards based solely on the ranking of Proposals;

(B) Discussions leading to best and final Offers, in which the District may not disclose private discussions leading to best and final Offers;

(C) Discussions leading to best and final Offers, in which the District may not disclose information derived from Proposals submitted by competing Proposers;

(D) Serial negotiations, beginning with the highest ranked Proposer;

(E) Competitive simultaneous negotiations;

(F) multi-tiered competition designed to identify, at each level, a class of Proposers that fall within a competitive Range or to otherwise eliminate from consideration a class of lower-ranked Proposers;

(G) A multistep Request for proposal requesting the submission of unpriced technical submittals, and then later issuing a Request for proposal limited to the Proposers whose technical submittals the District had determined to be qualified under the criteria set forth in the initial Request for proposal; or

(H) Any combination of methods described in this paragraph as authorized or prescribed by these rules.

(c) Revisions 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.

(d) After the opening of Proposals, the District may issue or electronically post an Addendum to the Request for proposal that modifies the criteria, rating process, and procedure for any tier of competition before the start of the tier to which the Addendum applies. The District shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. The District shall issue or post the Addendum at least five days before the start of the subject tier of competition or as otherwise determined by the District to be adequate to allow eligible Proposers to prepare for the competition in accordance with rules adopted under ORS 279A.065.

(7) The cancellation of Requests for Proposals and the rejection of Proposals shall be in accordance with ORS 279B.100.

(8) In the Request for proposal, the District shall describe the methods by which the District shall make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. The District shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the District's decision.

(9) The District shall issue or electronically post the notice of intent to award described in ORS 279B.135 to each Proposer who was evaluated in the final competitive tier.

(10) If a Contract is awarded, the District shall award the Contract to the responsible Proposer whose proposal the District determines in writing to be the most advantageous to the District based on the evaluation process and evaluation factors described in the Request for proposal, any applicable preferences described in ORS 279A.120 and 279A.125, and, when applicable, the outcome of any negotiations authorized by the Request for proposal. Other factors may not be used in the evaluation. When the Request for proposal specifies or authorizes the award of multiple Public Contracts, the District shall award Public Contracts to the responsible Proposers who qualify for the award of a Contract under the terms of the Request for proposal.

(11) The District may issue a request for information, a request for interest, a Request for Qualifications, or other preliminary documents to obtain information useful in the preparation of a Request for proposal.

PPS 47-0261 Procedures for Competitive Range; Multi-Tiered and Multistep Solicitations Multistep Proposals

(1) Generally. The District may use one or more, or any combination of procure goods or services employing any combination of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.0608 and this rule to procure goods or services. In addition to the procedures set forth in PPS 47-0300 through 47-0490 for methods of Contractor selection, the District may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the

establishment of a competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

(2) Methods. When conducting a multi-tiered or multistep selection process, the District may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, the District may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the District.

(3) District May Elect to Award Contract Prior to Completion of Stages. When the District's Request for proposal prescribes a multi-tiered or multistep Contractor selection process, the District nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the procurement without proceeding to subsequent stages. The District also may, at any time, cancel the procurement under ORS 279B.100.

(4) Exclusion Protest. The District may provide, before the notice of an intent to award, an opportunity for a Proposer to protest exclusion from the competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in PPS 47-0720.

(5) Award Protest. The District shall provide an opportunity to protest its intent to award a Contract pursuant to ORS 279B.410 and PPS 47-0740. An Affected Offeror may protest, for any of the bases set forth in PPS 47-0720(2), its exclusion from the competitive Range or from any phase of a multi-tiered or multistep sealed proposal process, or may protest an Addendum issued following initial Closing, if the District did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the District.

(6) Competitive Range. When the District's solicitation process conducted under ORS 279B.060(8) calls for the District to establish a competitive Range at any stage in the procurement process, the District may do so as follows:

(a) Determining Competitive Range.

(A) The District may establish a competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for proposal. After evaluation of all Proposals in accordance with the criteria in the Request for proposal, the District may determine and rank the Proposers in the competitive Range. Notwithstanding the foregoing, however, in instances in which the District determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the District need not determine or rank Proposers in the competitive Range. In addition, notwithstanding the foregoing, the District may establish a competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The District may establish the number of Proposers in the competitive Range in light of whether the District's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The District shall provide written notice to all Proposers identifying Proposers in the competitive Range. The District may provide an opportunity for

Proposers excluded from the competitive Range to protest the District's evaluation and determination of the competitive Range in accordance with PPS 47-0720.

(7) Discussions. The District may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for proposal. In conducting discussions, the District:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a proposal as a result of discussions. The conditions, terms, or price of the proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for proposal.

(d) At any time during the time allowed for discussions, the District may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) Negotiations.

(a) Serial Negotiations Allowed. The District may commence serial negotiations with the highest ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. The District may negotiate:

(A) The statement of work;

(B) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for proposal or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for proposal or Addenda thereto. Proposers shall not submit for negotiation, and a District shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for proposal or any Addendum.

(b) Terminating Negotiations. At any time during discussions or negotiations the District conducts under this rule, the District may terminate discussions or negotiations with the highest ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the District reasonably believes that:

(A) The eligible Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the District is conducting serial negotiations and the District terminates negotiations with an eligible Proposer, the District may then commence negotiations with the next highest-scoring eligible Proposer, and continue the sequential process until the District has either:

(A) Determined to award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the District chooses to conduct competitive negotiations, the District may negotiate simultaneously with competing eligible Proposers. The District:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the District notifies all of the eligible Proposers with whom the District shall engage in negotiations of the District's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a proposal resulting from negotiations shall be reduced to writing.

(9) Best and Final Offers. If the District requires best and final Offers, the District shall establish a common date and time by which eligible Proposers shall submit best and final Offers. If the District is dissatisfied with the best and final Offers, the District may make a written determination that it is in the District's best interest to conduct additional discussions, negotiations or change the District's requirements and require another submission of best and final Offers. The District shall inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The District shall evaluate Offers as modified by the best and final Offers. The District shall conduct the evaluations as described in OAR PPS 47-0600. The District may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(10) Multistep Sealed Proposals. The District may procure goods or services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). multistep sealed Proposals is a phased procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The District shall award the Contract to the Responsible Proposer submitting the most advantageous proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When the District uses multistep sealed Proposals, the District shall give public notice for the first phase in accordance with PPS 47-0300. Public notice is not required for the second phase. However, the District shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under PPS 47-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. The District may initiate a multistep sealed Proposals procurement by issuing a Request for proposal in the form and manner required for competitive sealed Proposals except as provided In this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for proposal shall state:

(A) That unpriced technical Proposals are requested;

(B) That the Solicitation is a multistep sealed proposal procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the goods or services being procured shall be furnished generally in accordance with the Proposer's technical proposal as found to be finally qualified and shall meet the requirements of the Request for proposal.

(c) Addenda to the Request for Proposal. After receipt of unpriced technical Proposals, Addenda to the Request for proposal shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for proposal.

(f) Discussion of Unpriced Technical Proposals. The District may seek clarification of a technical proposal of any Proposer who submits a qualified, or potentially qualified, technical proposal. During the course of such discussions, the District shall not disclose any information derived from one unpriced technical proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, the District may employ any combination of the methods of Contractor selection that call for the establishment of a competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the District shall invite each qualified Proposer to submit price Proposals. The District shall conduct phase two as any other competitive sealed proposal procurement except as set forth in this rule.

(i) No public notice need be given of the request to submit Price Proposals because such notice was previously given.

PPS 47-0265 Small Procurements

(1) Generally. For procurements of goods or services less than or equal to the dollar amount stated in ORS 279B.065, the District may award a Contract as a Small procurement in any manner the District deems practical or convenient, including by direct selection or award.

(2) Amendments. The District may amend a Contract awarded as a Small procurement in accordance with PPS 47-0800.

(3) No Fragmentation. A procurement may not be artificially divided or fragmented so as to constitute a Small procurement. See ORS 279B.065(2).

PPS 47-0270 Intermediate Procurements

(1) Generally. For procurements of goods or services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, the District may award a Contract as an intermediate procurement pursuant to ORS 279B.070.

(2) Intermediate Solicitation Process. When conducting an intermediate procurement, the District shall seek at least three informally solicited competitive Price quotes or competitive Proposals from prospective Contractors. The District shall keep a written record of the sources of the quotes or Proposals received. If three quotes or Proposals are not reasonably available, fewer will suffice, but the District shall make a written record of the effort made to obtain the quotes or Proposals.

(3) Negotiations. The District may negotiate with a prospective Contractor who offers to provide goods or services in response to an intermediate procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the District.

(4) Award. If a Contract is awarded, the District shall award the Contract to the Offeror whose quote or proposal will best serve the interests of the District, taking into account price as well as considerations

including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and Contractor responsibility under ORS 279B.110.

(5) Amendments. The District may amend a Contract awarded as an intermediate procurement in accordance with PPS 47-0800.

(6) No Fragmentation. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement. See ORS 279B.070(2).

PPS 47-0275 Sole-Source Procurements

(1) Generally. The Superintendent is delegated the authority to determine whether goods and service or a class of goods or services are available from only one source pursuant to ORS 279B.075. The Superintendent's determination shall be based on written findings that may include information that:

(a) The efficient utilization of existing goods or services requires the acquisition of compatible goods or services;

(b) The goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

(c) The goods or services are for use in a pilot or an experimental project; or

(d) Other findings that support the conclusion that the goods or services are available from only one source.

(2) Public Notice. If the Contract amount is greater than $150,000, the District shall give public notice of the Superintendent's determination that the goods or services or class of goods or services are available from only one source. The District shall publish such notice in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and PPS 47-0300. The public notice shall describe the goods or services to be acquired by a sole-source procurement, identify the prospective Contractor, and include the date, time, and place that protests are due. The District shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the goods or services are available from only one source to protest the sole-source determination.

(3) Protest. An Affected Person may protest the Superintendent's determination that the goods or services or class of goods or services are available from only one source in accordance with PPS 47-0710.

PPS 47-0280 Emergency Procurements

(1) Generally. The Superintendent may award a Public Contract as an Emergency Procurement. The Superintendent will document the nature of the emergency and describe the method used for selection of the particular Contractor. See ORS 279B.080.

(2) Construction Services. For Emergency Procurement of construction, the District shall ensure competition for a Contract for the Emergency Work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the District shall set a solicitation time period that the District determines to be reasonable under the Emergency circumstances, and may issue written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity. See PPS 49-0150.

SPECIAL PROCUREMENTS (CONTRACTING EXEMPTIONS)

PPS 47-0285 Special Procurements; Purpose and Application

The District may award a Public Contract as a Special procurement pursuant to the requirements of ORS 279B.085 without using competitive sealed bidding or competitive sealed Proposals or other competitive procedures as otherwise required by these rules. The Contract Review Board shall approve

Special procurements. The Contract Review Board may approve the following two types of Special procurements:

(1) A "Class Special Procurement" is a procurement procedure for entering into a series of Contracts over time or for multiple projects based on the classification of the Contract.

(2) A "Contract-Specific Special Procurement" is a procurement procedure for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.

PPS 47-0287 Special Procurements; Request Procedures

(1) To seek approval of an additional Special procurement, the Superintendent shall submit a written request to the Contract Review Board. The request shall describe the contracting procedure, the goods or services or class of goods or services that are the subject of the Special procurement, and the circumstances that justify the use of a Special procurement under the standards set forth in section (2) of this rule.

(2) The Contract Review Board shall review and may approve a request for a Special procurement if the Contract Review Board finds that the use of the Special procurement:

(a) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts; and

(b) **(A)** Is reasonably expected to result in substantial cost savings to the District or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with procurement requirements that would otherwise be applicable to the procurement under division 47 of these rules.

(3) The District shall give public notice of approval of a Special procurement in the manner provided in ORS 279B.055(4) and PPS 47-0300. The notice will describe the goods or services or class of goods or services subject to the Special procurement, and shall give Affected Persons at least seven days from the date of notice of the approval of the Special procurement to protest the Special procurement.

(4) An Affected person may protest the approval of a Special procurement in accordance with ORS 279B.400 and PPS 47-0700.

(5) An approved Class Special Procurement shall be added to enumerated Class Special Procurements in PPS 47-0288.

PPS 47-0288 Approved Class Special Procurements

The Contract Review Board declares the following classes of Contracts for goods or services listed in this section as Class Special Procurements for which Contracts may be awarded without compliance with the competitive procurement requirements that would otherwise be applicable to the procurement under division 47 of these rules. Unless an alternative procurement process is particularly specified in these rules, the selection procedures for such Class Special Procurements shall be as the Superintendent determines will result in a Contract that will best serve the interests of the District. Prior to utilizing a Class Special Procurement, the Superintendent will document in writing in the Solicitation file the reasons why the Contract qualifies as a Class Special Procurement under these rules, including any required findings. Except as otherwise provided in this rule, the School Board shall approve any Contracts awarded pursuant to Special procurement if the Contract Price exceeds the Superintendent's delegated authority under PPS 45-0200. The Contract Review Board hereby designates the following classes of Contracts for Special procurement:

(1) **Advertising Contracts**. The District may purchase advertising in any medium, regardless of the dollar value of the Contract. The District may sell advertising for District publications or activities, regardless of the dollar value of the Contract.

(2) Equipment Repair/Overhaul. The District may enter into a Public Contract for equipment repair or overhaul without competitive procurement, subject to the following conditions:

(a) Where the extent of the repair or overhaul is unknown or not easily identified; or

(b) Where service or parts requirements are unpredictable; or

(c) Service or parts required are for equipment for which specially trained personnel are required, and such personnel are available from only one source; and

(d) Conducting a competitive process is impractical. The District shall document in the Solicitation file the reasons why a competitive process was deemed to be impractical

(3) Specifications.

(a) "Or Equal" Specification.

(A) A Brand Name or Equal Specification may be used when the use of a Brand Name or Equal Specification is advantageous to the District, because the Brand Name describes the standard of quality, performance, functionality, and other characteristics of the product needed by the District.

(B) The Superintendent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(C) Nothing in this section may be construed as prohibiting the Superintendent from specifying one or more comparable products as examples of the quality, performance, functionality, or other characteristics of the product needed by the District.

(b) Specifying a Particular Make or Product. A Brand Name Specification may be prepared and used only if the Superintendent determines for a solicitation or a class of solicitations that only the identified Brand Name Specification will meet the needs of the District based on one or more of the following findings:

(A) That use of a Brand Name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(B) That use of a Brand Name Specification would result in substantial cost savings to the District;

(C) That there is only one manufacturer or seller of the product of the quality, performance, or functionality required;

(D) That the equipment or supplies being procured are used in athletic programs or physical education programs; or

(E) That efficient utilization of existing goods requires the acquisition of compatible goods or services. For the purposes of this finding, "compatibility" includes, without limitation, technical compatibility, technological equity, and equivalent ease of training, durability, and use. "Compatibility" also includes, without limitation, compatibility among equipment in a standardized technology bundle developed to deliver curriculum in a classroom.

(4) Copyrighted Materials and Creative Works. The District may directly purchase copyrighted materials or creative works regardless of dollar value if available from only one source. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, all adopted curriculum materials and tools in any format, including without limitation hard copy, electronic, digital or online. Examples of such curriculum material include textbooks, workbooks, curriculum kits, on-line curriculum, instructional software applications and related digital resources, assessments, assessment materials and reports. This exemption also includes reference materials in any format, including without

limitation books, periodicals, audio and visual media, and non-mass-marketed software. Examples of creative works covered by this Class Special Procurement including without limitation, artwork, music, uncopyrighted writings, and similar works.

(5) Insurance and Employee Benefits. The District may purchase liability, property damage, workers' compensation, and other insurance and insurance services Contracts, and employee benefits, without competitive procurement and regardless of dollar amount, by selecting either a vendor directly or by appointing an agent of record. For the purpose of this Special procurement, "employee benefits" includes, but is not limited to, "employee benefit plans" as defined in ORS 243.105(1), plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886, plans provided through the School District No. 1J Health and Welfare Trust, flexible benefit plans as defined in ORS 243.221, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans, long-term care insurance, health care coverage to retired officers, employees, spouses, and children, employee assistance plans, and expense reimbursement plans.

(6) Spot Buys. This Special procurement provides a process for the District to procure products that are available for a limited period of time at "lower-than-normal" prices (also referred to as "spot buys").

(a) Regardless of dollar value and without competitive procurement, the District may purchase "spot buys."

(b) Conditions. The District may procure an unlimited dollar value of products when any of the following conditions are present:

(A) A non-exclusive mandatory-use Contract or regularly scheduled bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing mandatory-use Contract, recent bid, or based on obtaining at least three quotes, and the amount saved exceeds any additional administrative costs incurred to purchase the item using this Special procurement;

(C) The product being purchased has limited availability (i.e., the product may no longer be available or available at the special price upon completion of normal bid processes); or

(D) Any mandatory-use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special procurement.

(c) Notwithstanding Subsection 6(b) of this section, the District may not purchase a spot buy if doing so would jeopardize fulfillment of a guaranteed minimum volume under an existing mandatory-use Contract;

(d) Documentation. Purchases may only be made under this Special procurement if the Superintendent documents to the Solicitation file that the conditions set forth in section (6)(b) apply to the proposed purchase.

(e) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on "spot-buy" Contracts in any dollar amount, but will report the nature and amount of the Contract to the School Board as provided in PPS 45-0200(6).

(7) Price Agreements.

(a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase goods or

services for an anticipated need at a predetermined price, but the Contract shall be let by a competitive procurement process pursuant to the requirements of these rules.

(b) The Superintendent may purchase the goods or services from a Contractor awarded a Price Agreement without first undertaking additional competitive solicitation up to the amount set forth in the Price Agreement.

(c) The Superintendent may use the Price Agreement entered into by another Public Agency when the Original Contract was let pursuant to PPS 46-0400 through 46-0480;

(d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

(8) Purchase of Used Personal Property. The District may purchase used property or equipment. "Used personal property or equipment" is property or equipment that has been placed in its intended use by a previous owner or user for a time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used" at the time of the District purchase. "Used personal property or equipment" generally does not include property or equipment if the District was the previous user, whether under a lease, as part of a demonstration, trial, or pilot project, or under a similar arrangement. Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for the purchase of used personal property in any dollar amount.

(9) Sale of Used Personal Property.

(a) The Superintendent may sell used personal property without obtaining competitive Bids or quotes if a liquidation sale would bring in greater revenue to the District than would be gained through Bids. As used in this section, "surplus personal property" is property or equipment that has been determined to no longer be useful to the District. It may be property or equipment that the District has used for some time and that is fully used up or obsolete. It may be property or equipment that is the natural excess or leftover from a project, such as cable, wire, carpet, etc., that has been cut or partially used in some manner so that it cannot be returned to the supplier for a refund.

(b) For sales of surplus property valued at more than $25,000 per item or lot, the Superintendent shall attempt to obtain at least three competitive quotes. The Superintendent will keep a written record of the source and number of quotes received. If three quotes are not available, a written record shall be made of the attempt to obtain three quotes.

(c) The Superintendent may sell used personal property regardless of price via an electronic auction or sales service including, without limitation, eBay, Craigslist, or other similar Internet-based auctions or marketplaces. If the service does not otherwise provide for a competitive sales process, the Superintendent will establish a minimum bid, a time period for acceptance of Bids, and will not sell the property unless the Superintendent receives a minimum of three Bids. The sale will be awarded to the highest Responsible bidder submitting a Responsive Bid, except that the Superintendent may accept a lower bid if transportation or other costs associated with collection or delivery of the property would offset the higher bid amount.

(d) The Superintendent may sell, sell at a discount, or donate used personal property to another school district, to another Public Body, or to a nonprofit corporation that provides educational, social, or other important services to the District, District students, or families of District students.

(e) If the Superintendent determines that the used personal property has no market value, or that the market value is so low that the staff time or cost involved in selling the property is likely to exceed the value of the used personal property, the Superintendent may dispose of the property as the Superintendent determines is in the best interest of the District.

(10) Reverse Auctions.

(a) A reverse auction means a process for the purchase of goods or services from the lowest bidder. The District shall conduct reverse auctions by first publishing a solicitation that describes its requirements and Contract terms and conditions. Then the District shall solicit online Bids from all interested bidders through an Internet-based program. The solicitation shall set forth a start and end time for Bids and specify the following type of information to be disclosed to bidders during the reverse auction:

(A) The prices of the other bidders or the price of the most competitive bidder;

(B) The rank of each bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B), and (C) above. Before the reverse auction commences, bidders shall be required by the District to assent to the Contract terms and conditions, either in writing or by an Internet "click" agreement. The bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the District. The identity of the bidders shall not be revealed during this process. Only the successively lower price(s), ranks, scores, and related details, separately or in any combination thereof, will be revealed to the participants. The District may cancel this solicitation if the District determines that it is in the District's best interest. At the end of this Bidding process, the District shall award any potential Contract to the lowest Responsible bidder, or in the case of multiple awards, lowest Responsible bidders pursuant to ORS 279A.055(10)(b). This process allows the District to test and determine the suitability of the goods or services before making the award.

(11) Software and Hardware Maintenance, Licenses, Subscriptions, Other Digital Resources and Upgrades. The Superintendent may directly enter into a Contract or renew existing Contracts for information technology and telecommunications hardware or software maintenance, software licenses and subscriptions (including for programs, applications, and other digital or electronic resources), and upgrades without competitive solicitation where the maintenance, upgrades, subscriptions, and licenses are either available from only one source or, if available from more than one provider, are obtained from the District's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the District's hardware or software system. The Superintendent shall document in the Solicitation file the facts that justify either that maintenance, licenses, subscriptions, and upgrades were available from only one source or, if from more than one source, from the current vendor.

(12) Hazardous Material Abatement.

(a) The Superintendent may enter into Public Contracts without competitive procurement, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted by the Oregon Department of Environmental Quality ("DEQ") under ORS chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this exemption.

(b) The Superintendent shall, to the extent reasonable under the circumstances, encourage competition by attempting to obtain informal quotes from potential suppliers of goods or services.

(c) The department responsible for managing or coordinating the clean-up shall submit a written description of the circumstances that require the clean-up and a copy of the DEQ order for the clean-up to the District Purchasing Department.

(d) The District Purchasing and Contracting Department shall record the measures taken under section (12)(b) of this rule to encourage competition, the amount of the quotes or Proposals obtained, if any, and the reason for selecting the Contractor to whom award is made.

(e) The District may not contract pursuant to this exemption in the absence of an order from the DEQ to clean up a site that includes a time limit that would not allow the District to hire a Contractor under normal competitive procurement procedures. Goods or services to perform other hazardous material removal or clean-up will be purchased in accordance with normal competitive procurement procedures as described in these rules and policies.

(f) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for hazardous material abatement in any dollar amount.

(13) Purchase of Products for Resale to Students and Staff. The District may purchase personal property for resale to students and staff without competitive procurement and regardless of dollar amount.

(14) Radio and Television Contracts for Student Activities.

(a) Generally. The Superintendent shall use a competitive procurement method (e.g., an Invitation to Bid or Request for proposal) to obtain written Bids or Proposals to provide commercial radio and television services for any student activity or District program, including athletics, if the value of the services totals more than $150,000, regardless of whether the District is paying or receiving revenue under the Contract.

(b) Specific and Ancillary Services. The Solicitation Document used to invite Bids or Proposals to furnish radio or television services to District programs shall include the minimum bidder or qualifications and service specifications and will conform to the other requirements of the "Request for proposal" rule herein. The Solicitation Document may invite interested bidders or Proposers to offer other ancillary services. Each ancillary service, if offered, shall be accompanied by a dollar value that reflects the current purchase price for the service and a description of the service and its use and application.

(c) Term of Contract. A Contract for radio or television services may be awarded for up to five years.

(15) Donated Materials or Services. The District may directly negotiate a Contract with a Person to perform services or provide goods or services regardless of dollar amount, if:

(a) The Person has agreed to donate all or a significant portion of the materials or services necessary to perform the work; and

(b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular project and any requirements that the District deems necessary or beneficial to protect the District.

(16) Manufacturer Direct Supplies. The District may purchase goods directly from a manufacturer if a large-volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.

(17) Benson House Program Contracts. The District may directly negotiate a Contract for goods and/or services without complying with the competitive procurement requirements of these rules where the Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(18) Purchases Under Contracts Solicited by Nonprofit Procurement Organizations of Which the District Is a Member. The District may purchase goods and/or services under a Contract or procurement

solicited by a Nonprofit Procurement Organization of which it is a member. For the purposes of this Special procurement, such a procurement Organization will be considered to be an "Administering Contracting Agency" and a "Contracting Purchasing Group" under PPS 46-0400 through 46-0480. Such procurement shall otherwise comply with the requirements for permissive, joint, or Interstate Cooperative Procurements, as applicable, pursuant to PPS 46-0400 through 46-0480.

(19) Secure, Specialized Transportation for Special Needs Students. The Superintendent may contract directly for transportation services for special needs students where such transportation need requires a transportation service with skills or equipment tailored to the needs of the particular special needs student or class of special needs students. For the purposes of this Special procurement, a "special needs student" is a student with special physical, mental, developmental, or security needs such that District transportation, public transportation, or other private general transportation providers (taxicabs, town car services, charter services, etc.) cannot provide safe, beneficial, or timely service. Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for secure, specialized transportation, in any dollar amount.

(20) FSCP. The Superintendent may establish an FSCP for goods, services, or construction services that are not Public Improvements for a particular class of services, where the need for such services is ongoing in nature, where it is difficult to anticipate the service need, time, amount, or availability of Contractors, or where service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these rules. An FSCP shall comply with the following requirements:

(a) Solicitation to Create an FSCP. An FSCP for goods or services shall be solicited based on the total cost of the work estimated to be awarded through the FSCP during its life. If the total amount of the work is estimated to be over $150,000, the Superintendent shall use a competitive sealed Proposals process as provided in PPS 47-0260. If the total amount of the work is $150,000 or less, the FSCP may be solicited pursuant to the intermediate procurement process set forth in PPS 47-0270.

(A) The Superintendent shall document the reasons for establishing an FSCP consistent with this rule in the Solicitation file. This documentation shall be reviewed and approved by the Director of procurement as demonstrating that the procurement qualifies for use of an FSCP under these rules.

(B) The solicitation shall describe the class of Contracts that can be awarded to Contractors in the FSCP. The District may not award Contracts outside the designated class of Contracts to the FSCP.

(C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(D) The solicitation may request a binding Price quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(E) The solicitation may set or limit the value of the work to be performed by the FSCP.

(b) Contracting for Work from an FSCP. Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform certain services or provide certain goods within the established scope of the work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual services or goods will be offered, negotiated, and awarded sequentially to Contractors on the FSCP list. Once the Superintendent has offered a Contract to all of the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer),

a new random FSCP list will be generated. The Superintendent may Offer a Contract to Contractors out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The project is for goods or services that is a continuation of, addition to, or connected with goods or services previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to award the Contract to the Contractor that performed the prior Work or provided the prior goods.

(D) The nature of the project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an intermediate procurement pursuant to PPS 47-0270 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in writing in the Solicitation file.

(c) An FSCP established under this rule will expire after three years from the date of Closing of the Solicitation, unless reestablished as provided in this rule.

(d) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of work or orders, or any Work or orders at all.

(e) The establishment of an FSCP does not preclude the Superintendent from procuring goods or services that would otherwise fall within the FSCP from other Contractors through any other procurement method authorized under these rules.

(f) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory, or other capability needed to perform the class of work or provide the required goods or services.

(g) If an FSCP for construction services is reasonably estimated to include Public Works projects that will total over $50,000 during the life of the FSCP, Public Works Contracts awarded to Contractors on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(21) Contracts for Price-Regulated Items. The Superintendent may contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority without competitive solicitation.

(22) Service Monopoly. The Superintendent may enter into Contracts for Work by a utility or other entity that has been granted a monopoly for services for a specific geographic area or provision of a type of service and by agreement the utility or entity is either entitled to or is required to perform the required Work.

(23) Investment Contracts. The Superintendent may contract for the investment of District funds or the borrowing of funds by the District when such investment or borrowing is contracted pursuant to statute, rule, or constitution. The Superintendent shall use competitive methods where possible to achieve the best value for the District.

(24) Rating Agency Contracts. The District may purchase the services of Moody's Investors service, Standard & Poor's, or similar rating agencies.

(25) Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt. The Superintendent may purchase gasoline, diesel fuel, heating oil, lubricants, and asphalt using the intermediate procurement Process set forth in PPS 47-0270 regardless of dollar amount.

(26) Hotel, Catering, and Space Rental Contracts.

(a) The Superintendent may rent a room or meeting facility in a hotel, event space, or other venue for District purposes without competitive procurement.

(b) The Superintendent may hire a caterer without competitive procurement where use of a particular caterer or catering service is a condition of rental of a facility.

(27) Specialized Assistive Equipment for Students. The superintendent may directly procure specialized assistive equipment for students, including without limitation positioning equipment for orthopedically impaired students and assistive technology for blind/vision impaired, deaf/hard of hearing, and deaf/blind students, and augmentative and alternative communication equipment for students who require such assistance.

(28) Service, Repair, or Maintenance Services for Products under Warranty. The superintendent may directly procure service, repair, or maintenance services from a manufacturer, dealer, or authorized service provider for a product or a system subject to a warranty when the terms of the warranty require use of a particular maintenance service provider or providers, or when the manufacturer or approved provider shall diagnose a problem because the system or part is proprietary.

PROCUREMENT PROCESS

PPS 47-0300 Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. The District shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The District may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the District's procurements;

(b) Placing notice on the District's electronic procurement System; or

(c) Placing notice on the District's Internet World Wide Web site.

(2) Advertising. The District shall advertise every notice of a Solicitation Document as follows:

(a) The District shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5) in at least one newspaper of general circulation in the District and in as many other publications as the District may determine; or

(b) The District may publish the advertisement for Offers on the District's electronic procurement System instead of publishing notice in a newspaper of general circulation required by ORS 279B.055(4) when the District determines that doing so is more cost effective.

(c) Notice shall be given at least seven days prior to the Solicitation Closing day.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the goods or services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with Sections (2)(a) or (b) above and Closing, which shall not be less than fourteen (14) days for an Invitation to Bid and thirty (30) days for a Request for proposal, unless the District determines

that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing be less than seven (7) days as set forth in ORS 279B.055(4)(f). The District shall document the specific reasons for the shorter public notice period in the Solicitation file;

(d) The date that Persons shall file applications for prequalification if prequalification is a requirement, and that the class of goods or services is one for which Persons shall be prequalified;

(e) The office where Contract terms, conditions, and specifications may be reviewed;

(f) The name, title, and address of the individual authorized by the District to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the District deems appropriate.

(4) Posting Advertisement for Offers. The District shall post a copy of each advertisement for Offers at the principal business office of the District. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The District may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The District shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with PPS 47-0430.

PPS 47-0310 Bids or Proposals Are Offers

(1) Offer and Acceptance. The Bid or proposal is the bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the District's acceptance for the period specified in PPS 47-0480. The District may elect to accept the Offer at any time during the specified period, and the District's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive proposal is a "Firm Offer" for the period specified in PPS 47-0480, the District may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent that the Proposer is authorized to propose certain terms and conditions pursuant to PPS 47-0262, a Proposer shall not make its Offer contingent upon the District's acceptance of any terms or conditions (including specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for proposal permits Proposers to propose alternative terms or conditions under PPS 47-0261, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

PPS 47-0320 Facsimile Bids and Proposals

(1) District Authorization. The District may authorize Offerors to submit facsimile Offers. If the District determines that bid or proposal security is or will be required, the District should not authorize facsimile Offers unless the District has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the District shall determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to Be Included in Solicitation Document. In addition to all other requirements, if the District authorizes a facsimile Offer, the District shall include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response shall arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The District reserves the right to award the Contract solely on the basis of a facsimile Offer." However, upon the District's request the apparent successful Offeror shall promptly submit its complete original signed Offer;

(e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the District is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to, the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

PPS 47-0330 Electronic Procurement

(1) Electronic Procurement Authorized.

(a) The District may conduct all phases of a procurement, including, without limitation, the posting of Electronic Advertisements and the receipt of electronic Offers, by electronic methods if and to

the extent the District specifies in a Solicitation Document, a Request for quotes, or any other written instructions on how to participate in the procurement.

(b) The District shall open an Electronic Offer in accordance with electronic security measures in effect at the District at the time of its receipt of the Electronic Offer. Unless the District provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The District's use of electronic signatures shall be consistent with applicable statutes and rules. The District may limit the use of, electronic methods of conducting a procurement based on the best interests of the District, as determined by the District.

(d) If the District determines that bid or proposal security is or will be required, the District should not authorize Electronic Offers unless the District has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The District shall conduct all portions of an electronic procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) Preliminary Matters. As a condition of participation in an electronic procurement, the District may require potential Contractors to register with the District before the date and time on which the District shall first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the procurement, such as procedures that the District may use to attribute, authenticate, or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic signature.

(4) Offer Process. The District may specify that Persons shall submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the District specifies that Persons may submit multiple Electronic Offers during a specified period of time, the District shall designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the District shall accept Electronic Offers for a period of time, then at the designated date and time that the District shall first receive Electronic Offers, the District shall begin to accept real time Electronic Offers on an electronic procurement System, and shall continue to accept Electronic Offers in accordance with section (5)(b) of this rule until the date and time specified by the District, after which the District shall no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When the District conducts an electronic procurement that provides that all Electronic Offers shall be submitted by a particular date and time, the District shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the District specifies that Persons may submit multiple Electronic Offers during a period of time, the District shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time that the District first receives Electronic Offers, the District shall post on the District's Electronic Procurement System, and updated on a real-time basis, the lowest Electronic Offer price or highest ranking Electronic Officer.

(B) A Person may not increase the price set forth in an Electronic Offer after the date and time that the District first accepts Electronic Offers.

(c) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the District's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest, or to otherwise participate in the procurement, the District may cancel the procurement in accordance with PPS 47-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

BID AND PROPOSAL PREPARATION

PPS 47-0400 Offer Preparation

(1) Instructions. An Offeror shall submit and sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the District with all documents and Descriptive Literature required by the Solicitation Document.

PPS 47-0410 Offer Submission

(1) Product Samples and Descriptive Literature. The District may require Product Samples or Descriptive Literature if the District determines either is necessary or desirable to evaluate the quality, features, or characteristics of an Offer. The District shall dispose of Product Samples, or make them available for the Offeror to retrieve, in accordance with the Solicitation Document.

(2) Identification of Offers.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable. If the District permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The District shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The District is not responsible for Offers submitted in any manner, format, or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring that the District receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

PPS 47-0420 Pre-Offer Conferences

(1) Purpose. The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The District may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If the District holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a written Addendum to the Solicitation Document.

(5) District Announcement. The District shall set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 47-0255(2) or 47-0260(2).

PPS 47-0430 Addenda to Solicitation Document

(1) Issuance; Receipt. The District may change a Solicitation Document only by written Addenda. An Offeror shall provide written acknowledgment of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda.

(2) Notice and Distribution. The District shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the District shall provide notice of Addenda and how the District shall make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the District shall engage in a multistep competitive sealed bidding process in accordance with PPS 47-0257, or a multi-tiered or multistep competitive sealed proposals process in accordance with PPS 47-0261. The following is an example of how the District may specify how it will provide notice of Addenda: "The District will not mail notice of Addenda, but will publish notice of any Addenda on the District's web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The District shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the District shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection (3)(a) of this rule, an Addendum that modifies the evaluation criteria, selection process, or procedure for any step or tier of competition under a multistep sealed bidding or multistep sealed Proposals process issued in accordance with PPS 47-0257 or 47-0261 shall be issued no fewer than five days before the beginning of that tier or step of competition, unless the District determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The District shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a written request for change or protest to the Addendum, as provided in PPS 47-0730, by the close of the District's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest of the Solicitation under PPS 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with PPS 47-0730, then the District may consider an Offeror's request for change or protest to the Addendum only, and the District shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, the District is not required to provide a protest period for Addenda issued after initial Closing during a multi-tiered or multistep procurement process conducted pursuant to ORS 279B.055 or 279B.060.

PPS 47-0440 Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the District in accordance with PPS 47-0400 and PPS 47-0410, unless otherwise specified in the Solicitation Document. Any modification shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by written notice submitted on the Offeror's letterhead, signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing upon presentation of appropriate identification and evidence of authority satisfactory to the District.

(b) The District may release an unopened Offer withdrawn under section (2)(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the written request to withdraw an Offer as follows:

(A) Bid (or proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The District shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

PPS 47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. The District shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District shall return the Offer or modification to its secure and confidential state until Opening. The District shall document the resealing for the Solicitation file (e.g., "District inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. The District shall publicly open Offers including any modifications made to the Offer pursuant to PPS 47-0440(1). In the case of Invitations to Bid, to the extent practicable, the District shall read aloud the name of each bidder and such other information as the District considers appropriate. However, the District may withhold from disclosure information marked by the Offeror as "confidential" or a "trade secret" in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

PPS 47-0460 Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District shall not consider late Offers, withdrawals, or modifications except as permitted in PPS 47-0470 or 47-0261.

PPS 47-0470 Mistakes

(1) Generally. To protect the integrity of the competitive procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) District Treatment of Mistakes. The District shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before the award of the Contract, the District may take the following action:

(a) The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a signature appears elsewhere in the Offer evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality, or delivery.

The District may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the District's correction in writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(a) The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;

(G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the District.

(b) The criteria in subsection (2)(c) of this rule shall determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria shall apply to the question of whether the District shall permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid or proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the District, whether by award to the next lowest Responsive and Responsible bidder, the most advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The District shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.

(4) Identification of Mistakes After Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

PPS 47-0480 Time for District Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid, and binding on the Offeror for not less than thirty (30) days following Closing unless otherwise specified in the Solicitation Document.

PPS 47-0490 Extension of Time for Acceptance of Offer

The District may request, orally or in writing, that Offerors extend, in writing, the time during which the District may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

QUALIFICATIONS AND DUTIES

PPS 47-0500 Responsibility of Bidders and Proposers

(1) Determination. Before awarding a Contract, the District shall determine that the bidder submitting the lowest bid or Proposer submitting the most advantageous proposal is Responsible. The District shall use the standards set forth in ORS 279B.110 and PPS 47-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event the District determines a bidder or Proposer is not Responsible, it shall prepare a written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

PPS 47-0525 Qualified Products Lists

(1) Authority. The District may develop and maintain a qualified products list pursuant to ORS 279B.115 in instances in which the testing or examination of goods before initiating a procurement is necessary or desirable in order to best satisfy the requirements of the District. For purposes of this section, "goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

(2) Notice. In the initial development of any qualified products list, the District shall give public notice, in accordance with PPS 47-0300, of the opportunity for potential Contractors, sellers, or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list, and may solicit in writing representative groups of potential Contractors, sellers, or suppliers to submit goods for the testing and examination. Any potential Contractor, seller, or supplier, even though not solicited, may offer its goods for consideration.

(3) Inclusion to Be Based on Tests or Examinations. The District's inclusion of goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 through 192.505, the District may make the test or examination results public in a manner that protects the identity of the potential Contractor, seller, or supplier that offered the goods for testing or

examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 through 192.505, the District may keep confidential trade secrets, test data, and similar information provided by a potential Contractor, seller, or supplier if so requested in writing by the potential Contractor, seller, or supplier.

(4) List Does Not Constitute Prequalification. The inclusion of goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective Contractor, seller, or supplier of goods on the qualified products list.

PPS 47-0550 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions

(1) Prequalification of Prospective Offerors. Pursuant to ORS 279B.120 and 279B.125, the District may prequalify prospective bidders or Proposers to submit Bids or Proposals for Public Contracts to provide particular types of goods or services.

(2) Notice of Prequalification. The District shall, in response to the receipt of a prequalification application submitted under section (1) of this rule, notify the prospective bidder or Proposer whether the prospective bidder or Proposer is qualified based on the standards of responsibility listed in section (7), the type and nature of Contracts that the prospective bidder or Proposer is qualified to compete for and the time period for which the prequalification is valid. If the District does not prequalify a prospective bidder or Proposer as to any Contracts covered by the prequalification process, the notice shall specify which of the standards of responsibility listed in section (7) the prospective bidder or Proposer failed to meet. Unless the reasons are specified, the prospective bidder or Proposer shall be deemed to have been prequalified in accordance with the application.

(3) Revocation of Prequalification. If the District subsequently discovers that a prospective bidder or Proposer that prequalified under sections (1) and (2) of this rule is no longer qualified, the District may revoke the prequalification upon reasonable notice to the prospective bidder or Proposer, except that a revocation is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued. Notwithstanding this prohibition against revocation of prequalification, the District may determine that a prequalified Offeror is not Responsible prior to Contract award.

(4) Application. When the District permits or requires prequalification of bidders or Proposers, a prospective bidder or Proposer who wishes to prequalify shall submit a prequalification application to the District on a form prescribed by the District. Upon receipt of a prequalification application, the District shall investigate the prospective bidder or Proposer as necessary to determine whether the prospective bidder or Proposer is qualified. The determination shall be made in less than 30 days, if practicable, if the prospective bidder or Proposer requests an early decision to allow the prospective bidder or Proposer as much time as possible to prepare a bid or proposal for a Contract that has been advertised. In making its determination, the District shall consider only the applicable standards of responsibility listed in section (7). The District shall promptly notify the prospective bidder or Proposer whether the prospective bidder or Proposer is qualified.

(5) Contents of Notice. If the District finds that a prospective bidder or Proposer is qualified, the notice shall state the type and nature of Contracts that the prospective bidder or Proposer is qualified to compete for and the period of time for which the prequalification is valid. If the District finds that the prospective bidder or Proposer is not qualified as to any Contracts covered by the rule, resolution, ordinance, or other regulation, the notice shall specify the reasons given under section (7) below. To be entitled to a hearing under PPS 47-0760, a prospective bidder or Proposer shall, within three business days after receipt of the notice, notify the District that the prospective bidder or Proposer demands a hearing under PPS 47-0760.

(6) Revocation or Reissuance Process. If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective bidder or Proposer and that the prospective bidder or Proposer is no longer qualified or is less qualified, the District may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective bidder or

Proposer. The notice shall specify the reasons given under section (2) for revocation or revision of the prequalification of the prospective bidder or Proposer and inform the prospective bidder or Proposer of the right to a hearing under PPS 47-0760. To be entitled to a hearing under PPS 47-0760, a prospective bidder or Proposer shall, within three business days after receipt of the notice, notify the District that the prospective bidder or Proposer demands a hearing under PPS 47-0760. A revocation or revision does not apply to any Contract for which an advertisement for Bids or Proposals was issued before the date the notice of revocation or revision was received by the prequalified prospective bidder or Proposer.

(7) Standards of Responsibility. In determining whether a bidder or Proposer has met the standards of responsibility pursuant to ORS 279B.110(2), the District shall consider whether a bidder or Proposer has:

(a) 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 bidder or Proposer to meet all contractual responsibilities;

(b) A satisfactory record of performance. The District shall document the record of performance of a bidder or Proposer if the District finds the bidder or Proposer non-responsible under this section;

(c) A satisfactory record of integrity. The District shall document the record of integrity of a bidder or Proposer if the District finds the bidder or Proposer non-responsible under this section;

(d) Qualified legally to contract with the District;

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or Proposer fails to promptly supply information requested by the District concerning responsibility, the District shall base the determination of responsibility on any available information or may find the bidder or Proposer non-responsible; and

(f) Not been Debarred by the District under PPS 47-0575.

(8) Pre-Negotiation. The District may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section 1 or the pre-negotiation may be a separate process and not part of the prequalification process. Unless required as part of the prequalification process, the failure of the District and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to procurements. The District may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the District has pre-negotiated different terms and conditions with Proposers or, when permitted, Proposers offer different terms and conditions, the District may consider the terms and conditions in the proposal evaluation process.

PPS 47-0560 Request for Qualifications ("RFQ")

For purposes of this section, an RFQ may be used without the RFQ constituting a prequalification pursuant to PPS 47-0550, if the District establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing an RFP. If the District establishes a closed, exclusive, or binding list of qualified Contractors, then the District shall comply with section (1) of this rule. The District is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(1) Content of RFQ. At a minimum, the RFQ shall describe the particular specialty desired, the qualifications the Contractor(s) shall have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform

the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the District to evaluate Contractor qualifications. All RFQs shall:

(a) Be in writing;

(b) Provide that the District may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(c) Provide that the District is not responsible for any costs of any Proposers incurred while submitting Proposals, and that all Proposers who respond to solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(2) Pre-Submission Meeting. A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ shall include the date, time, and place of the meeting(s).

(3) Notice and Opportunity to Submit RFQ. Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications shall receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to the District's subsequent RFP.

PPS 47-0575 Debarment of Prospective Offerors

(1) Generally. The District may Debar prospective Offerors for the reasons of discriminating against a subcontractor in the awarding of a Contract because the subcontractor is a minority, women or emerging small business enterprise, a disadvantage business enterprise or a veteran-owned business as set forth in ORS 279A.110, or after providing notice and the opportunity for hearing as set forth in Sections (5)-(8).

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), the District may determine that a previously Debarred Offeror is not Responsible prior to Contract award.

(3) Imputed Knowledge. The District may attribute improper conduct of a Person or their affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. The District may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon written determination that participation is advantageous to the District. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

(5) Debarment Process. The District may Debar a prospective bidder or Proposer from consideration for award of the District's Contracts for the reasons listed in section (6) of this rule after providing the prospective bidder or Proposer with notice and a reasonable opportunity to be heard.

(a) The District may not Debar a prospective bidder or Proposer under this section for more than three years.

(6) Reasons for Debarment. A prospective bidder or Proposer may be Debarred from consideration for award of the District's Contracts if:

(a) The prospective bidder or Proposer 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 a public or private contract or subcontract.

(b) The prospective bidder or Proposer 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 bidder's or Proposer's responsibility as a Contractor.

(c) The prospective bidder or Proposer has been convicted under state or federal antitrust statutes.

(d) The prospective bidder or Proposer has committed a violation of a Contract provision that is regarded by the District 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. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for Debarment.

(e) The prospective bidder or Proposer does not carry workers' compensation or unemployment insurance as required by statute.

(7) Written Debarment Decision Required. The District shall issue a written decision to Debar a prospective bidder or Proposer under this section. The decision shall:

(a) State the reasons for the action taken;

(b) Inform the Debarred prospective bidder or Proposer of the appeal rights of the prospective bidder or Proposer under PPS 47-0760; and

(c) Be mailed or otherwise furnished immediately to the Debarred prospective bidder or Proposer.

(8) A prospective bidder or Proposer that wishes to appeal Debarment shall, within three business days after receipt of notice of Debarment, notify the District that the prospective bidder or Proposer appeals the Debarment as provided in PPS 47-0760.

OFFER EVALUATION AND AWARD

PPS 47-0600 Offer Evaluation and Award

(1) District Evaluation. The District shall evaluate Offers only as set forth in the Solicitation Document pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b) based on the requirements set forth in the ITB or RFP, and in accordance with applicable law. The District shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident bidders: In determining the lowest Responsive Bid, the District shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and PPS 46-0310 for nonresident bidders.

(B) Public Printing: The District shall, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

(C) Award When Bids are Identical: If the District determines that one or more Bids are identical under PPS 46-0300, the District shall award a Contract in accordance with the procedures set forth in PPS 46-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical: If the District determines that one or more Proposals are identical under PPS 46-0300, the District shall award a Contract in accordance with the procedures set forth in PPS 46-0300.

(B) Public Printing: The District shall, for the purpose of evaluating Proposals, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

(c) Recycled Materials. When procuring goods, the District shall give preference for Recycled Materials as set forth in ORS 279A.125 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 5 percent, or a higher percentage if the District makes a written determination.

(2) Clarification of Bids or Proposals. After Opening, the District may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the District's sole discretion, needing clarification shall be accorded such an opportunity. The District shall document clarification of any Offeror's bid or proposal in the Solicitation file.

(3) Negotiations.

(a) Bids. The District shall not negotiate with any bidder. After award of the Contract, the District and Contractor may only modify the Contract in accordance with PPS 47-0800.

(b) Requests for Proposals. The District may only conduct discussions or negotiate with Proposers in accordance with ORS 279B.060(6)(b) and PPS 47-0261. After award of the Contract, the District and Contractor may only modify the Contract in accordance with PPS 47-0800.

(4) Award.

(a) General. If awarded, the District shall award the Contract to the Responsible bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the most Advantageous Responsive proposal. The District may award by item, groups of items, or the entire Offer, provided such award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for proposal may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, a "market basket" of items representative of the District's expected purchases, or grand total of all items.

(A) Multiple Awards—Bids. Notwithstanding subsection (4)(a) of this rule, the District may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple awards shall not be made if a single award will meet the District's needs, including but not limited to adequate availability, delivery, service, or product compatibility and skills. A multiple award may be made if award to two or more bidders of similar goods or services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple awards may not be made for purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective bidders that multiple Contracts may be awarded for any Invitation to Bid shall not preclude the District from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the award of multiple Contracts, the District shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing goods or services.

(c) Multiple awards—Proposals.

(A) Notwithstanding subsection (4)(a) of this rule, the District may award multiple Contracts under a Request for proposal in accordance with the criteria set forth in the Request for proposal. Multiple awards shall not be made if a single award will meet the District's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple award may be made if award to two or more Proposers of similar goods or services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple awards may not be made for purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for proposal shall not preclude the District from awarding a single Contract for such Request for proposal.

(B) If a Request for proposal permits the award of multiple Contracts, the District shall specify in the Request for proposal the criteria it will use to choose from the multiple Contracts when purchasing goods or services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(d) Partial Awards. If after evaluation of Offers the District determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The District may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The District may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions, and specifications.

(e) All or None Offers. The District may award all or none Offers if the evaluation shows an all-or-none award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

PPS 47-0610 Notice of Intent to Award

(1) Notice of Intent to Award. The District shall provide written notice of its intent to award to all bidders and Proposers pursuant to ORS 279B.135 at least seven (7) days before the award of a Contract, unless the District determines that circumstances justify prompt execution of the Contract, in which case the District may provide a shorter notice period. The District shall document the specific reasons for the shorter notice period in the Solicitation file.

(2) Finality. The District's award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to PPS 47-0740; or

(b) The District provides written responses to all timely-filed protests denying the protests and affirming the award.

PPS 47-0620 Documentation of Award

(1) Basis of Award. After award, the District shall make a record showing the basis for determining the successful Offeror as part of the District's Solicitation file.

(2) Contents of Award Record. The District's record shall include:

(a) For Bids.

(A) Bids;

(B) Completed bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals.

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher-scoring Proposals; and

(D) If the District engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and PPS 47-0261, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the District used to select a Proposer to which the District awarded a Contract.

PPS 47-0630 Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the District shall deliver to the successful Offeror a Contract, a signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge in person or by submitting to the District a written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.

(3) Availability of Solicitation Files. After notice of intent to award, the District shall make Solicitation files available in accordance with applicable law.

PPS 47-0640 Rejection of an Offer

(1) Rejection.

(a) Any solicitation or procurement described in a solicitation may be canceled, or any or all Bids or Proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the District as determined by the District. The reasons for the cancellation or rejection shall be made part of the Solicitation file. The District is not liable to any bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, proposal, or award. ORS 279B.100.

(b) The District shall reject an Offer upon the District's finding that the Offer:

(A) Is contingent on the District's acceptance of terms and conditions (including specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers goods or services that fail to meet the specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public procurement procedures.

(c) The District shall reject an Offer upon the District's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the District required mandatory prequalification;

(B) Has been Debarred or has been disqualified under PPS 46-0210(4) (Disqualification);

(C) Has not met the requirements of ORS 279A.105 (emerging small business), if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the District shall have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the District shall determine under ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources, and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the District should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The District shall make its basis for determining an Offeror non-Responsible under this section part of the Solicitation file as required by ORS 279B.110(2)(b).

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if the District determines the Offeror demonstrates a lack of business ethics, such as violation of state environmental laws or false certifications made to the District. The District may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor, or successor person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The District may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract, or in connection with the Offeror's performance of a contract or subcontract. The District shall make its basis for determining that an Offeror is non-Responsible under this section part of the Solicitation file as required by ORS 279B.110(2)(c);

(iv) Is legally qualified to contract with the District;

(v) Has attested in writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state; and

(vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the District concerning Responsibility, the District shall base the determination of responsibility on any available information, or may find the Offeror non-Responsible.

(2) Required Tax Certification. For the purposes of subparagraph (1)(c)(F)(v) of this rule:

(A) The period for which the Offeror shall attest that it complied with the applicable tax laws shall extend no fewer than six years into the past from the date of the Closing.

(B) Tax laws include, but are not limited to, ORS 305.620, ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws.

(C) The District may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is "credible and convenient" under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, a Contracting Agency may accept forms of attestation that range from a notarized statement to a less formal document that records the Offeror's attestation. However, State Contracting Agencies may not accept the certificate of compliance with tax laws required by ORS 305.385 unless that certificate embraces, in addition to the tax laws described in ORS 305.380, the tax laws of political subdivisions.

(3) Form of Business Entity. For purposes of this rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of this rule.

PPS 47-0650 Rejection of All Offers

(1) Rejection. The District may reject all Offers when the rejection is in the best interest of the District as determined by the District. The reasons for the rejection shall be made part of the Solicitation file. The District is not liable to any bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, proposal, or award. ORS 279B.100. The District shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The District may reject all Offers based on the following criteria:

(a) The content of or an error in the Solicitation Document or the procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The District cancels the procurement or solicitation in accordance with PPS 47-0660; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

PPS 47-0660 Cancellation of Procurement or Solicitation

(1) Cancellation in the District Interest. The District may cancel a procurement or solicitation when the cancelation is in the best interest of the District as determined by the District. The reasons for the cancellation shall be made part of the Solicitation file. The District is not liable to any bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, proposal, or award.

(2) Notice of Cancellation Before Opening. If the District cancels a procurement or solicitation prior to Opening, the District shall provide written notice of cancellation in the same manner that the District initially provided notice of the Solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

(3) Notice of Cancellation After Opening. If the District cancels a procurement or solicitation after Opening, the District shall provide written notice of cancellation to all Offerors who submitted Offers.

PPS 47-0670 Disposition of Offers if Procurement or Solicitation Canceled

(1) Prior to Opening. If the District cancels a procurement or solicitation prior to Opening, the District shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the District shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) After Opening. If the District cancels a procurement or solicitation after Opening, the District:

(a) May return Proposals in accordance with ORS 279B.060(6)(c); and

(b) Shall keep bids in the Solicitation file.

(3) Rejection of All Offers. If the District rejects all Offers, the District shall keep all Proposals and Bids in the Solicitation file.

LEGAL REMEDIES

PPS 47-0700 Protests and Judicial Review of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special procurement, an Affected Person shall file a written protest with the Superintendent and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person shall deliver a written protest to the District within seven (7) days after the first date of public notice of the approval of a Special procurement by the District, unless a different protest period is provided in the public notice of the approval of a Special procurement.

(3) Content of Protest. The written protest shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Board Response. The Contract Review Board shall not consider an Affected Person's protest of the approval of a Special procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special procurement. The Contract Review Board shall issue a written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special procurement, or revoke the approval of the Special procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Superintendent's decision relating to a protest of the approval of a Special procurement in accordance with ORS 279B.400.

PPS 47-0710 Protests and Judicial Review of Sole-Source procurements

(1) Purpose. For sole-source procurements requiring public notice under PPS 47-0275, an Affected Person may protest the determination of the Superintendent or designee that the goods or services or class of goods or services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person shall file a written protest with the Superintendent or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the sole-source procurement, an Affected Person shall deliver a written protest to the Superintendent or designee within seven days after the first date of public notice of the sole-source procurement, unless a different protest period is provided in the public notice of a sole-source procurement.

(3) Content of Protest. The written protest shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Response. The Superintendent or designee shall not consider an Affected Person's sole-source procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source procurement. The Superintendent or designee shall issue a written disposition of the protest in a timely manner. If the Superintendent or designee upholds the protest, in whole or in part, the Superintendent shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Superintendent's or designee's disposition of a sole-source procurement protest shall be in accordance with ORS 279B.420.

PPS 47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) Purpose. An Affected Offeror may protest exclusion from the competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror shall file a written protest with the District and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may only protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and, but for the District's mistake in evaluating the Offerors or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. For example, the protesting Offeror shall claim it is eligible for inclusion in the competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the competitive Range because their Proposals were not Responsive, or the District committed a substantial violation of a provision in the

Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive Range.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror shall deliver a written protest to the District within seven (7) days after issuance of the notice of the competitive Range or notice of subsequent tiers or steps.

(4) Content of Protest. The Affected Offeror's protest shall be in writing and shall specify the grounds upon which the protest is based.

(5) District Response. The District shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The District shall issue a written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum under PPS 47-0430 reflecting its disposition or cancel the procurement or solicitation under PPS 47-0660.

(6) Judicial Review. Judicial review of the District's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

PPS 47-0730 Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060, and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror shall file a written protest with the District and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror shall deliver a written protest to the District not less than ten (10) days prior to Closing.

(3) Content of Protest. The prospective Offeror's written protest shall include:

- **(a)** Sufficient information to identify the Solicitation that is the subject of the protest;
- **(b)** The grounds that demonstrate how the procurement process is contrary to law or how the Solicitation Document is unnecessarily restrictive, is legally flawed, or improperly specifies a Brand Name;
- **(c)** Evidence or supporting documentation that supports the grounds on which the protest is based; and
- **(d)** A statement of the desired changes to the procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) District Response. The District shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The District shall consider the protest if it is timely filed and meets the conditions set forth in section (3) of this rule. The District shall issue a written disposition of the protest no fewer than three business days before Offers are due. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum reflecting its disposition under PPS 47-0430 or cancel the procurement or solicitation under PPS 47-0660.

(5) Extension of Closing. If the District receives a protest from a prospective Offeror in accordance with this rule, the District may extend Closing if the District determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the District's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

(8) Failure to Protest or Request a Clarification Precludes Protest of Award on Such Issue. An Offeror cannot protest an award based on any issue that could have, but was not, raised as a Request for Clarification or Protest of solicitation pursuant to this section.

PPS 47-0740 Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the award of a Contract, or the intent to award a Contract, whichever occurs first, if:

(a) The bidder or Proposer is adversely affected because the bidder or Proposer would be eligible to be awarded the Public Contract in the event that the protest were successful; and

(b) The reason for the protest is that:

(A) All lower Bids or higher ranked Proposals are non-Responsive;

(B) The District has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the Solicitation materials;

(C) The District has abused its discretion in rejecting the protestor's bid or proposal as non-Responsive; or

(D) The District's evaluation of Bids or Proposals or the District's subsequent determination of award is otherwise in violation of these rules or the Public Contracting Code.

(2) Delivery. An Offeror shall file a written protest with the District and exhaust all administrative remedies before seeking judicial review of the District's Contract award decision. Unless otherwise specified in the Solicitation Document, an Offeror shall deliver a written protest to the District within seven (7) days after the award of a Contract, or issuance of the notice of intent to award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's written protest shall specify the grounds for the protest to be considered by the District pursuant to section (1) of this rule.

(4) District Response. The District shall not consider an Offeror's Contract award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The District shall issue a written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either award the Contract to the successful protestor or cancel the procurement or solicitation.

(5) Judicial Review. Judicial review of the District's decision relating to a Contract award protest shall be in accordance with ORS 279B.415.

PPS 47-0745 Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the District's decision to exclude the prospective Offeror's goods from the District's qualified products list under ORS 279B.115. A prospective Offeror shall file a written protest and exhaust all administrative remedies before seeking judicial review of the District's qualified products list decision.

(2) Delivery. Unless otherwise stated in the District's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror shall deliver a written protest

to the District within seven (7) days after issuance of the District's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in writing and shall specify the grounds upon which the protest is based.

(4) District Response. The District shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the District's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The District shall issue a written disposition of the protest in a timely manner. If the District upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the District's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

PPS 47-0750 Judicial Review of Other Violations

Any violation of ORS 279A or 279B by the District, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

PPS 47-0760 Review of Prequalification and Debarment Decisions

(1) Upon receipt of a notice from the District of a prequalification decision under ORS 279B.125 or of a decision to Debar under ORS 279B.130, a prospective bidder or Proposer that wishes to appeal the decision shall, within three days after receipt of the notice, notify the District that the prospective bidder or Proposer appeals the decision as provided in this section.

(2) Immediately upon receipt of the prospective bidder's or Proposer's notice of appeal, the District shall notify the appropriate Local Contract Review Board.

(3) Upon the receipt of notice from the District under section (2) of this rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 days after receiving the notice from the District. The Contract Review Board shall set forth in writing the reasons for the hearing decision.

(4) At the hearing, the Contract Review Board shall consider de novo the notice of denial, revocation, or revision of a prequalification or the notice of Debarment, the standards of responsibility listed in ORS 279B.110(2) on which the District based the denial, revocation or revision of the prequalification or the reasons listed in ORS 279B.130(2) on which the District based the Debarment, and any evidence provided by the parties. Hearings before the Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(5) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

- **(a)** If the decision to deny, revoke, or revise a prequalification of a Person as a bidder or the decision to Debar a Person is upheld, the costs shall be paid by the Person appealing the decision.
- **(b)** If the decision to deny, revoke, or revise a prequalification of a Person as a bidder or the decision to Debar a Person is reversed, the costs shall be paid by the District.

(6) Judicial review of the District's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

PPS 47-0800 Amendments to Goods or Services Contracts and Price Agreements

(1) Generally. The District may amend a Contract for goods or services without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special procurement, if any. An amendment is not within the scope of the procurement if the District determines that if it had described in the procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These rules otherwise permit the District to award a Contract without competition for the goods or services to be procured under the amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the District, subject to all of the following conditions:

(A) The goods or services to be provided under the amended Contract are the same as the goods or services to be provided under the unamended Contract.

(B) The District determines that, with all things considered, the amended Contract is at least as favorable to the District as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract awarded as a small or intermediate procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed 125 percent of the maximum threshold for small procurements or for intermediate procurements.

(3) Price Agreements. The District may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist, as follows:

(A) The District fails to receive funding or appropriations to sustain purchases at the levels contemplated at the time of contracting; or

(B) The applicable program is terminated or the law changes so that purchases under the Price Agreement are no longer authorized or appropriate for the District's use; or

(c) As permitted by applicable law.

(4) Amendments That Would Cause a Contract to Exceed the Superintendent's Authority. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 shall be approved by the School Board except as provided in PPS 45-0200.

(4) Reporting Requirement for Amendments/Change Orders That Exceed 125 Percent of Original Contract Price.

(a) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than 125 percent of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(A) The Original Contract Price does not exceed $500,000.

(B) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than 150 percent of the original Contract Price.

(c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION 47

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING OR LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

PPS 48-0100 Application

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related services under Contracts, and set forth the following procedures:

(1) Procedures through which the District selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying services, or Related services; and

(2) Two-tiered procedures for selection of Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related services for certain public improvements owned and maintained by the District.

PPS 48-0110 Definitions

In addition to the definitions set forth in PPS 46-0110, the following definitions apply to these division 48 rules:

(1) "Architect" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 through 671.220, and includes, without limitation, the terms "Architect," "licensed Architect," and "registered Architect."

(2) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100 and means professional services that are required to be performed by an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor.

(3) "Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or provider of Related services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, or providers of Related services, or any combination of the foregoing. Provided, however, when the District is entering into a direct Contract under PPS 48-0200(1)(c) or (d), the "Consultant" shall be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(4) "Engineer" means an individual who is registered and holds a valid certificate in the practice of land engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(5) "Estimated Fee" means The District's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

(6) "Land Surveyor" means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(7) "Photogrammetric Mapping" means an evaluating and measuring of land that is limited to the determination of the topography, area, contours, and location of planimetric features, by using photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process.

(8) "Photogrammetrist" means an individual who is registered and holds a valid certificate to practice photogrammetric mapping in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(9) "Price Agreement" for purposes of this division 48 is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for project-specific services, and which may include Consultant compensation information, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial work order, task order, or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services in which the District does not guarantee a minimum or maximum additional purchase.

(10) "Project" means all components of the District's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, under a Contract.

(11) "Related Services" means Personal services, other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying services that are related to planning, designing, engineering, or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost-estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services, or land-use planning services.

(12) "Transportation Planning Services" means Transportation Planning services for projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Transportation Planning services include only project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements, and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans, and other transportation plans not directly associated with an individual project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning services also do not include transportation planning for projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

PPS 48-0120 List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services may annually submit a statement describing their qualifications and related performance information to the District's office addresses. The District shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) The District may compile and maintain a record of each Consultant's performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.311 through 192.478), the District may make available copies of the records.

PPS 48-0130 Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) Selection of Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors. When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, the District shall follow the applicable selection procedure under either PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), or PPS 488-0220 (Formal Selection Procedure). The District may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, in any of the District's selection procedures to select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, pursuant to the requirements of ORS 279C.110(5)

(2) Selection of Consultants to Perform Related Services. The District shall select a Consultant to perform Related services using one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, the District shall follow the applicable selection procedure under either PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), or PPS 48-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, the District shall follow the applicable provisions under PPS 48-0200 (Direct Appointment Procedure), the applicable provisions of PPS 48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of PPS 48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, the District shall follow the applicable provisions under PPS 48-0200 (Direct Appointment Procedure), the applicable provisions of PPS 48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of PPS 48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the informal selection procedure of PPS 48-0210, the District may use abbreviated requests for proposals that nevertheless meet the requirements of PPS 48-0210, when the District determines, in its sole discretion, that the characteristics of the project and the Related services required by the District would be adequately addressed by a more abbreviated Request for proposal document generally comparable to the intermediate procurement procedures and related documentation under ORS 279B.070 and PPS 47-0270. The District may request and consider a Proposer's pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, submitted with a proposal.

Sections (1) and (2) Do Not Apply to Price Agreements. The District is not required to follow the procedures in section (1) or section (2) of this rule when the District has established Price Agreements pursuant to PPS 48-0270 with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services under an individual work order or task order. Provided, however, the criteria and procedures the District uses to select a single Consultant, when the District has established Price Agreements with more than one Consultant, shall meet the requirements of OAR PPS 48-0270 (Price Agreements).

(3) Electronic Selection. The District may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If The District uses electronic methods to screen and select a Consultant, the District shall first promulgate rules for conducting the

screening and selection procedure by electronic means, substantially in conformance with PPS 47-0330 (Electronic procurement).

(4) Contracts for "Mixed" Services. For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, and also provide Related services, other services or other related goods under the Contract. The District's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. The District shall determine the predominant purpose of the Contract by determining which of the services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, the District shall comply with the requirements of section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related services, the District shall comply with the requirements of section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other services or goods under the Public Contracting Code, the District shall comply with the applicable provisions of PPS divisions 46, 47 and 49 of these rules that match the predominant purpose of the Contract.

(5) Compliance With Board Policy. In applying these rules, the District shall support Board Policies relating to District Contracts.

(6) Disclosure Requirements for Proposals Under Division 48. The following provisions apply to proposals received by the District for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services:

(a) "Competitive Proposals" Means all Proposals Solicited under Division 48. The term "competitive proposal" includes Proposals under PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), PPS 48-0220 (Formal Selection Procedure) or PPS 48-0130(2)(c) (Selection Based on Price and Qualifications), and any proposals submitted in response to a selection process for a work order or task order under PPS 48-0270 (Price Agreements) or PPS 48-0280 (FSCP).

(b) Direct Appointments. For purposes of Proposals received by the District under PPS 48-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while the District may make Proposals under PPS 48-0200 (Direct Appointment Procedure) open for public inspection following the District's decision to begin Contract negotiations with the selected Consultant, Proposals are not required to be open for public inspection until after the District has executed a Contract with the selected Consultant.

(c) Closely Competitive Proposals. In the limited circumstances permitted by ORS 279C.110, 279C.115, and 279C.120, here the District is conducting discussions or negotiations with Proposers who submit Proposals that the District has determined to be closely competitive or to have a reasonable chance of being selected for award, the District may open Proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the District may open Proposals in such a way as to avoid disclosure of the contents until after the District executes a Contract with the selected Consultant. If the District determines that it is in the best interest of the District to do so, the District may make Proposals available for public inspection following the District's issuance of a notice of intent to award a Contract to a Consultant; and

(d) ORS 297C.107 Requirements. Disclosure of Proposals and proposal information is otherwise governed by ORS 279C.107 as follows:

(A) The District may open Proposals so as to avoid disclosing contents to competing Proposers during, where applicable, the process of negotiation.

(B) The District need not open Proposals for public inspection until after the District executes a Contract.

(C) Regardless of when Proposals are opened for public inspection, the District shall withhold from disclosure trade secrets as defined in ORS 192.501, and information submitted to the District in confidence as described in ORS 192.502.

(D) Opening a proposal at a public meeting of the Board or other body subject to the Public Meetings Law does not make the contents of the proposal subject to disclosure regardless of whether an executive session has been called.

(E) If a request for Proposals is cancelled after Proposals are received, the District shall, subject to ORS 192.501 and 192.502, return a proposal and all copies of the proposal to the Proposer. The District shall keep a list of returned Proposals in the Solicitation file.

(7) Independent and Objective Oversight Required. Pursuant to ORS 279C.307(1), when procuring Personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Contract subject to PPS divisions 48 or 49 ("ORS 279C.307 Services"), the District may not:

(a) Procure the Personal services identified in ORS 279C.307 from a Contractor or Consultant or an affiliate of a Contractor or Consultant who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the Personal services; or

(b) Procure the Personal services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of Personal services.

(8) Application of Section 8. The requirements of ORS 279C.307(1) and section 8 of this rule apply in the following circumstances, except as provided in section (9) and (10) of this rule:

(a) The District requires the procurement of Personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, a Public Contract for Related services, or a Public Contract for construction services under ORS chapter 279C.

(b) The procurement of Personal services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services that involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric

Mapping, Transportation Planning or Land Surveying services, construction services subject to ORS chapter 279C, commissioning services, or other Related services for a project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing, or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related services or Personal services, which involve administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the Public Contracts described in section (10)(a) of this rule.

(9) Design-Build and CM/GC Contract Solicitations. The requirements of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To the District's procurement of both design services and construction services through a single "Design-Build" procurement, as that term is defined in PPS 49-0610. Such a Design-Build procurement includes a procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to the District's procurement of Personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build procurement; and

(b) To the District's procurement of both pre-construction services and construction services through a single procurement of Construction Manager/General Contractor services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to the District's procurement of Personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Construction Manager/General Contractor services Contract or performance under such a Contract resulting from a procurement of Construction Manager/General Contractor services.

(10) Application for Exception. As permitted by ORS 279C.307(3), the District may apply for an exception to the requirements of ORS 279C.307(1) in the situation when the District anticipates that it must procure Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C, and the District desires to accept a Bid or other Proposal from a Contractor or Consultant that would otherwise be prohibited from bidding or proposing to provide the required Personal Services. In order for the District to obtain such an exception to the requirements of ORS 279C.307(1), the District must apply for and obtain an approved exception from the Appropriate Authority for the District before awarding a contract to the Contractor or Consultant under a Procurement for the required Personal Services, or before entering into an amendment of an existing Public Contract with the Contractor or Consultant to obtain the Personal Services.

(a) Application Requirements. The District's application to the Appropriate Authority for an exception under ORS 279C.307(3) must include the following Findings and Justifications:

(A) The District requires Personal Services described in ORS 279C.307(1);

(B) Accepting a Bid or from a Contractor or Consultant that would be subject to the prohibition described in ORS 279C.307(1) is in the best interest of the District;

(C) Approving the is unlikely to encourage favoritism in awarding Public Contracts or to substantially diminish competition for Public Contracts; and

(D) Approving the exception:

(i) Is reasonably expected to result in substantial cost savings to the District or the public; or

(ii) Otherwise will substantially promote the public interest in a manner that could not be practicably realized by complying with the prohibition described in ORS 279C.307(1).

(b) Consultation with Legal Counsel. The District shall consult with the District's legal counsel during the exception process provided for in ORS 279C.307(3) as follows:

(A) During the process of preparing an application for the exception to ensure compliance with the requirements of ORS 279C.307 and with the other applicable provisions of ORS chapter 279C;

(B) Pursuant to the requirements of an ORS 279C.307(3) exception approved by the District's Appropriate Authority; and

(C) The District's consultation with its legal counsel should include discussion and evaluation of mitigation measures that the District can include in the Procurement and in any resulting Public Contract for the Personal Services, in order to reduce any competitive advantage that the Contractor or Consultant may have or may be perceived to have, and to increase the objectivity and independence of the Contractor or Consultant during its performance of the Personal Services.

(c) Definitions. The following definitions apply to section (11) of this rule:

(i) "Appropriate Authority" means the District's local contract review board; and

(ii) "Findings and Justifications" means the determinations, findings and justifications for a conclusion that the District, in seeking an exception from the objectivity and independence requirements of ORS 279C.307(1), reaches based on the considerations set forth in ORS 279C.307(3)(d) and based on sufficient supporting facts.

SELECTION PROCEDURES

PPS 48-0200 Direct Appointment Procedure

(1) 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; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $100,000; or

(c) FSCP. The Consultant is a member of an FSCP that has been established for the class of work for which a Contract is required; or

(d) Continuation of Project with an Intermediate Estimated Fee. Where a District project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be performed under the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that have been substantially described, planned, or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed $250,000; and

(C) The District used either the formal selection procedure under PPS 48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

(e) Continuation of Project With an Extensive Estimated Fee. When a District project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be performed under the Contract shall meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that have been substantially described, planned, or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services rendered under the earlier Contract;

(B) The District used either the formal selection procedure under PPS 48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) The District makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(iii) Promote efficient use of public funds and resources and result in substantial cost savings to the District; and

(iv) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract; or

(f) The Contract Review Board Grants Approval for a Direct Appointment or Alternative Procurement Process.

(A) The Superintendent may seek approval from the Local Contract Review Board for direct appointment or an alternative procurement process for Consultant services.

(B) The Superintendent shall submit a written request to the Board demonstrating that:

(i) Approval by the Board is unlikely to encourage favoritism in the award of public contracts or substantially diminish competition for public contracts; and

(ii) Is reasonably expected to result in substantial cost savings to the District or to the public; or

(iii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the selection procedures otherwise required by these rules.

(2) The District may select a Consultant for a Contract under this rule from the following sources:

(a) District's list of Consultants that is created under PPS 48-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under PPS 48-0120 0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that the District reasonably can identify under the circumstances.

(3) The District shall direct negotiations with a Consultant selected under this rule toward discussing, refining, and finalizing the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant

(b) The Consultant's performance obligations and performance schedule;

(c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services; and

(d) Any other provisions that the District believes to be in the District's best interest to negotiate.

PPS 48-0210 Informal Selection Procedure

(1) The District may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.

(2) When using the informal selection procedure on the basis of qualifications alone or, for Related services, on the basis of price and qualifications, the District shall:

(a) Create a request for Proposals ("RFP") that includes at a minimum the following:

(A) A description of the project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon; and

(ix) If the District is selecting a Consultant to provide Related service, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and District is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these division 48 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the RFP, and select the three highest ranked Proposers.

(3) Contracting Agencies using the informal selection procedure for Related services on the basis of price Proposals and other pricing information alone shall:

(a) Create an RFP that includes at a minimum the following:

(A) A description of the project for which a Consultant's Related services are needed and a description of the Related services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Any minimum or pass-fail qualifications that the Proposers shall meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(viii) of this rule that are related to the Related services described in the RFP;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related services described in the RFP, expenses, hourly rates and overhead;

(G) A statement directing Proposers to the protest procedures set forth in these division 48 rules; and

(H) A sample form of the Contract.

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Related services; and.

(c) Review and rank all responsive Proposals received, according to the total price for the Related services described in the RFP, Consultant pricing policies and other pricing information requested in the RFP, including but not limited to the number of hours proposed for the Related services required, expenses, hourly rates and overhead, and select the three highest ranked Proposers.

(4) If the District does not cancel the RFP after it reviews the Proposals and ranks each Proposer, the District will begin negotiating a Contract with the highest ranked Proposer. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services; and

(d) Any other conditions or provisions that the District believes to be in the District's best interest to negotiate.

(5) The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the District and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the District may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(6) If the District uses the informal selection procedure for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, when the District will be using pricing policies, proposals or other pricing information as part of the District' screening and selection of prospective Consultants, pursuant to ORS 279C.110(5) [HB 2769 (Oregon Laws 2019, Chapter 55)], shall:

(a) Create an RFP that meets the requirements of ORS 279C.110(5)(a) In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, the District may provide a specific estimate of that cost, or a range of estimated costs;

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, the District shall provide the RFP to all available prospective Consultants and shall maintain a written record of the District's efforts to locate available prospective Consultants for the RFP. The District shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, or any combination of the foregoing.

(c) In the initial phase of the RFP, evaluate each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, with those qualifications including the criteria set forth in subsections (2)(a)(E)(i) through (2)(a)(E)(viii) of this rule;

(d) At the end of the initial phase of the RFP, announce the evaluation scores of each Consultant and rank each Consultant according to the evaluation scores. The District shall identify up to three (3) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(e) In the second phase of the RFP, request a pricing proposal from the highest ranked prospective Consultants identified in the initial phase of the RFP, with that pricing proposal to meet the requirements of ORS 279C.110(5)(c)(A) and (B);

(f) Complete the evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;

(g) If the District does not cancel the RFP after it reviews the qualifications of all prospective Consultants and the price proposals received from the highest ranked Consultants and ranks the highest ranked Consultants from the second phase of the RFP, begin negotiating a Contract with the highest ranked prospective Consultant. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:

(A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(B) The Consultant's performance obligations and performance schedule;

(C) The Consultant's payment methodology, rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services; and

(D) Any other conditions or provisions the District believes to be in the District's best interest to negotiate; and

(h) The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the District and the Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with section (6)(g) of this rule, until negotiations result in a Contract. If negotiations with any of the top three prospective Consultants do not result in a Contract within a reasonable amount of time, the District may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(7) When the Estimated Fee in an informal selection procedure under this rule is expected not to exceed $150,000, the Contracting Agency is only required to provide the RFP under sections (2), (3) and (6) of this rule to three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, the Contracting Agency shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agency's efforts to locate available prospective Consultants for the RFP.

(8) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under PPS 48-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

PPS 48-0220 Formal Selection Procedure

(1) Subject to OAR PPS 48-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), the District shall use the formal selection procedure described in this rule to select a Consultant if the Consultant cannot be selected under either PPS 48-0200 (Direct Appointment Procedure) or under PPS

48-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at the District's discretion.

(2) When using the formal selection procedure, the District shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

(a) Except as provided in subsection (2)(b) of this section, the District shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the project is located, and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach disadvantaged business enterprise (DBE), veteran-owned business (VB), minority business enterprise (MBE), women business enterprise (WBE), and emerging small business enterprise (ESB) audiences.

(A) The District shall publish the advertisement within a reasonable time before the deadline for the proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) The District shall include a brief description of the following items in the advertisement:

(i) The project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services the District seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the District shall publish each RFP and RFQ by one or more of the electronic methods identified in PPS 46-0110(14). The District shall comply with Sections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) The District may send notice of the RFP or RFQ directly to all Consultants on the District's list of Consultants that is created and maintained under PPS 48-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. The District may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the District may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFQ.

(a) Mandatory RFQ Requirements. The District shall include the following, at a minimum, in each RFQ:

(A) A brief description of the project for which the District is seeking a Consultant;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services the District seeks for the project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including, but not limited to, construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that the District seeks;

(F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;

(G) A statement whether or not the District shall hold a pre-qualification meeting for all interested Consultants to discuss the project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFQ, and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the District is not responsible for any Consultant expenses associated with the RFQ.

(b) Optional RFQ Requirements. The District may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFQ, including Consultants committed resources and recent, current, and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the District is selecting a Consultant to provide Related services, Consultants' pricing policies and pricing Proposals, or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates, and overhead;

(J) Consultants' ability to assist the District in complying with any art acquisition requirements imposed by the District;

(K) Consultants' ability to assist the District in complying with State of Oregon energy efficient design requirements established by the District;

(L) Consultants' ability to assist the District in complying with the solar energy technology requirements pursuant to ORS 276.900 through 279.915; and

(M) Any other information the District deems reasonably necessary to evaluate Consultants' qualifications.

(c) Pricing Proposal Requests Not Allowed During the RFQ Process When RFQ Is Followed by RFP. If the District will use a Request for Qualifications followed by an RFP to procure Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services under this rule and District intends to use pricing policies, proposals or other pricing information as part of the District's screening and selection of prospective Consultants, pursuant to ORS 279C.110(5), the District cannot request cost proposals or otherwise use pricing policies, proposals or other pricing information as part of the Request for Qualifications. The District may only request cost proposals or otherwise use pricing policies, proposals or other pricing information during the RFP process, following the establishment of a short list of qualified Consultants through the Request for Qualifications process.

(d) RFQ Evaluation Committee. The District shall establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the evaluation criteria. The District may appoint to the evaluation committee District employees or employees of other public agencies with experience in Architecture, Engineering, or Land Surveying services, Related services, construction services, or Public Contracting. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying, or related professions. The District shall designate one member of the evaluation committee as the evaluation committee chairperson.

(e) The District may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including, but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(f) After the evaluation committee reviews, scores, and ranks the responding Consultants, the District shall establish a short list of at least three qualified Consultants, if feasible, provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the District's minimum requirements, then:

(A) The District may establish a short list of fewer than three qualified Consultants; or

(B) The District may cancel the RFQ and issue an RFP.

(g) No Consultant will be eligible for placement on the District's short list established under subsection (3)(d) of this rule if the Consultant or any of Consultant's principals, partners, or associates are members of the District's RFQ evaluation committee.

(h) Except when the RFQ is cancelled, the District shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposal. The District shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) Required Contents. Except as otherwise provided in Sections (4)(b) and (4)(c) of this rule, when the District uses the formal selection procedure, the District shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services sought for the project, the estimated project cost, the estimated time period during which the project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points, or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights, or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services on comparable projects;

(iii) The amount and type of resources and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(iv) The recent, current, and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii) above would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services on time and within budget, including whether or not there is a record of satisfactory performance under PPS 48-0120 (List of Interest Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls, and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the project and Architectural, Engineering, and Land Surveying services or Related services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(xiii) If the District is selecting a Consultant to provide Related services, pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead; and

(xiv) Any other criteria that the District deems relevant to the project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP, including, where the nature and budget of the project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including, but not limited to, construction services;

(D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the District;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the District;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and the District is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to DBE, MBE, WBE, ESB, and VB participation goals or good faith efforts with respect to DBE, MBE, WBE, ESB, and VB participation, and federal requirements when federal funds are involved;

(A) A statement whether or not the District shall hold a pre-proposal meeting for all interested Consultants to discuss the project and the Architectural, Engineering, Photogrammetric

Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP, and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(B) A request for any information the District deems reasonably necessary to permit the District to evaluate, rank, and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP; and

(C) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. When using the formal selection procedure, the District shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the project and the specific Related services sought for the project, the estimated project cost, the estimated time period during which the project is to be completed, and the estimated time period in which the specific Related services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers shall meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in section (4)(a)(C) through section(4)(a)(N) of this rule pertaining to the Related services described in the RFP.

(c) RFP Contents for District Selection of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services with Pricing Policies, Proposals or Other Pricing Information. If the District will be including pricing policies, proposals or other pricing information in the District's formal selection procedure criteria for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services pursuant to ORS 279C.110(5), the District shall meet the following minimum requirements for each RFP:

(A) If the District has used the Request for Qualifications procedure in section (3) of this rule to evaluate potential Consultants and establish a short list of qualified Consultants pursuant to ORS 279C.110(5), the RFP shall meet the requirements of ORS 279C.110(5) that address the second phase of the selection process applicable to the short list of no more than three of the highest ranked prospective consultants that were identified in the initial phase of the selection process described in ORS 279C.110(5)(a) and (b).

(B) If the District has elected to not use the Request for Qualifications procedure in section (3) of this rule, and will use only an RFP in the District's use of the formal selection procedure, the District shall include at least the following in the RFP:

(i) The information set forth in ORS 279C.110(5)(a). In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, the District may provide a specific estimate of that cost, or a range of estimated costs;

(ii) (In the initial phase of the RFP, provisions describing the District's evaluation of each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, with those qualifications including the criteria set forth in subsections (4)(a)(B)(i) through (4)(a)(B)(xiii) and (4)(a)(B)(xv) of this rule;

(iii) At the end of the initial phase of the RFP, provisions describing the District's evaluation scores of each Consultant and rank of each Consultant according to the evaluation scores. The District shall identify up to three (3) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(iv) In the second phase of the RFP, provisions describing the District's request of a pricing proposal from each of the highest ranked prospective Consultants identified in the initial phase of the RFP, pursuant to the requirements of ORS 279C.110(5)(c)(A) and (B);

(v) Provisions describing the District's evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;

(d) RFP Evaluation Committee. The District shall establish a committee of at least three individuals to review, score, and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the District may include the same members who served on the RFQ evaluation committee. The District may appoint to the evaluation committee the District employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying or Related services, construction services, or Public Contracting. At least one member of the evaluation committee shall be a District employee. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, land surveying, or related professions. The District shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners, or associates are members of the District's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points, or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the District the results of the scoring and ranking for each Proposer.

(e) If the District does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the District shall begin negotiating a Contract with the highest ranked Proposer. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:

(A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(B) The Consultant's performance obligations and performance schedule;

(C) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services; and

(D) Any other conditions or provisions the District believes to be in the District's best interest to negotiate.

(f) The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the District and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on if applicable, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the District may end the particular formal solicitation. Nothing in this rule precludes the District from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP that failed to result in a Contract.

PPS 48-0230 Ties Among Proposers

(1) If the District is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the District may select a candidate through any process that the District believes will result in the best value for the District, taking into account the scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services. Provided, however, that the tie-breaking process established by the District under this section (1) cannot be based on pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead. The process shall be designed to instill public confidence through ethical and fair dealing, honesty, and good faith on the part of the District and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the District and the selected Proposer shall proceed with negotiations under PPS 48-0210(3) or 48-0220(4)(c), as applicable.

(2) If the District is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the District shall follow the procedure set forth in PPS 46-0300 (Preferences for Oregon goods and services) to select the Consultant.

PPS 48-0240 Protest Procedures

(1) RFP Protest and Request for Change. Pursuant to ORS 279C.110(8), Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification, or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due,

unless a different deadline is indicated in the RFP. Each protest and request for change shall include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications, or Contract terms. The District may not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection. Pursuant to ORS 279C.110(8), Consultants may submit a written protest of the District's selection of a Consultant for award of a Contract as follows:

(a) Single Award. In the event of an award to a single Proposer, the District shall provide to all Proposers a copy of the selection notice that the District sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the District no later than seven days after the date of the selection notice, unless a different deadline is indicated in the RFP. A Proposer submitting a protest shall claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the District shall provide to all Proposers copies of the selection notices that the District sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the District no later than seven days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest shall claim that the protesting Proposer is one of the highest ranked Proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest shall claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP.

(c) Effect of Protest Submission Deadline. The District may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the District shall resolve all timely submitted protests within a reasonable time following the District's receipt of the protest, and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the District shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

PPS 48-0250 Solicitation Cancellation, Delay, or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

The District may cancel, delay, or suspend a solicitation, RFQ, or other preliminary procurement document, whether related to a Direct Appointment Procedure (PPS 48-0200), Informal Selection Procedure (PPS 48-0210), or a Formal Selection Procedure (PPS 48-0200), or reject all Proposals, responses to RFQs, responses to other preliminary procurement documents, or any combination of the foregoing, if the District believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension, or rejection, the District is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension, or rejection. Consultants responding to either solicitations, RFQs, or other preliminary procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs, or responses to other preliminary procurement documents.

PPS 48-0260 Two-Tiered Selection Procedure for District Public Improvement Projects

(1) If the District requires an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services for a public improvement that is owned and maintained by the District and a State Agency will serve as the lead, the District shall enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers, or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services for that public improvement, and the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) Tier One. State that the District shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in PPS 48-0210 (Informal Selection Procedures) and 48-0220 (Formal Selection Procedures), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under PPS 48-0200 (Direct Appointment Procedure), and shall notify the District of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) Tier Two. In accordance with the qualifications-based selection requirements of ORS 279C.110, the District shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services for the District's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services for the District's Public Improvement through an alternative process adopted by the District consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The District's alternative process shall be described in the applicable RFP, may be structured to take into account the unique circumstances of the District, and may include provisions to allow the District to perform its tier-two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The District's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the District to the State Contracting Agency, prior to the advertisement of a procurement or series of procurements, or during the course of the procurement or series of procurements, that the District's tier two selection shall be the highest ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the District is required. However, the District may provide written notice to the State Contracting Agency that the District's general written direction is not to be applied for a particular procurement and describe the process that the District shall utilize for the particular procurement. In order for a written direction from the District consistent with this section to be effective for a particular procurement, it shall be received by the Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the procurement. In the event of a multiple award under the terms of the applicable procurement, the written direction from the District may apply to the highest ranked Proposers that are selected under the terms of the procurement document.

(B) An intergovernmental agreement between the District and the Contracting Agency outlining the alternative process that the District has adopted for a procurement or series of procurements.

(C) Where multiple Local Government Contracting Agencies are involved in a two-tiered selection procedure, the Local Government Contracting Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Contracting Agencies, whether the Local Government Contracting Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services under the tier two selection process. In the event of a multiple award under the terms of the applicable procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the District to select the highest ranked firms that are required under the terms of the procurement document, as part of the tier two selection process.

(4) In the event the State Contracting Agency has made a multiple award of Price Agreements pursuant to OAR 137-048-0270, with that multiple award of Price Agreements meeting the tier-one requirements of ORS 279C.125 and this rule, the District shall make its tier-two selection of an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor for a project-specific work order or task order from the Consultants who have executed Price Agreements with the State Contracting Agency, in accordance with the work order or task order assignment procedures established by the State Contracting Agency in the Price Agreements. If the District elects to select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services for District's public improvement through an alternative process adopted by the District, the requirements of that alternative process shall be specified in the RFP, if any, in the executed Price Agreements, or in the project-specific work order or task order assignment procedures provided to the Consultants who have executed Price Agreements, at the time the selection of a Consultant is made for the project-specific work order or task order.

(5) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in PPS 48-0200 (Direct Appointment Procedure), 48-0210 (Informal Selection Procedure, or 48-0220 (Formal Selection Procedure) as applicable.

(6) Nothing in these division 48 rules should be construed to deny or limit the District's ability to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4) through a selection process established by the District.

PPS 48-0270 Price Agreements

(1) The District may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services when the District cannot determine the precise quantities of those services which the District shall require over a specified time period.

(2) When establishing Price Agreements under this rule, the District shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with PPS 48-0130(1) or 48-0130(2), as applicable. The District may select a single Consultant when a Price Agreement is awarded to obtain services for a specific project or a closely-related group of projects.

(3) In addition to any other applicable solicitation requirements set forth in these division 48 rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services shall:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity, and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the District intends to award a Price Agreement to one Consultant or to multiple Consultants. If the District shall award a Price Agreement to more than one Consultant, the Solicitation Document and Price Agreement shall describe the criteria and procedures the District shall use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the District's sole discretion; provided, however, in circumstances where a direct contract is not permitted under PPS 48-0200 and a state agency is conducting the solicitation, the selection criteria cannot be based on pricing policies, pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead. In accordance with PPS 48-0130(2) applicable to Related services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information for the District's solicitation of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, or any Contracting Agency's solicitation of Related services, may include the number of hours proposed for the Related services required, expenses, hourly rates, the number of hours, overhead, and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of PPS 48-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services under the Price Agreement.

(4) When the Solicitation materials and terms and conditions for a Price Agreement involve a two-tiered selection process pursuant to ORS 279C.125 and OAR 137-048-0260(1), the Solicitation materials and terms and conditions for a Price Agreement shall meet the requirements of subsection (3) of this rule, except as provided in this subsection (4). In the event of a planned multiple award of Price Agreements under a procurement, the Solicitation materials and terms and conditions for the Price Agreements shall include assignment procedures for project-specific work orders or task orders that will allow the District to select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor for a work order or task order from the Consultants who have executed Price Agreements with the State Contracting Agency. If the District decides to use an alternative process adopted by the District for its tier-two selection process, however, the District's alternative process shall be described in the Solicitation materials and terms and conditions supporting the initial award of Price Agreements, in the executed Price Agreements, or in the project-specific assignment procedures for a work order or task order that are provided to the firms who have executed Price Agreements, at the time of selection for the project-specific work order or task order. The District's alternative process may be structured to take into account the unique circumstances of the District and may include provisions to allow the District to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies, including, but not limited to, the methods specified in PPS 48-0260(3)(b).

(5) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services assigned under a Price Agreement require a written work order or task order issued by the District. Any work orders or task orders assigned under a Price Agreement shall include, at a minimum, the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) The payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the work order or task order that is fair and reasonable to the District, as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services;

(d) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and

(e) Any other provisions the District believes to be in the District's best interest.

PPS 48-0280 FSCP

The Superintendent may establish an FSCP for a particular class of Architectural, Engineering, Land Surveying or Related services where the need for such services is ongoing in nature, where it is difficult to anticipate the service need, time, amount, or availability of Contractors, or where service needs arise so quickly it is not practical or cost-effective to conduct individual solicitations under these rules. An FSCP shall comply with the following requirements:

(1) Solicitation to Create an FSCP. An FSCP can be established pursuant to an RFQ, an RFP, competitive quotes, or such other method of competitive procurement as the Superintendent deems to be appropriate given the services to be procured.

(a) The Superintendent shall document the reasons for establishing an FSCP consistent with this rule in the Solicitation file. This documentation shall be reviewed and approved by the Director of procurement as demonstrating that the procurement qualifies for use of an FSCP under these rules.

(b) The solicitation shall describe the class of Contracts that can be awarded to Contractors in the FSCP. The District may not award Contracts outside of the designated class of Contracts to the FSCP.

(c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(d) The solicitation may request a binding Price quote or rate that will become part of a subsequent Contract or may establish the pool based on qualifications alone.

(e) The solicitation may set or limit the value of the work to be performed by the FSCP.

(2) Contracting for Work From an FSCP.

(a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual projects within the established scope of the work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual projects will be offered, negotiated, and awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The project is for Work that is a continuation of, addition to, or is connected with Work previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to award the Contract to the Contractor that performed the prior Work.

(D) The nature of the project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in writing in the Solicitation file.

(b) An FSCP established under this section will expire after three years from the date of Closing of the Solicitation, unless reestablished as provided in this rule.

(c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of work or any Work at all.

(d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of work from other Contractors through any other procurement method authorized under these rules.

(e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of work.

POST-SELECTION CONSIDERATIONS

PPS 48-0300 Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the project construction costs or total project costs.

(2) Except as otherwise allowed by law, the District shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the project, and reimbursable expenses incurred during the performance of work on the project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, the District shall not purchase any building materials, supplies, or equipment for any building, structure, or facility constructed by or for the District from any Consultant under a Contract with the District to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services

or Related services for the building, structure, or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services under a Contract with the District to perform Design-Build services or Energy Savings Performance Contract services (see PPS 49-0670 and 49-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies, or equipment was awarded to Consultant pursuant to applicable law governing the award of such a Contract.

PPS 48-0310 Expired or Terminated Contracts; Reinstatement

(1) If the District enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services and that Contract subsequently expires or is terminated, the District may proceed as follows, subject to the requirements of section (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of project delay caused by the District or caused by any other occurrence outside the reasonable control of the District or the Consultant, and if no more than one year has passed since the Contract expiration date, the District may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract to reflect any material alteration of the project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the District and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the District or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the District may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying services or Related services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services not completed under the Contract as adjusted to reflect a material alteration of the project.

(2) The District may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the District;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original procurement document.

PPS 48-0320 Contract Amendments

(1) The District may amend any Contract if the District, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the final form of the

original procurement document. In making this determination, the District shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the procurement document were re-issued to include the additional services.

(2) The District may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.

(3) All amendments to Contracts shall be in writing, shall be signed by an authorized representative of the Consultant and the District, and shall receive all required approvals before the amendments will be binding on the District.

(4) Amendments That Would Cause a Contract to Exceed the Superintendent's Authority. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 shall be approved by the School Board except as provided in PPS 45-0200.

(5) Reporting Requirement for Amendments/Change Orders That Exceed 125 Percent of Original Contract Price.

(a) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than 125 percent of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(A) The Original Contract Price does not exceed $500,000.

(B) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than 150 percent of the original Contract Price.

(c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION 48

PPS DIVISION 49

DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS

PPS 49-0100 Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. The rules that apply specifically to Public Improvement Contracts are so identified. These division 49 rules apply to Contracts for Construction Manager/General Contractor services, whether the initial Contract between the parties includes both pre-construction services and construction services, or only contains pre-construction services, since the underlying procurement for Construction Manager/General Contractor services authorizes the District to enter into Contracts for both pre-construction and construction services.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related services, all of which are addressed in division 48 of the rules).

PPS 49-0110 Policies

In addition to the general Code policies set forth in ORS 279A.015, the 279C.300 policy on competition and the 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

PPS 49-0120 Definitions

(3) **Conduct Disqualification** means a Disqualification under ORS 279C.440 in accordance with PPS 49-0370.

(4) **Disqualification** means the preclusion of a Person from contracting with the District for a period of time in accordance with PPS 49-0370.

(5) **Foreign Contractor** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See PPS 49-0490.

(6) **Notice** means any of the alternative forms of Public announcement of procurements, as described in PPS 49-0210.

(7) **Work** means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

PPS 49-0130 Competitive Bidding Requirement

The District shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see PPS 49-0600 through 49-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

PPS 49-0140 Contracts for Construction Other Than Public Improvements

(1) **Procurement Under ORS Chapter 279B**. Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and amended as general trade services under the provisions of ORS 279B rather than under the provisions of ORS 279C and these division 49 rules.

(2) Emergency Construction Contracts. Emergency Contracts for construction services are not Public Improvement Contracts and are regulated under ORS 279B.080. See PPS 49-0150.

(3) Application of ORS Chapter 279C. Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (279C.440, 445, 450); Legal Actions (279C.460 and 465); Required Contract Conditions 279C.505, 515, 520, and 530); Hours of Labor (279C.540 and 545); Retainage (279C.550, 560, 565 and 570); Subcontracts (279C.580); Action on Payment Bonds (279C.600, 605, 610, 615, 620, 625); Termination (ORS 279C.650, 655, 660, 670); and all of the Prevailing Wage Rates requirements (279C.800 through .870) for Public Works Contracts.

PPS 49-0146 Class Exemptions; Public Improvement Contracts

The Local Contract Review Board declares the following Contracts listed in this section as classes of Public Improvement Contracts exempt from competitive bidding.

(1) Donated Public Improvements. The Superintendent may authorize a Person to construct a Public Improvement without competitive Bidding or other competitive process and regardless of dollar amount, if:

(a) The Person has agreed to donate all or a significant portion of the materials or services necessary to construct the Public Improvement or perform the service; and

(b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular project and any requirements that the District deems necessary or beneficial to protect the District.

(2) Benson House Program Contracts. The Superintendent may directly negotiate a Public Improvement Contract without complying with the competitive procurement requirements of these rules where the Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(3) Purchases Under Contracts Solicited by Nonprofit Procurement Organizations of Which the District Is a Member. The Superintendent may purchase Public Improvements under a Contract or procurement solicited by a Nonprofit Procurement Organization of which it is a member. For the purposes of this Special procurement, such a Nonprofit Procurement Organization will be considered a "Contracting Purchasing Group" under PPS 46-0400 through 46-0480, and a procurement shall comply with the requirements for Joint Cooperative Procurements pursuant to PPS 46-0420.

(4) FSCP. The Superintendent may establish an FSCP for a particular class of Public Improvements where the need for such Work is ongoing in nature, where it is difficult to anticipate the service need, time, amount, or availability of Contractors, or where service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these rules. An FSCP shall comply with the following requirements:

(a) Solicitation to Create an FSCP. An FSCP for Public Improvements shall be solicited based on the total cost of the work estimated to be awarded through the FSCP during its life. If the total amount of the work is estimated to be over $100,000, the Superintendent shall use a formal RFQ process pursuant to PPS 49-0645 or an RFP process pursuant to PPS 49-0650. If the total amount of the work is $100,000 or less, the FSCP may be solicited pursuant to the intermediate procurement process set forth in PPS 49-0160.

(A) The Superintendent shall document the reasons for establishing an FSCP consistent with this rule in the Solicitation file. This documentation shall be reviewed and approved by the Director of procurement as demonstrating that the procurement qualifies for use of an FSCP under these rules.

(B) The solicitation shall describe the class of Contracts that can be awarded to Contractors in the FSCP. The District may not award Contracts outside of the designated class of Contracts to the FSCP.

(C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(D) The solicitation may request a binding Price quote or time and materials rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(E) The solicitation may set or limit the value of the work performed by the FSCP.

(b) Contracting for Work from an FSCP. Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform specific Work within the established scope of the work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Work will be Offered, negotiated, and awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered a Contract to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may offer a Contract to Contractors out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The project is for a Public Improvement that is a continuation of, an addition to, or connected with a Public Improvement previously constructed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to award the Contract to the Contractor that performed the prior Work or provided the prior goods.

(D) The nature of the project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an intermediate procurement pursuant to PPS 49-0160 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in writing in the Solicitation file.

(c) An FSCP established under this section will expire after three years from the date of Closing of the Solicitation, unless reestablished as provided in this rule.

(d) Appointment to an FSCP does not guarantee that a contractor will receive a particular amount of work or orders or any work or orders at all.

(e) The establishment of an FSCP does not preclude the Superintendent from procuring public improvements that would otherwise fall within the FSCP from other contractors through any other procurement method authorized under these rules.

(f) At any time during the term of an FSCP, the Superintendent may request confirmation from a contractor or contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory or other capability needed to perform the class of work or provide the required goods.

(g) If an FSCP for public improvements is reasonably estimated to include projects that will total over $50,000 during the life of the FSCP, public improvement contracts awarded to Contractors

on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(5) Price Agreements.

(a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase Public Improvements for an anticipated need at a predetermined price, but the Contract shall be solicited by a competitive procurement process pursuant to the requirements of these rules based on the total Contract Price.

(b) The Superintendent may purchase Public Improvements from a Contractor awarded a Price Agreement without first undertaking additional competitive solicitation up to the amount set forth in the Price Agreement.

(c) The Superintendent may use the Price Agreement entered into by another Oregon Public Agency when the Original Contract was let pursuant to PPS 46-0420.

(d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

(e) If a Price Agreement for Public Improvements will exceed $50,000 over the term of the Agreement, the Contract shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(6) Expedited Contracting Process in Order to Access State, Federal, or Grant Funding. The Superintendent may waive any or all of the Solicitation procedures under this division 49 in the following circumstances:

(a) The state or federal government or granting entity has adopted a funding program or made funding available to assist the District in constructing Public Improvements and has attached a time deadline to have a Contract in place, a project underway, or a project completed in order for the District to access or be eligible for those funds. Such programs include, without limitation, the American Recovery and Reinvestment Act of 2009 ("ARRA") and similar programs.

(b) The Superintendent determines that compliance with the Solicitation procedures in this division 49 could jeopardize the District's ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.

(c) The Superintendent provides for an alternative contracting process.

(d) The reasons for and extent of the waiver are documented in the Solicitation file.

(e) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract is over the Superintendent's delegated authority as set forth in PPS 45-0200(4)(b)(A).

PPS 49-0150 Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. The Superintendent may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an Emergency Procurement of construction services, the District shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers, or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Superintendent considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract shall be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances. Emergency contract modifications are not subject to the requirements or limitations of PPS 47-0800 or PPS 49-0910.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the District waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration, those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of BOLI in enforcing prevailing wage rate and overtime payment requirements. See PPS 49-0815 and BOLI rules at OAR 839-025-0015.

PPS 49-155 Small Procurements. A public improvement contract with a value less than $25,000 may be solicited by any method that the Superintendent deems in the best interests of the District, including direct negotiation.

PPS 49-0160 Intermediate Procurements; Competitive Quotes and Amendments

(1) General. Public Improvement Contracts estimated by the District not to exceed $100,000 may be awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors.

(3) Request for Quotes. The District shall utilize written requests for quotes whenever reasonably practicable. Written requests for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the District shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that written copies the prevailing wage rates are not required by BOLI (e.g., if the total project cost is $50,000 or less or is not otherwise subject to payment of prevailing wages).

(4) Number of Quotes; Record Required. The District shall seek at least three competitive quotes and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, the District shall make a written record of the effort made to obtain those quotes.

(5) Award. If awarded, the District shall award the Contract to the prospective Contractor whose quote will best serve the interests of the District, taking into account the announced selection criteria. If award is not made to the Offeror offering the lowest price, the District shall make a written record of the basis for award.

(6) Amendments. Amendments of Intermediate-level Public Improvement Contracts that exceed the thresholds stated in section (1) of this rule are specifically authorized by the Code when made in accordance with PPS 49-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

FORMAL PROCUREMENT RULES

PPS 49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the work, and applicable plans, specifications, and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the District's representatives at the conference are not binding on the District unless confirmed by written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of work for which Offerors shall be prequalified if prequalification is a requirement;

(D) The name and title of the District official designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers shall be delivered, any bid or proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See PPS 49-0300 regarding facsimile Bids or Proposals and PPS 49-0310 regarding electronic procurement);

(F) The time, date, and place of Opening;

(G) The time and date of Closing after which the District shall not accept Offers, which time shall be not less than five days after the date of the last publication of the advertisement. Although a minimum of five days is prescribed, the District is encouraged to use at least a 14-day solicitation period when feasible. If the District is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the District shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and PPS 49-0360. For timing issues relating to Addenda, see PPS 49-0250;

(H) The office where the specifications for the work may be reviewed;

(I) A statement that each bidder to an ITB shall identify whether the bidder is a "resident bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the District unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840, or 40 U.S.C. 3141 to 3148";

(K) A statement that the District shall not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board or is licensed by the State Landscape Contractors Board as specified in PPS 49-0230;

(L) Whether a Contractor or a subcontractor under the Contract shall be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) (see PPS 49-0440(3));

(N) How the District shall notify Offerors of Addenda and how the District shall make Addenda available (see PPS 49-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in PPS 49-0360.

(b) Evaluation Process.

(A) A statement that the District may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for Good Cause all Offers after finding that doing so is in the public interest.

(B) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the District shall use to determine the Responsible bidder with the lowest Responsive Bid (where award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and PPS 49-0620), along with the process the District shall use to determine acceptability of the work;

(D) If the Solicitation Document is an Invitation to Bid, the District shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life cycle Cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but to the extent possible, such evaluation factors shall be objective, reasonable estimates based on information the District has available concerning future use; and

(E) If the Solicitation Document is a Request for proposal, the District shall refer to the additional requirements of PPS 49-0650; and

(c) Contract Provisions. The District shall include all Contract terms and conditions, including warranties, insurance, and bonding requirements, that the District considers appropriate for the Public Improvement project. The District shall also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material, contributions to Industrial Accident Fund, and liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1);

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays, and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 through 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(2)

(P) Retainage (ORS 279C.550 through 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 through 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of or transfer rights, or delegate duties under the Contract, either in whole or in part, without the District's prior written consent. Unless otherwise agreed by the District in writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the District consents in writing to an assignment, sale, disposal, or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the District for complete performance of the Contract as if no such assignment, sale, disposal, transfer, or delegation had occurred unless the District otherwise agrees in writing.

PPS 49-0210 Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. The District shall furnish notice as set forth below in subsections (a) through(c) to a number of Persons sufficient for the purpose of fostering and promoting competition. The notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The notice may contain any other appropriate information. The District may charge a fee or require a deposit for the Solicitation Document. The District may furnish notice using any method determined to foster and promote competition, including:

(a) Mailing notice of the availability of Solicitation Documents to Persons that have expressed an interest in the District's procurements;

(b) Placing notice on the District's electronic procurement System; or

(c) Placing notice on the District's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, the District shall advertise every solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Board has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the District publishes by Electronic Advertisement as permitted under subsection 2(b) of this rule, the District shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the District may determine to be necessary or desirable to foster and promote competition.

(b) The District may publish by Electronic Advertisement if the Contract Review Board determines that Electronic Advertisement is likely to be cost effective.

(c) In addition to the District's publication required under subsections 2(a) or 2 (b), the District shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions, and specifications may be reviewed;

(C) The date that Persons shall file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of work for which Persons shall be prequalified;

(D) The scheduled Closing, which shall not be less than five days after the date of the last publication of the advertisement;

(E) The name, title, and address of the District official authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to ORS 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

PPS 49-0220 Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. The District may require mandatory prequalification of Offerors. The District shall indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the District conditions a Person's submission of an Offer on the Person's prequalification. The District shall not consider an Offer from a Person that is not prequalified if the District required prequalification.

(b) Permissive Prequalification. The District may prequalify a Person for the District's solicitation list, but in permissive prequalification the District shall not limit distribution of a solicitation to that list.

(c) Prequalification Procedure. When prequalification is required or allowed, a Person shall submit a prequalification application to the District on the form prescribed by the District. The District shall determine if the applicant is qualified within 30 days of the date of application, or sooner if practicable and so requested by the applicant to enable the applicant to participate in Bidding on an advertised Contract. If the District finds that the applicant is qualified, the District shall provide notice to the applicant of the nature and type of Contracts the applicant is qualified to bid on and the period of time for which the qualification is valid.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the District.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the District's satisfaction:

(a) The Person's financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the District. (See PPS 49-0390(2) regarding standards of responsibility.)

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the District shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in section (6) of this rule.

(5) Revocation of Prequalification. If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified Person and that the Person is no longer qualified or is less qualified, the District may revoke or revise and reissue the prequalification after reasonable notice to the prequalified Person. The notice shall specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in section (6) of this rule.

(6) Appeal of Denial or Revocation of, or Revision to Prequalification.

(a) Any Person who wishes to appeal the District decision under Sections (4) or (5) of this rule shall, within three business days after receipt of the notice of disqualification, file written notice with the District that Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.

(b) Immediately upon receipt of the prospective bidder's or Proposer's notice of appeal, the District shall notify the local Contract Review Board.

(c) Upon the receipt of notice from the District under section (2) of this rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the

hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 days after receiving the notice from the District. The Contract Review Board shall set forth in writing the reasons for the hearing decision.

(d) At the hearing the Contract Review Board shall consider de novo the notice of denial, revocation or revision of a prequalification, the standards listed in section (3) of this rule on which the District based the decision, and any evidence provided by the parties. Hearings before a Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

(A) If the decision to deny, revoke, or revise a prequalification of a Person as a bidder is upheld, the cost shall be paid by the Person appealing the decision.

(B) If the decision to deny, revoke, or revise a prequalification of a Person as a bidder is reversed, the costs shall be paid by the District.

(f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

PPS 49-0230 Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. The District shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. The District shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the offer is made.

(3) Non-Complying Entities. The District shall deem an Offer received from a Person that fails to comply with this rule Non-Responsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding or the District.

PPS 49-0240 Pre-Offer Conferences

(1) Purpose. The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the procurement requirements, obtain information, or conduct site inspections.

(2) Required Attendance. The District may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of the Offering firm is present.

(3) Scheduled Time. If the District holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a written Addendum to the Solicitation Document.

(5) District Announcement. The District shall set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 49-0200(1)(a)(B).

PPS 49-0250 Addenda to Solicitation Documents

(1) Issuance; Receipt. The District may change a Solicitation Document only by written Addenda. An Offeror shall provide written acknowledgement of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda or in the Solicitation Document.

(2) Notice and Distribution. The District shall notify prospective Offerors of Addenda consistent with the standards of notice set forth in PPS 49-0210(1). The Solicitation Document shall specify how the District shall provide notice of Addenda and how the District shall make the Addenda available (see PPS 49-0200(1)(a)(N). For example, "The District shall not mail notice of Addenda, but will publish notice of any Addenda on the District's Web site. Addenda may be downloaded off the District's Web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing, and at least once daily during the week of the Closing."

(3) Timelines; Extensions. The District shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the District shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a written request for change or protest to the Addendum, as provided in PPS 49-0260, by the close of the District's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under PPS 49-0260, whichever date is later. The District shall consider only an Offeror's request for change or protest to the Addendum; the District shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in PPS 49-0260(2) and (3).

PPS 49-0260 Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a written request for change or protest, an Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

(2) Request for Change.

(a) Delivery. An Offeror may request in writing a change to the specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror shall deliver the written request for change to the District not less than ten (10) days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror shall deliver a written protest on those matters to the District not less than ten (10) days prior to Closing.

(b) Content of Protest.

(A) An Offeror's written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) The Response. The District is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The District shall provide notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District shall either issue an Addendum reflecting its determination under PPS 49-0260 or cancel the Solicitation under PPS 49-0270.

(5) Extension of Closing. If the District receives a written request for change or protest from an Offeror in accordance with this rule, the District may extend Closing if the District determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

(6) Failure to Protest or Request a Change Precludes Protest of Award on Such Issue. An Offeror cannot protest an award based on any issue that could have, but was not, raised as a Request for Change or Protest of solicitation.

PPS 49-0270 Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. The District may cancel a solicitation for Good Cause if the District finds that cancellation is in the public interest. The District's reasons for cancellation shall be made part of the Solicitation file.

(2) Notice of Cancellation. If the District cancels a solicitation prior to Opening, the District shall provide notice of cancellation in accordance with PPS 49-0210(1). Such notice of cancellation shall:

(a) Identify the Solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Disposition of Offers.

(a) Prior to Offer Opening. If the District cancels a solicitation prior to Offer Opening, the District shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the District rejects all Offers, the District shall retain all such Offers as part of the District's Solicitation file.

PPS 49-0280 Offer Submissions

(1) Offer and Acceptance. The bid or proposal is the bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the District's acceptance for the period specified in PPS 49-0410. The District may elect to accept the Offer at any time during the specified period, and the District's award of the Contract to a bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive proposal is a Firm Offer for the period specified in PPS 49-0410, the District may elect to discuss or negotiate certain Contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See PPS 49-0650 on Requests for Proposals and PPS 49-0290 on bid or proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation. In competitive Proposals, the Solicitation Document shall describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of competitive Bidding, or whether Offers are subject to discussion, negotiation, or otherwise are not to be considered as final Offers. See PPS 49-0650 on Requests for Proposals and PPS 49-0290 on bid or proposal Security.

(2) Responsive Offer. The District may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to PPS 49-0650, an Offeror shall not make an Offer contingent upon the District's acceptance of any terms or conditions (including specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges that it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for proposal permits proposal of alternative terms under PPS 49-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in writing.

(5) Instructions. An Offeror shall submit and sign the Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any corrections or erasures to their Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. An Offeror shall submit the Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. An Offeror shall provide the District with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the District permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or Electronic Offers in accordance with the Solicitation Document. The District shall not consider facsimile or Electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. The District may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features, or characteristics of the offered items. The District shall dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable.

(b) The District is not responsible for Offers submitted in any manner or format, or to any delivery point, other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offeror is responsible for ensuring that the District receives the Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

PPS 49-0290 Bid or Proposal Security

(1) Security Amount. If the District requires bid or proposal security, it shall be not more than 10 percent or less than 5 percent of the Offeror's bid or proposal, consisting of the base bid or proposal together with all additive alternates. The District shall not use bid or proposal security to discourage competition. The District shall clearly state any bid or proposal security requirements in its Solicitation Document. The Offeror shall forfeit bid or proposal security after award if the Offeror fails to execute the Contract and promptly return it with any required performance bond and payment bond and, in the case of proposal security, with any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless the District has otherwise exempted a solicitation or class of solicitations from bid security pursuant to ORS 279C.390, the District shall require bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(6). The District may require bid security even if it has exempted a class of solicitations from bid security. The District may require proposal security in RFPs. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. The District may accept only the following forms of bid or proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. The District shall return or release the bid or proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The District may return the bid or proposal security of unsuccessful Offerors prior to award if the return does not prejudice Contract award and the security of at least the bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

PPS 49-0300 Facsimile Bids and Proposals

(1) District Authorization. The District may authorize Offerors to submit facsimile Offers. If the District determines that bid or proposal security is or will be required, the District shall not authorize facsimile Offers unless the District has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the District shall determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to Be Included in Solicitation Document. In addition to all other requirements, if the District authorizes a facsimile Offer for Bids or Proposals, the District shall include in the Solicitation Document (other than in a Request for Quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer' as used in this Solicitation Document means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response shall arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The District reserves the right to award the Contract solely on the basis of the facsimile Offer." However, upon the District's request, the apparent successful Offeror shall promptly submit its complete original signed Offer; and

(e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the District is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to, the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

PPS 49-0310 Electronic Procurement

(1) General. The District may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 shall also be published in a trade newspaper of general statewide circulation, and may post notices of intent to award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that the District desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, the District shall comply with PPS 47-0330 (electronic procurement under ORS 279B), taking into account ORS 279C requirements for written Bids, opening Bids publicly, bid security, first-tier subcontractor disclosure, and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this rule shall be construed as prohibiting the District from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

PPS 49-0320 Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the District in accordance with PPS 49-0280, unless otherwise specified in the Solicitation Document. Any modification shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or proposal) Modification; and

(b) Solicitation Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by written notice submitted on the Offeror's letterhead, signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

(b) The District may release an unopened Offer withdrawn under section (2)(a) of this rule to the Offeror or its authorized representative after voiding any date and time stamp mark;

(c) The Offeror shall mark the written request to withdraw an Offer as follows:

(A) Bid (or proposal) Withdrawal; and

(B) Solicitation number (or other identification as specified in the Solicitation Document).

(3) Documentation. The District shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

PPS 49-0330 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. The District shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District shall return the Offer or modification to its secure and confidential state until Opening. The District shall document the resealing for the Solicitation file (e.g., "The District inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. The District shall publicly open Offers, including any modifications made to the Offer, pursuant to PPS 49-0320. In the case of Invitations to Bid, to the extent practicable, the District shall read aloud the name of each bidder, the bid price(s), and such other information as the District considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District shall not read Offers aloud.

(3) Availability. After Opening, the District shall make Bids available for public inspection, but pursuant to ORS 279C.410, Proposals are not required to be available for public inspection until after the notice of intent to award is issued. In any event, the District may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 through 646.475. To the extent that the District determines such designation is not in accordance with applicable law, the District shall make those portions available for

public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, models, or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

PPS 49-0340 Late Bids, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District shall not consider late Offers, withdrawals, or modifications except as permitted in PPS 49-0350 or 49-0390.

PPS 49-0350 Mistakes

(1) Generally. To protect the integrity of the competitive procurement process and to assure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) District Treatment of Mistakes. The District shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before award of the Contract, the District may take the following action:

(a) The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) The District may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the District's correction in writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this section or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this rule;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;

(G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the District.

(d) The criteria in section (2)(c) of this rule shall determine whether the District shall permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the District shall permit an Offeror to withdraw its Offer without forfeiture of its bid bond (or other bid or proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the District, whether by award to the next lowest Responsive and Responsible bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The District shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes After Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

PPS 49-0360 First-Tier Subcontractors; Disclosure and Substitution; ITB

(1) Required Disclosure. Within two working hours after the bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the District to exceed $100,000, all bidders shall submit to the District a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

(a) 5 percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this rule applies, the District shall:

(a) Set the bid Closing on a Tuesday, Wednesday, or Thursday, and at a time between 2:00 p.m. and 5:00 p.m., except that these bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges, or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the bid Closing; and

(c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the District.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, the District in its solicitation shall:

(a) Prescribe the disclosure form that shall be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure:

Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor

furnishing labor or labor and materials would be greater than or equal to: (i) 5 percent of the project bid, but at least $15,000, or (ii) $350,000 regardless of the percentage, the bidder shall disclose the following information about that subcontract either in its bid submission, or within two hours after bid Closing:

(A) The subcontractor's name,

(B) The category of work that the subcontractor would be performing, and

(C) The dollar value of the subcontract.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

THE DISTRICT SHALL REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see PPS 49-0360)."

(4) Submission. A bidder shall submit the disclosure form required by this rule either in its bid submission or within two working hours after bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and will not be considered for Contract award.

(6) District Role. The District shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The District shall also provide copies of disclosure forms to BOLI as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Pursuant to ORS 279C.585, a Contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 and this rule by submitting the name of the new subcontractor and the reason for the substitution in writing to the District. A Contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(a) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written Contract after having had a reasonable opportunity to do so after the written Contract, which shall be reasonably based on the general terms, conditions, plans, and specifications for the Public Improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the Contractor.

(b) When the disclosed subcontractor becomes bankrupt or insolvent.

(c) When the disclosed subcontractor fails or refuses to perform the subcontract.

(d) When the disclosed subcontractor fails or refuses to meet the bond requirements of the Contractor that had been identified prior to the bid submittal.

(e) When the Contractor demonstrates to the District that the subcontractor was disclosed as the result of an inadvertent clerical error.

(f) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the Construction Contractors Board.

(g) When the Contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(h) When the disclosed subcontractor is ineligible to work on a Public Improvement Contract under applicable statutory provisions.

(i) When the substitution is for Good Cause. The Construction Contractors Board shall define "Good Cause" by rule. "Good cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" shall reflect the least-cost policy for Public Improvement Contracts established in ORS 279C.305.

(j) When the substitution is reasonably based on the Contract alternates chosen by the District.

The District shall accept written submissions filed under this section (7) as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the District does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

PPS 49-0370 Disqualification of Persons

(1) Authority. The District may disqualify a Person from consideration of award of the District's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, the District may disqualify a Person for:

(A) Conviction for the commission 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 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 Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a Contract provision that is regarded by the District to be so serious as to justify disqualification. A violation under this section (1)(a)(D) may include, but is not limited to, material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for disqualification.

(E) Failure to carry workers' compensation or unemployment insurance as required by statute.

(b) Standards for Disqualification. As provided in ORS 200.065, 200.075, or 279A.110, the District may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

(A) For a Disqualification under ORS 200.065, the District may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain

certification as a disadvantaged business enterprise, minority-owned business, women owned business, emerging small business enterprise, or a veteran-owned business; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another district under ORS 200.065.

(B) For a Disqualification under ORS 200.075, the District may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a veteran-owned business, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a Contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

(iv) If a Person is Disqualified for a Disqualification under ORS 200.075, the affected District shall not permit that Person to participate in that District's Contracts.

(C) For a Disqualification under ORS 279A.110, the District may disqualify a Person if the District finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a veteran-owned business, Contract with that District.

(2) Notice of Intent to Disqualify. The District shall notify the Person in writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the District intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in writing within a time period established by the District and that if the District does not receive the Person's written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) Hearing. The Superintendent will schedule a hearing upon the District's receipt of a timely hearing request. Within a reasonable time prior to the hearing, the Superintendent will notify the Person of the time and place of the hearing and provide information on hearing procedures, right to representation and other matters relating to the conduct of the hearing. Following the hearing, the Superintendent will make a decision on whether to disqualify the Person.

(4) Notice of Disqualification. The District shall notify the Person in writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines as provided in section (5) of this rule.

(5) Appeal of Disqualification.

(a) Any Person who wishes to appeal a decision by the Superintendent to disqualify the Person under this section shall, within three business days after receipt of the notice of intent to Disqualify under section (4) of this rule, file written notice with the District that the Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.

(b) Immediately upon receipt of the prospective bidder's or Proposer's notice of appeal, the District shall notify the appropriate Local Contract Review Board.

(c) Upon the receipt of notice from the District under section (2) of this rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 days after receiving the notice from the District. The Contract Review Board shall set forth in writing the reasons for the hearing decision.

(d) At the hearing the Contract Review Board shall consider de novo the notice of disqualification, the reasons for disqualification set forth in section (1) of this rule on which the District based the disqualification, and any evidence provided by the parties. Hearings before a Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

(A) If the decision to disqualify the Person is upheld, the costs shall be paid by the Person appealing the decision.

(B) If the decision to disqualify a Person is reversed, the costs shall be paid by the District.

(f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

PPS 49-0380 Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if awarded, shall be awarded to the Responsible bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive proposal. See PPS 49-0390 and rules for Alternative Contracting Methods at PPS 49-0600 to 49-0690.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum bid without additive or deductive alternates, or if the District elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base-bid prices, as applicable. If the ITB calls for a lump-sum base bid, plus additive or deductive alternates, the total bid price shall be calculated by adding to

or deducting from the base bid those alternates selected by the District for the purpose of comparing Bids.

(b) Unit Price. If the bid includes unit pricing for estimated quantities, the total bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the bidder, and adjusting for any additive or deductive alternates selected by the District for the purpose of comparing Bids. The District shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the bidder, the unit price governs. See PPS 49-0350(2)(b).

(3) Proposal Evaluation Criteria. If the District has exempted the procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335(1) and has directed the District to use an Alternative Contracting Method under ORS 279C.335(4), the District shall set forth the evaluation criteria in the Solicitation Documents. See PPS 49-0640, 49-0650, 49-0670, 049-0690, ORS 279C.335 and 279C.405.

PPS 49-0390 Offer Evaluation and Award; Determination of Responsibility

(1) General. If awarded, the District shall award the Contract to the Responsible bidder submitting the lowest Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (See ORS 279C.375(3)(a)) or is ineligible for award as a nonresident education service district (ORS 279C.325). The District may award by item, groups of items, or the entire Offer provided such award is consistent with the Solicitation Document and in the public interest. Where award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before awarding a Contract, the District shall have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the District shall determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all Contractual responsibilities;

(b) Holds current licenses that businesses or service professionals operating in this state shall hold in order to undertake or perform the work specified in the Contract;

(c) Is covered by liability insurance and other insurance in amounts the District requires in the Solicitation Documents;

(d) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407, or has elected coverage under ORS 656.128;

(e) Has made the disclosure required under ORS 279C.370.

(f) Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the time and budget allotted for the procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly

excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The District shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(g) Has a satisfactory record of integrity. An Offeror may lack integrity if the District determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under PPS 49-0370 may be used to determine an Offeror's integrity. The District may find an Offeror non-responsible based on previous conviction id offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The District shall make its basis for determining that an Offeror is not responsible under this paragraph in the Solicitation file;

(h) Is legally qualified to contract with the District; and

(a) Has supplied all necessary information in connection with the inquiry concerning responsibility. If an Offeror fails to promptly supply information requested by the District concerning responsibility, the District shall determine the Offeror's responsibility based on any available information, or may find that the Offeror is not responsible.

(3) Documenting Agency Determinations. The District shall document its compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract award.

(4) District Evaluation. The District shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The District shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The District may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material, and may also require any of the following prior to award:

(A) Demonstration, inspection, or testing of a product for characteristics such as compatibility, quality, or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to specifications.

(b) The District shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The District shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The District's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The District shall use only objective criteria to evaluate Bids as set forth in the ITB. The District shall evaluate Bids to determine which Responsible Offeror Offers the lowest Responsive Bid.

(a) Nonresident bidders. In determining the lowest Responsive Bid, the District shall add a percentage increase to the Bid of a nonresident bidder equal to the percentage, if any, of the preference given to that bidder in the state in which the bidder resides.

(b) Clarifications. In evaluating Bids, the District may seek information from a bidder only to clarify the bidder's Bid. Such clarification shall not vary, contradict, or supplement the Bid. A bidder shall submit written and signed clarifications and such clarifications shall become part of the bidder's Bid.

(c) Negotiation Prohibited. The District shall not negotiate scope of work or other terms or conditions under an Invitation to Bid process prior to award.

(7) Evaluation of Proposals. See PPS 49-0650 regarding rules applicable to Requests for Proposals.

PPS 49-0395 Notice of Intent to Award

(1) Notice. At least seven days before the award of a Public Improvement Contract, the District shall issue to each bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the District's intent to award the Contract. This requirement does not apply to award of a Small or Intermediate (informal competitive quotes) Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d).

(2) Form and Manner of Posting. The form and manner of posting notice shall conform to customary practices within the District's procurement system, and may be made electronically.

(3) Finalizing Award. The District's award shall not be final until the later of the following:

(a) Seven days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The District provides a written response to all timely filed protests that denies each protest and affirms the award.

(4) Prior Notice Impractical. Posting of notice of intent to award shall not be required when the District determines that it is impractical due to unusual time constraints in making prompt award for its immediate procurement needs, documents the Solicitation file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

PPS 49-0400 Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After award, the District shall make a record showing the basis for determining the successful Offeror part of the District's Solicitation file.

(2) Contents of Award Record for Bids. The District's record shall include:

(a) All submitted Bids;

(b) Completed bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in PPS 49-0650, the District's record shall include:

(a) All submitted Proposals;

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher-scoring Proposals or for failing to meet mandatory requirements of the Request for proposal; and

(d) If the District permitted negotiations in accordance with PPS 49-0650, the District's completed evaluation of the initial Proposals and the District's completed evaluation of final Proposals.

(4) Contract Document. The District shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person, the District shall provide tabulations of awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests shall contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The District may also provide tabulations of Bids and Proposals awarded on designated Web site or the District's Electronic Procurement System.

(6) Availability of Solicitation Files. The District shall make completed Solicitation files available for public review at the District.

(7) Copies from Solicitation Files. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

PPS 49-0410 Time for District Acceptance; Extension

(1) Time for Offer Acceptance. An Offeror's bid, or proposal submitted as a Firm Offer (see PPS 49-0280), is irrevocable, valid, and binding on the Offeror for not less than 60 days from Closing unless otherwise specified in the Solicitation Document.

(2) Extension of Acceptance Time. The District may request, orally or in writing, that Offerors extend, in writing, the time during which the District may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

PPS 49-0420 Negotiation With Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and PPS 49-0430 when all bids exceed the cost estimate, the District shall not negotiate with any bidder prior to Contract award. After award of the Contract, the District and the Contractor may only modify the resulting Contract by change order or amendment to the Contract in accordance with PPS 49-0910.

(2) Requests for Proposals. The District may only conduct discussions or negotiations with Proposers in accordance with the requirements of PPS 49-0650.

PPS 49-0430 Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible bidders on a competitively bid project exceed the District's Cost Estimate, prior to Contract award the District may negotiate Value Engineering and Other Options with the Responsible bidder submitting the lowest Responsive bid in an attempt to bring the project within the District's Cost Estimate. The subcontractor disclosure and substitution requirements of PPS 49-0360 do not apply to negotiations under this rule.

(2) Definitions. The following definitions apply to this rule:

(a) "Cost Estimate" means the District's most recent pre-bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer, or other qualified professional, or confidential cost calculation work sheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in PPS 49-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials, or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, specifications, or other Contract requirements that may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle Costing, which may either increase or decrease absolute costs over varying time periods.

(3) **Rejection of Bids**. In determining whether all Responsive Bids from Responsible bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from bidders who have been formally disqualified by the District, shall be excluded from consideration.

(4) **Scope of Negotiations**. The District shall not proceed with Contract award if the scope of the project is significantly changed from the original bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other bidders would have been expected by the District to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit re-solicitation of trade subcontracts.

(5) **Discontinuing Negotiations**. The District may discontinue negotiations at any time, and shall do so if it appears to the District that the apparent low bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) **Limitation**. Negotiations may be undertaken only with the lowest Responsive, Responsible bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with bidders next in line for Contract award.

(7) **Public Records**. To the extent that a bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.311 through 192.478.

PPS 49-0440 Rejection of Offers

(1) **Rejection of an Offer.**

(a) The District may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.

(b) The District shall reject an Offer upon the District's finding that the Offer:

(A) Is contingent on the District's acceptance of terms and conditions (including specifications) that differ from the Solicitation Document,

(B) Takes exception to terms and conditions (including specifications),

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the specifications of the Solicitation Documents;

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The District shall reject an Offer upon the District's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of the Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed bid or proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section (3) of this rule; or

(H) Is not Responsible. See PPS 49-0390(2) regarding District determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and PPS 49-0370.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to the District written certification, as part of the Offer, that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a veteran-owned business, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) Contract and Subcontract Conditions. If the District awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8)5 and 200.045(3),6 or awards a Contract under ORS 279A.100:7

(a) The District shall provide, as a material condition of the Contract:

(A) That the Contractor shall maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor shall promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor shall include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's

[5] A bidder or proposer that the Governor's Policy Advisor for Economic and Business Equity determines has undertaken both a policy and a practice of actively pursuing participation by minority-owned businesses, women-owned businesses, businesses that veterans own or emerging small businesses in all of the bidder's or proposer's bids or proposals, both public and private.
[6] A bidder or proposer has made good faith efforts to encourage required participants to participate by taking all of the actions list in ORS 200.045(3).
[7] An affirmative action program adopted under ORS 279A.100 for goods and services contracts or any other contract under $50,000.

certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the District may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (4) of this rule, the District shall verify the Contractor's and any subcontractor's compliance with Subsection (4)(a) of this rule.

(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

(5) Rejection of All Offers. The District may reject all Offers for Good Cause upon the District's written finding that it is in the public interest to do so. The District shall notify all Offerors of the rejection of all Offers, along with the good-cause justification and finding.

(6) Criteria for Rejection of All Offers. The District may reject all Offers upon a written finding that:

(a) The content of or an error in the Solicitation Document or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality, or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The District cancels the Solicitation in accordance with PPS 49-0270; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

PPS 49-0450 Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Offeror shall exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive proposal process is authorized under PPS 49-0650, the District shall provide written notice to all Proposers of the District's determination of the Proposers included in the competitive Range. The District's notice of the Proposers included in the competitive Range shall not be final until the later of the following:

(a) 10 days after the date of the notice, unless otherwise provided therein; or

(b) Until the District provides a written response to all timely filed protests that denies the protest and affirms the notice of the Proposers included in the competitive Range.

(3) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, the District shall provide written notice to all Offerors of the District's intent to award the Contract as provided in PPS 49-0395.

(4) Right to Protest Award.

(a) An adversely affected or aggrieved Offeror may submit to the District a written protest of the District's intent to award within seven days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest shall be in writing and shall specify the grounds on which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for award of the Contract as the Responsible bidder submitting the lowest Responsive bid or the Responsible Proposer submitting the best Responsive proposal and is next in line for award, i.e., the protesting Offeror shall claim that all lower bidders or higher-scored Proposers are ineligible for award:

(A) Because their Offers were nonresponsive; or

(B) The District committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible bidder offering the lowest bid or the Responsible Proposer offering the highest ranked proposal.

(d) The District shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the competitive Range above the size of the competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the District a written protest of the District's decision to exclude the Proposer from the competitive Range within seven days after issuance of the notice of the competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at PPS 49-0650.)

(b) The Proposer's protest shall be in writing and shall specify the grounds on which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive proposal and is eligible for inclusion in the competitive Range, i.e., the protesting Proposer shall claim it is eligible for inclusion in the competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the competitive Range because:

(A) Their Proposals were not Responsive; or

(B) The District committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive Range.

(d) The District shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not

protest the District's decision not to increase the size of the competitive Range above the size of the competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The Superintendent may settle or resolve a written protest submitted in accordance with the requirements of this rule.

(7) Decision. If a protest is not settled, the Superintendent, or such Person's designee, shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror shall promptly execute the Contract after the award is final. The District shall execute the Contract only after it has obtained all applicable required documents and approvals.

PPS 49-0460 Performance and Payment Security; Waiver

(1) Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a) or this rule, excused in cases of emergency under ORS 279C.380(4), or unless the District exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the District a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the District, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See 279C.380(5). Also see OAR 137-049-0815 and BOLI rules at 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) Other Construction Contracts. The District may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) Requirement for Surety Bond. The District shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the District may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond shall be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) Time for Submission. The apparent successful Offeror shall promptly furnish the required performance security at the District's request. If the Offeror fails to furnish the performance security as requested, the District may reject the Offer and award the Contract to the Responsible bidder with the next lowest Responsive bid or the Responsible Proposer with the next highest-scoring Responsive proposal, and, at the District's discretion, the Offeror shall forfeit its bid or proposal security.

PPS 49-0470 Substitute Contractor

If the Contractor provided a performance bond, the District may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the award of a new Contract and shall not be subject to the competitive procurement provisions of ORS 279C.

PPS 49-0490 Foreign Contractor

If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, 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, Contract duration, and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be

forwarded to the District. The District shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

ALTERNATIVE CONTRACTING METHODS

PPS 49-0600 Alternative Contracting Methods; Purpose

These PPS 49-0600 to PPS 49-0690 rules are intended to provide guidance to the District regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the Contract Review Board under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to, the following forms of contracting: Design-Build, Energy Savings Performance, and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in ORS 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by the District in whole, in part or not at all, within the discretion of the District. As to ESPC contracting, these PPS 49-0600 through PPS 49-0690 rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by the entire District to govern the procedures for entering into ESPCs. As to contracting for Construction Manager General Contractor services, requiring an exemption from competitive bidding under ORS 279C.335(2), PPS 49-0600 to 49-0690 include mandatory and optional provisions pertaining to the procurement of Construction Manager/General Contractor services, pursuant to the requirements of ORS 279C.337.

PPS 49-0610 Definitions for Alternative Contracting Methods

The following definitions shall apply to rules PPS 49-0600 to 49-0690, unless the context requires otherwise:

(1) **Affiliate** has the meaning set forth in ORS 279C.332(1).

(2) **Alternative Contracting Methods** mean innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with award of a Public Improvement Contract based solely on price, in which a final design is issued with formal bid documents, construction services are obtained by sealed bid awarded to the Responsible bidder submitting the lowest Responsive bid, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting, and ESPCs, which are specifically addressed in these PPS 49-0600 to 49-0690 rules. These methods also include other developing techniques which include but are not limited to general "performance contracting," "cost-plus-time " contracting, (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these PPS 49-0600 to 49-0690 rules when the District uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(3) **Construction Manager/General Contractor** (or **"CM/GC"**) has the meaning set forth in ORS 279C.332(2).

(4) **Construction Manager/General Contractor Method** (or **"CM/GC Method"**) means the Alternative Contracting Method which involves a District's selection of a CM/GC to perform CM/GC services for a project or projects.

(5) **Construction Manager/General Contractor Services** (or **"CM/GC Services"**) has the meaning set forth in ORS 279C.332(3).

(6) **Design-Build** means a form of procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the District, and manages both design and construction. In this form of Contract, a single Person

provides the District with all of the Personal services and construction Work necessary to both design and construct the project.

(7) Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

(8) Energy Conservation Measures (or "ECMs") (also known as **"energy efficiency measures"**) means, as used in ESPC procurement, any equipment, fixture, or furnishing to be added to or used in an existing building or structure, and any repair, alteration, or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these PPS 49-0600 to 49-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water, and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures for purposes of these PPS 49-0600 to 49-0690 rules.

(9) Energy Savings Guarantee means the energy savings and performance guarantee provided by the ESCO under an ESPC procurement, which guarantees to the District that certain energy savings and performance will be achieved for the project covered by the RFP through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the District in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the District after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(10) Energy Savings Performance Contract (or "ESPC") means a Public Improvement Contract between the District and a Qualified Energy service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(11) General Conditions Work (or "GC Work") means a general grouping of project Work required to support construction operations on the project that is not included within the Contractor's overhead or fee.

(12) Guaranteed Maximum Price (or "GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the District by the Contractor, and accepted by the District, that includes all reimbursable costs of and fees for completion of the Contract Work, and any particularly identified contingency amounts as defined by the Public Improvement Contract.

(13) Measurement and Verification (or "M & V") means, as used in ESPC procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(14) Project Development Plan means a secondary phase of Personal services and Work performed by an ESCO in an ESPC procurement when the ESCO performs more extensive design of the agreed-upon ECMs

for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the work. The term "project development plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the work.

(15) Qualified Energy Service Company (or "ESCO") means, as used in ESPC procurement, a company, firm, or other legal Person with the following characteristics: demonstrated technical, operational, financial, and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the District; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(16) Savings has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the District under the terms of the Contract, including costs for which the District reimburses a Contractor and fees, profits or other payments the Contractor earns.

(17) Technical Energy Audit, means, as used in ESPC procurement, the initial phase of services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the District of the ESCO's findings during this initial phase of the work. The term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the work.

PPS 49-0620 Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process in accordance with 279C.335 and any applicable District rules. Use of Alternative Contracting Methods may be directed by the District if that use is within the competitive bidding process if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods shall be directed through the District's Local Contract Review Board, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of ORS 279C.335. In any of these circumstances, use of Alternative Contracting Methods shall be justified in accordance with any applicable Code and District requirements and, if require, these PPS 049-0600 to 049-0690 rules. See PPS 49-0630 regarding required findings and restrictions on exemptions from the competitive bidding requirements under ORS 279C.335.

(2) Energy Savings Performance Contracts. ESPCs are excepted from the competitive Bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f) if the District complies with the procedures set forth in these PPS 49-0600 through 49-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the Solicitation, rules related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the District prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 when the District does not use the competitive bidding process required by ORS 279C.335. The purpose of this evaluation is to determine whether it was actually in the District's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation shall be delivered to the Contract Review Board of the District as applicable within 30 days of the date the District "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any GMP changes, and actual costs;

(b) A narrative description of successes and failures during design, engineering, and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption findings.

PPS 49-0630 Findings, Notice, and Hearing

(1) Cost Savings and Other Substantial Benefits Factors. When findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the competitive Bidding requirements, the "substantial cost savings" and "other substantial benefits "criteria at ORS 279C.335(2)(b) require consideration of the type, cost, the amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the District Local Contract Review Board does not need to consider that factor, and the District is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

(2) Required Information. The statutory definition of "findings" at ORS 279C.330(2) which applies to exemptions from competitive bidding means the justification for the District's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both ORS 279C.335(2)(a) and 279C.335(2)(c).

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355, and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request; and

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the District may make a finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c). Nevertheless, the District shall still make the findings required in ORS 279C.335(2)(a).

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, award will be made based upon identified selection criteria, and an opportunity will be given to protest that award.

(5) Descriptions. findings supporting a competitive bidding exemption shall describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (Request for proposal), two-step (beginning with a Request for Qualification, followed by a Request for proposal) or other solicitation process will be utilized. The findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting findings are not binding upon the District. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) Class Exemptions. In making the findings supporting a class exemption, the District shall clearly identify the class with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class shall meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and

(b) The class shall include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and shall reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that:

(A) involve renovations for a common purpose;

(B) require completion on a related schedule in order to avoid unnecessary disruption of District operations;

(C) share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;

(D) otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) otherwise meet the requirements of the Director of the District Local Contract Review Board.

(7) Public Hearing. Before final adoption of findings exempting a Public Improvement Contract from the requirement of competitive Bidding, the District shall give notice and provide interested with the opportunity to request a public hearing as required by ORS 279C.335(5). The notice must state that, in response to a written request, the District will hold a public hearing for the purpose of taking comments on the draft Findings for an exemption from the competitive bidding requirement. If the District does not receive a written request from an interested party to hold a public hearing, the District may hold a public hearing, but

is not required to hold a public hearing. If a hearing is requested, the District will hold a public hearing for the purpose of receiving public comment on the District's draft findings.

PPS 49-0640 Competitive Proposals; Procedure

The District may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, ORS 279C.400 through 279C.410 and PPS 49-0600 through 49-0690, unless other applicable statutes control the District's use of competitive Proposals for Public Improvement Contracts. Also see the section of rules in this division entitled Formal procurement rules, PPS 49-0200 through 49-0450, and RFP-related rules under the Alternative Contracting Methods section at PPS 49-0640 through 49-0660. For ESPCs, the following RFP process as further specified in PPS 049-0645, 049-0650, 049-0660 and 049-0680 shall be utilized if the District desires the procurement process to be exempt from the competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in PPS 49-0600 through 49-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the District;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the District. See ORS 279C.305.

For ESPC proposal evaluations, the District may provide in the RFP that qualifications-based evaluation factors will outweigh the District's consideration of price-related factors, due to the fact that prices for the major components of the work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of proposal evaluation. For CM/GC services proposal evaluations, the District shall comply with ORS 279C.337.

(2) Evaluation Factors.

(a) In basic negotiated construction contracting where the only reason for an RFP is to consider factors other than price, those factors may consist of 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 could affect the cost or quality of the work.

(b) In CM/GC contracting, in addition to subsection (a) above, those factors may also 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, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the work.

(c) In Design-Build contracting, in addition to subsections (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that could affect cost or quality of the work.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b), and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques, and equipment that the ESCO will use in the performance of the work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the District and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the work, and the ESCO's fee structure for all phases of the ESPC project.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and PPS 49-0600 through PPS 49-0690, provided that the general Work scope 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 Document. See PPS 49-0650. Terms that may be negotiated consist of details of Contract performance; methods of construction, timing, and assignment of risk in specified areas; fee; and other matters that could affect the cost or quality of the work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the District has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the work, the scope of services to be performed by the ESCO during the project Development Plan phase of the work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO, and scope of work, methodologies, and compensation terms and conditions during the design and construction phase and M & V phase of the work, consistent with the requirements of PPS 49-0680.

PPS 49-0645 Requests for Qualifications ("RFQ")

As provided by ORS 279C.405(1), the District may utilize a Request for Qualifications, (RFQ) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using an RFQ as the first step in a two-step solicitation process in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the District shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases, the District shall also provide within the RFQ a protest provision substantially in the form of PPS 49-0450(5) regarding protests of the competitive Range. Thereafter, the District may distribute RFPs to the selected firms without further advertisement of the Solicitation.

PPS 49-0650 Requests for Proposals ("RFP")

(1) Generally. The use of competitive Proposals shall be specially authorized for a Public Improvement Contract under the competitive Bidding exception and exemption requirements of ORS 279C.335, PPS 49-0130, and PPS 49-0600 through 49-0690. Also see ORS 279C.337 and ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and PPS 49-0640 regarding competitive proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of PPS 49-0200, this rule applies to the requirements for RFPs. RFP Solicitation Documents shall conform to the following standards:

(a) The District shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references, and warranty provisions. See PPS 49-0640 regarding proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the District. Subject to 279(C).410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of proposal evaluation prior to award or prior to establishing any competitive Range;

(b) When the District is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the District shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the District has identified as authorized for negotiation. The District shall describe the evaluation, discussion, and negotiation process, including how the District shall establish the competitive Range, if any;

(c) The anticipated size of any competitive Range shall be stated in the Solicitation Document but may be decreased if the number of Proposers that submit responsive Proposals is less than the specified number, or may be decreased as provided in PPS 49-0650(4)(a).

(d) When the District intends to award Contracts to more than one Proposer, the District shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will award. The District shall also include the criteria it will use to determine how the District shall endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular Contractor to provide Personal services or Work from those Contractors awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The District shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The District shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive proposal or Proposals.

(A) Clarifications. In evaluating Proposals, the District may seek information from a Proposer to clarify the Proposer's proposal. A Proposer shall submit written and signed clarifications and such clarifications shall become part of the Proposer's proposal.

(B) Limited Negotiation. If the District did not permit negotiation in its Request for proposal, the District may, nonetheless, negotiate with the highest ranked Proposer, but may then only negotiate the:

(i) Statement of work; and

(ii) Contract Price as it is affected by negotiating the statement of work.

The process for discussions or negotiations that is outlined and explained in Sections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the District permitted discussions or negotiations in the Request for proposal, the District shall evaluate Proposals and establish the competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at the District's discretion, the District may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the District proceeds with discussions or negotiations, the District shall establish a negotiation team tailored for the acquisition. The District's team may include legal, technical, auditing, and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the District from canceling the Solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the District does not cancel the Solicitation, after the Opening the District shall evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the District shall rank the Proposers based on the District's scoring and determine the competitive Range.

(B) The District may increase the number of Proposers in the competitive Range if the District's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial competitive Range are closely competitive or have a reasonable chance of being determined the best Proposer after the District's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The District shall provide written notice to all Proposers identifying Proposers in the competitive Range. A Proposer that is not within the competitive Range may protest the District's evaluation and determination of the competitive Range in accordance with PPS 49-0450.

(c) Intent to award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the District has provided a final response to any protest, whichever date is later, the District may either:

(A) Provide written notice to all Proposers in the competitive Range of its intent to award the Contract to the highest ranked Proposer in the competitive Range.

(i) An unsuccessful Proposer may protest the District's intent to award in accordance with PPS 49-0450.

(ii) After the protest period provided in accordance with PPS 49-0450 expires, or after the District has provided a final response to any protest, whichever date is later, the District shall commence final Contract negotiations with the highest ranked Proposer in the competitive Range; or

(B) Engage in discussions with Proposers in the competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the competitive Range.

(5) Discussions; Revised Proposals. If the District chooses to enter into discussions with and receive revised Proposals from the Proposers in the competitive Range, the District shall proceed as follows:

(a) Initiating Discussions. The District shall initiate oral or written discussions with all of the Proposers in the competitive Range regarding their Proposals with respect to the provisions of the RFP that the District identified in the RFP as the subject of discussions. The District may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the District would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the District to obtain the best proposal based on the requirements and evaluation criteria set forth in the RFP.

(b) Conducting Discussions. The District may conduct discussions with each Proposer in the competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The District may terminate discussions with any Proposer in the competitive Range at any time. The District shall, however, offer all Proposers in the competitive Range the opportunity to discuss their Proposals with the District before the District notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the District:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its proposal, and shall not otherwise direct the Proposer to make any specific revisions to its proposal.

(B) At any time during the time allowed for discussions, the District may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the competitive Range and provide notice to the Proposers in the competitive Range to submit revised Proposals.

(c) Revised Proposals. If the District does not cancel the Solicitation at the conclusion of the District's discussions with all remaining Proposers in the competitive Range, the District shall give all remaining Proposers in the competitive Range notice of the date and time by which they shall submit revised Proposals. This notice constitutes the District's termination of discussions, and Proposers shall submit revised Proposals by the date and time set forth in the District's notice.

(A) Upon receipt of the revised Proposals, the District shall evaluate the revised Proposals based on the evaluation criteria set forth in the RFP and rank the revised Proposals based on the District's scoring.

(B) The District may conduct discussions with and accept only one revised proposal from each Proposer in the competitive Range unless otherwise set forth in the RFP.

(d) Intent to Award; Protest. The District shall provide written notice to all Proposers in the competitive Range of the District's intent to award the Contract. An unsuccessful Proposer may protest the District's intent to award in accordance with PPS 49-0450. After the protest period provided in accordance with that rule expires, or after the District has provided a final response to any protest, whichever date is later, the District shall commence final Contract negotiations.

(6) Negotiation.

(a) Initiating Negotiations. The District may determine to commence negotiations with the highest ranked Proposer in the competitive Range following the:

(A) Initial determination of the competitive Range; or

(B) Conclusion of discussions with all Proposers in the competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations

(A) Scope: The District may negotiate:

(i) The statement of work;

(ii) The Contract Price as it is affected by negotiating the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers shall not submit, and the District shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.

(c) Continuing Negotiations. If the District terminates negotiations with a Proposer, the District may then commence negotiations with the next highest-scoring Proposer in the competitive Range, and continue the process described in this rule until the District has:

(A) Determined to award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the competitive Range, unless the District provided for more than one round of discussions or negotiations in the Request for proposal, in which case the District may proceed with any authorized further rounds of negotiations.

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this rule, the District may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the District reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

PPS 49-0660 RFP Pricing Mechanisms

(1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of competitive Bidding. Alternatively, a Request for proposal may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated District purposes related to time of completion, safety, or other Public Contracting objectives, including but not limited to total least-cost mechanisms such as life cycle Costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC services Contracts where a total Contract Price is provided in the design phase in order to assist the District in determining whether the project scope is within the District's budget and allowing for design changes during preliminary design rather than after final design services have been completed.

- **(a)** If the collaborative process described above in this section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the District and included within the Contract.
- **(b)** If the collaborative process described above in this section (3) is not successful and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the District shall terminate the Contract. The District may then proceed to negotiate a new Contract (and GMP) with the Proposer that was next-ranked in the original selection process, or employ other means for continuing the project under ORS 279C.

(4) When Cost Reimbursement Contracts are utilized, regardless of whether a GMP is included, the District shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable, and properly allocated.

PPS 49-0670 Design-Build Contracts

(1) General. The Design-Build form of contracting, as defined at PPS 49-0610(3), has technical complexities that are not readily apparent. The District shall use this contracting method only with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to use the Design-Build process, the District shall be able to reasonably anticipate the following types of benefits:

- **(a)** Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;
- **(b)** Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- **(c)** Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- **(d)** Shortening project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- **(e)** Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. The District shall utilize the Design-Build form of contracting only in accordance with the requirements of these PPS 49-0600 through 49-0690 rules. See particularly PPS 49-0620 pertaining to Alternative Contracting Methods and PPS 49-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in PPS 49-0640(2)(a), (b), and (c).

(4) QBS Inapplicable. Because the value of construction services predominates the Design-Build form of Contracting, the qualifications-based selection ("QBS") process mandated by ORS 279C.110 for the District in certain circumstances in obtaining certain Consultant services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon-licensed design professional, the District shall require that the Design-Build Contractor disclose in its written Offer that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of Architectural services, and ORS 672.060(11) regarding the offer of Engineering services that are appurtenant to construction services.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts, the surety's obligation on performance bonds, or the bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work, and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. The District shall conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required shall be clearly defined within the procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards, and performance measurements shall be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the District, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which the District requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations, and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to the District regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the District is benefited from such deliverables.

PPS 49-0680 Energy Savings Performance Contracts

(1) Generally. These PPS 49-0600 through PPS 49-0690 rules include a limited, efficient method for the District to enter into ESPCs outside the competitive Bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the District chooses not to utilize the ESPC procurement method provided for by these PPS 49-0600 through 49-0690 rules, the District may still enter into an ESPC by complying with the competitive Bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the procurement requirements applicable to any district not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at PPS 49-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the District, as well as the additional technical complexities associated with a Design-Build Contract. The District shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the District shall be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services, and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the project Development Plan phase into the design and construction phase of work on the project;

(d) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in the construction process, through the integration of ESPC Personal services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective ECMs into an existing building or structure so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation, and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. The District desiring to pursue an exemption from the competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086) shall utilize the ESPC form of contracting only in accordance with the requirements of these PPS 49-0600 to 49-0690 rules.

(4) No Findings Required. The District is only required to comply with the ESPC contracting procedures set forth in PPS 49-0600 through 49-0690 of these rules in order for the ESPC to be exempt from the competitive Bidding processes of ORS 279C.335. No findings are required for an ESPC to be exempt from the competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the District is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these PPS 49-0600 through 49-0690 rules.

(5) Selection. ESPC selection criteria may include those factors set forth above in PPS 49-0640(2)(a), (b), (c), and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers shall disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) Qualifications Based Selection (QBS). Because the value of construction services predominates in the ESPC method of contracting, the QBS process mandated by ORS 279C.110 for the State Contracting Agencies in obtaining certain Consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon-licensed design professional, the District shall require that the ESCO disclose in the ESPC that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO shall provide a performance bond and a payment bond, each for 100 percent of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the District's operations and maintenance staff, and any similar professional services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal services and Work associated with the ESCO's Energy Savings Guarantee, are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, the District may require that the ESCO provide performance security for M & V services and any services associated with the ESCO's Energy Savings Guarantee, if the District so provides in the RFP.

(9) Contracting Requirements. The District shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the work;

(ii) The project Development Plan phase of the work;

(iii) A third phase of the work that constitutes a Design-Build Contract, during which the ESCO completes any plans and specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration, and related Personal services and Work to actually construct the project; and

(iv) A final phase of the work whereby the ESCO, independently or in cooperation with an independent Consultant hired by the District, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the District shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in PPS 49-0670(7).

(c) Pricing Alternatives. The District may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the District, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the District's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will completely pay for themselves or substantially pay for themselves over the useful life of the ECMs installed. The permitted scope of work for ESPCs resulting from a solicitation under these PPS 49-0600 through PPS 49-0690 rules does not include maintenance services for the project facility.

PPS 49-0690 Construction Manager/General Contractor Services ("CM/GC Services")

(1) General. The CM/GC Method is a technically complex project delivery system. The District shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants, or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting, and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the District and design professional, although with the CM/GC Method there is a separate contract between the District and design professional. In order to utilize the CM/GC Method, the District shall be able to reasonably anticipate the following types of benefits:

(a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The District may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The District may consider value engineering, building systems analysis, life cycle Costing analysis, and construction planning that lead to cost savings. The District shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the District, design professionals, any District project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through preconstruction services. The District may consider the need for CM/GC input on issues such as operation of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects, and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. The District shall use the CM/GC form of contracting only in accordance with the requirements of these division 49 rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly PPS 49-0600 on "Purpose" and PPS 49-0620 on "Use of Alternative Contracting Methods."

(3) Selection. CM/GC selection criteria may include those factors set forth in PPS 49-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified construction manager Personal services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal services rendered, which together shall not exceed the GMP. See GMP definition at PPS 49-0610(7) and pricing mechanisms at PPS 49-0660.

(5) Contract Requirements. The District shall conform their CM/GC contracting practices to the following requirements:

(a) Nature of the Initial CM/GC Services Contract Document. A solicitation for CM/GC services is a procurement for a Public Improvement, since the scope of the procurement includes not only pre-construction Personal services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC services contracting approach, the text of the resulting CM/GC services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the District and the CM/GC for the pre-construction Personal services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC services contracting approach, however, also contemplates that the District shall only authorize the CM/GC to perform the preconstruction Personal services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP shall define both what Personal services and construction Work are included and excluded from the GMP, fixed

Contract price or other maximum Contract Price. A set of project drawings and specifications shall be produced establishing the scope of construction Work contemplated by the GMP fixed Contract price or other maximum Contract Price.

(c) Adjustments to the GMP Fixed Contract Price or Other Maximum Contract Price. The Contract shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope other warrants an increase in the GMP, fixed Contract Price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract Price or other maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the work defined at the establishment of the GMP, fixed Contract Price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract Price or other maximum Contract Price. An increase to the scope of the work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the District and other changes to the work.

(d) Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the work below the GMP; fixed Contract price or other maximum Contract price, that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the District's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings shall accrue to the District.

(e) Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price, including any category of GC Work, and may also incorporate a mutually agreeable cost-reimbursement standard.

(f) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.

(g) Fee. Compensation for the CM/GC's Personal services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the District selects the GM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing pre-construction services during a separate pre-construction phase.

(h) Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP, fixed Contract Price or other maximum Contract Price).

(i) Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions, and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.

(j) Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price, or other maximum Contract Price.

(k) Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract shall include provisions that clearly meet the requirements of ORS 279C.337(3) and other District requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process shall meet the following parameters:

(A) Absent a written justification prepared by the CM/GC and approved by the District as more particularly provided for in this section, the CM/GC's Subcontractor selection process shall be "competitive," meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the District, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process shall meet the following requirements:

(i) The CM/GC shall prepare and submit a written justification to the District, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a competitive process along with facts supporting the continuation or expansion of the Subcontractor agreement, or a sole source justification;

(ii) For a sole source selection of a subcontractor to proceed, the District shall evaluate the written justification provided by the CM/GC and shall find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The CM/GC shall provide an independent cost estimate for the work package that will be subject to the non-competitive process, if required by the District;

(iv) The CM/GC shall fully respond to any questions or comments submitted to the CM/GC by the District; and

(v) The District shall approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;

(D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC shall disclose that fact in the selection process documents and announcements. The Contract shall also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of work involved, by a representative of the District or another independent third party.

(l) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the District shall approve subcontract awards, and to what extent, if any, the District shall resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of subcontractor and suppler protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the District shall retain the right to monitor the subcontracting process in order to protect the District's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract shall establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC shall provide, or shall have included in the CM/GC's RFP proposal to perform CM/GC services for the project, a detailed proposal for performance of the work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the District, the CM/GC's proposal to perform the construction Work shall be supported by at least one independent cost estimate prior to the work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the District and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

(o) Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the District to be performed by the CM/GC, however, the CM/GC shall provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed Contract price or other maximum Contract Price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum contract price shall be increased, the performance bond and the payment bond shall each be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum contract price.

(p) Independent Review of CM/GC Performance; Conflicts of Interest. If the District requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Personal services, construction Work or both pre-construction Personal services and construction Work, the District shall obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:

(A) The CM/GC's performance of both pre-construction Personal services and construction Work that are included within the definition of CM/GC services, consistent with ORS 279C.307(2); or

(B) The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.

(q) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the District.

CONTRACT PROVISIONS

PPS 49-0800 Required Contract Clauses

Except as provided by PPS 49-0150 and 49-0160, the District shall include in all Solicitation Documents for Public Improvement Contracts all of the ORS 279C-required Contract clauses, as set forth in the checklist contained in PPS 49-0200(1)(c) regarding Solicitation Documents. The following series of rules provides further guidance regarding particular Public Contract provisions.

PPS 49-0810 Waiver of Delay Damages Against Public Policy

The District shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the District's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages are permissible.

PPS 49-0815 BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor shall have a Public Works bond filed with the

Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

PPS 49-0820 Retainage

(1) Withholding of Retainage. The District shall not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of written application containing the surety's written approval, the District may, in its discretion, reduce or eliminate Retainage on any remaining progress payments. The District shall respond in writing to all such applications within a reasonable time. When the Contract Work is 97½ percent completed, the District may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. The District may at any time reinstate Retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless the District finds in writing that accepting a bond or instrument described in section (2)(a) or (2)(b) of this rule poses an extraordinary risk that is not typically associated with the bond or instrument, the District, in lieu of withholding moneys from payment, shall accept from a Contractor:

(a) Bonds, securities, or other instruments that are deposited and accepted as provided in section (4)(a) of this rule; or

(b) A surety bond deposited as provided in section (4)(b) of this rule.

(3) Deposit in Interest-Bearing Accounts. Upon request of the Contractor, the District shall deposit cash Retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the District. Earnings on such account shall accrue to the Contractor. The District shall establish the account through the State Treasurer.

(4) Alternatives to Cash Retainage. In lieu of cash Retainage to be held by the District, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities, or other instruments.

(A) The Contractor may deposit bonds, securities, or other instruments with the District or in any bank or trust company to be held for the benefit of the District. If the District accepts the deposit, the District shall reduce the cash Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities, or other instruments deposited or acquired in lieu of cash Retainage shall be of a character approved by the District, including, but not limited to:

(i) Bills, certificates, notes, or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the District's determination that all requirements for the protection of the District's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of Retainage.

(b) Deposit of Surety Bond. The District, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the District in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of Retainage. In such cases, Retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of Costs. The District may recover from the Contractor all costs incurred in the proper handling of Retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the District shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the District. The District shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both Contractors and subcontractors to file certified statements with the District). See BOLI rule at OAR 839-025-0010.

PPS 49-0830 Contractor Progress Payments

(1) Request for Progress Payments. Each month the Contractor shall submit to the District their written request for a progress payment based on an estimated percentage of Contract completion. At the District's discretion, this request may also include the value of material to be incorporated in the completed Work, which has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the District shall make a progress payment to the Contractor, which shall be equal to:

(a) The value of completed Work;

(b) Less those amounts that have been previously paid;

(c) Less other amounts that may be deductible or owing and due to the District for any cause; and

(d) Less the appropriate amount of Retainage.

(2) Progress Payments Do Not Mean Acceptance of work. Progress payments shall not be construed as an acceptance or approval of any part of the work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

PPS 49-0840 Interest

(1) Prompt Payment Policy. The District shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 days after receipt of invoice or 15 days after District approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, up to a maximum rate of 30 percent.

(3) Interest on Final Payment. Final payment on the Contract Price, including Retainage, shall be due and owing no later than 30 days after Contract completion and acceptance of the work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) Settlement or Judgment Interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at

the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or 30 days after the Contractor submitted a claim for payment to the District in writing or otherwise in accordance with the Contract requirements.

PPS 49-0850 Final Inspection

(1) Notification of Completion; Inspection. The Contractor shall notify the District in writing when the Contractor considers the Contract Work completed. Within 15 days of receiving the Contractor's notice, the District shall inspect the project and project records, and will either accept the work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of Acceptance. When the District finds that all Work required under the Contract has been completed satisfactorily, the District shall acknowledge acceptance of the work in writing.

PPS 49-0860 Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see the administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract shall contain the following provisions:

(a) District authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).

(d) Contractor-required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract shall provide that all workers shall be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by the contractor and every subcontractor, as set forth in ORS 279(C).830(2).

(3) Requirements for Specifications. The specifications for every Public Works Contract, consisting of the procurement package (such as the project Manual, bid or proposal booklets, Request for quotes, or similar procurement specifications), shall contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the specifications by reference in compliance with OAR 839-025-0020; or

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the Contractor shall pay the higher of the applicable state or federal prevailing rate of way to all workers. See BOLI rules at OAR 839-025-0020 and-0035.

(c) A requirement for filing a public works bond by the Contractor and every subcontractor, as set forth in ORS 279C.830(2).

PPS 49-0870 Specifications; Brand Name Products

(1) Generally. The District's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. The District may identify products by Brand Names as long as the following language: "approved equal," "or equal," "approved equivalent," or "equivalent," or similar language is included in the Solicitation Document. The District shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

(3) Product Exemption. The Superintendent is delegated the authority to exempt products from the prohibition in section (1) of this rule, pursuant to ORS 279C.345(2), upon any of the following written findings:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts;

(b) 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 District;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

PPS 49-0880 Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance, and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records, and all other records, hereafter referred to as "Records") accessible to the District at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. The District may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person shall provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing.

(3) Records Inspection; Contract Audit. The District and its authorized representatives shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section (1) of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of three years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in writing.

PPS 49-0890 District Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the District may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the District chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The District shall not make payments to subcontractors or suppliers for Work already paid for by the District.

PPS 49-0900 Contract Suspension; Termination Procedures

(1) Suspension of work. In the event the District suspends performance of work for any reason considered by the District to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by Mutual Agreement for Reasons Other Than Default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The District suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the District shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The District shall also pay for all Work completed based on the Contract Price. Unless the work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the District. The District may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the District unilaterally terminates the Contract for any reason considered by the District to be in the public interest.

(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the work performed.

(5) Remedies Cumulative. The District may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

CONTRACT AMENDMENTS AND CHANGE ORDERS

PPS 49-0910 Public Improvement Contract Amendments and Changes to the Work

(1) Definitions for Rule. As used in this rule with regard to Public Improvement Contracts:

(a) "Amendment" means a written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the work, within the general scope of the original procurement that requires mutual agreement between the District and the Contractor.

(b) "Changes to the work" means a mutually agreed-upon change order, or a construction change directive or other written order issued by the District or its authorized representatives to the Contractor requiring a Change in the work within the general scope of a Public Improvement Contract and issued under its Changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or Contract time for the Changed Work.

(2) Change Orders. Changes to the work are anticipated in construction and, accordingly, the District shall include Change provisions in all Public Improvement Contracts that detail the scope of the Changes clause, provide pricing mechanisms, authorize the District or its authorized representative(s) to issue Changes to the work, and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the work are agreed to or issued consistent with the Contract's Changes provisions, they are not considered to be new procurements, and an exemption from competitive Bidding is not required for their issuance by the District. Change orders that are approved pursuant to the terms of a construction contract are not subject to the contract amendment procedures of these rules except as provided in Subsection 5 of this section.

(3) Change Order Authority. The District may establish internal limitations and delegations for authorizing Changes to the work, including dollar limitations. Dollar limitations on Changes to the work are not set by these rules, but such Changes are limited by the above definition of that term.

(4) Contract Amendments. Public Improvement Contract amendments within the general scope of the original procurement are not considered to be new procurements, and an exemption from competitive Bidding is not required in order to add components or phases of work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation, and whether the original procurement was accomplished through competitive Bidding, competitive Proposals, competitive quotes, sole-source, or Emergency Contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive Bidding exemption; and

(d) The amendment is made consistent with this rule and other applicable legal requirements.

(5) Reporting Requirement for Amendments/Change Orders That Exceed 125 Percent of Original Contract Price.

(e) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than 125 percent of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(D) The Original Contract Price does not exceed $500,000.

(E) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(F) Where a CM/GC or Design/Build Contract authorizes Early Work Amendments and requires execution of the GMP amendment to establish the total Contract Price, the GMP amendment shall establish the "Original Contract Price" for purposes of this Rule.

(f) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than 150 percent of the original Contract Price.

(g) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION

EXHIBIT B

FINDINGS IN SUPPORT OF THE DESIGNATION OF CERTAIN CLASSES OF CONTRACTS FOR GOODS AND SERVICES AS SPECIAL CLASS PROCUREMENTS UNDER ORS 279B.085

The Board of Directors of School District No. 1J, Multnomah County, Oregon, acting as the Local Public Contract Review Board (the "Board"), makes the following findings in support of amendments and additions to the District's class special procurements for goods and services incorporated in the District's 2024 amendments to its Public Contracting Rules ("2024 Amendments").

I. Class Special Procurements.

A. Applicable Criteria. ORS 279B.085(4) empowers the Board to designate classes of contracts for goods or services for special procurement outside of the competitive procurement processes otherwise required under ORS Chapter 279B and the District's Public Contracting Rules. In order to approve a class special procurement, the Board must find that the designation of a class of contracts for special procurement:

1. Is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts; and

2. Either:

a. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or

b. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the requirements that are otherwise applicable under ORS Chapter 279B or the District's rules adopted to implement those rules.

B. Findings. The District's class special procurements are set forth in District Public Contracting Rules at PPS-47-0288 (Exhibit A). The District's 2019 Amendments amend two existing class special procurements:

1. Copyrighted Materials and Creative Works (PPS-47-0288(4)).

a. Findings of Fact. The 2024 Rules amend this section to clarify that it applies to curriculum, reference materials, copyrighted materials, and creative works in any format. This amendment considers that modern learning and creative works come in multiple formats and sometime in more than format (e.g., hard copy and electronic/digital).

b. Conclusions of Law. This amendment will not discourage competition because learning and creative materials in any format are so specialized or unique that they cannot be effectively competed. In addition, many instructional materials must be reviewed prior to approval for use at the District, and this allows for creation of a list of vetted and approved materials, including format, from which programs and teachers can select. This promotes the public interest in high quality and relevant instructional materials in a way that cannot practicably be realized through the standard ORS 279B procurement process.

2. Software and Hardware Maintenance, Licenses, Subscriptions, and Upgrades (PPS-47-0288(11)).

a. Findings of Fact. The 2024 Rules modify this special procurement to allow direct procurement of software and hardware maintenance, licenses, subscriptions, and upgrades in any format where they are only available from a single source or, when available from multiple providers, are best procured from the incumbent provider who has knowledge of the District's systems. The superintendent must document the reasons for exercising this exemption in the procurement file. Similar to the above amendment, this amendment is designed to apply to the expanded array of available resources in multiple formats.

b. Conclusions of Law. This amendment is unlikely to diminish competition because it can only be employed where no competition exists, or where the contract has previously been completed and the product is already fully integrated with the District's systems, or the incumbent provider has specialized knowledge of the District's systems. It promotes the public interest in a way that cannot practicably be realized through the standard ORS 279B procurement process because it makes efficient use of the District's existing systems and does not require the District to conduct a competitive process where no effective competition exists.

II. Existing Special Procurement and Exemptions Continued. Although the 2024 Rules make a number of formatting and editorial changes to other class special procurements, the 2024 Rules make no other substantive amendments to existing special procurements or propose new special procurements as part of the 2024 Amendments to the District's Public Contracting Rules.

Portland Public School District 1st Reading

DATE OF FIRST READING: January 09, 2024

PUBLIC COMMENT FOR
the revision of
Portland Public Schools 2024
Public Contracting Rules

The Portland Public School District is providing Notice of Proposed Revised Policy and Public Comment to offer interested parties reasonable opportunity to submit data or comments on the proposed policies noted below.

Public comment may be submitted in writing directly to the district or through the district website noted below. Written comments must be submitted by 5:00pm on the Last Date for Comment listed below.

Open for Comment until at least:
January 30, 2024

Summary: **Revision of the Portland Public Schools 2024 Public Contracting Rules**

1st Reading by: **Director Julia Brim-Edwards**
Portland Public School Board, Policy Committee Chair

Recommended for a 1st Reading by:
Portland Public Schools Board of Education, Policy Committee

Draft Policy Web Site: http://www.pps.net/draftpolicies

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Draft Policy Comment Form: https://forms.gle/VqYbmVA36qqADj6n6

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PORTLAND PUBLIC SCHOOLS

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STAFF REPORT

Date: December 14, 2023

To: School Board

From: Emily Courtnage, Director of Purchasing & Contracting

Subject: 2024 Update to Public Contracting Rules

Background

In 2010, Portland Public Schools developed and adopted a substantial and comprehensive revision to its Public Contracting Rules ("Rules"). These Rules were updated in 2012, 2016, and 2019 to reflect legislative changes to the state Public Contracting Code (ORS Chapter 279A, 279B, and 279C) and revisions to the Attorney General's Model Public Contracting Rules ("Model Rules"). An update and revision to the District's Public Contracting Rules is necessary to reflect legislative changes made to the Public Contracting Code in 2023, as well as improve internal alignment, efficiency, and effectiveness of the District's purchasing processes, as further detailed below.

The Policy Committee of the School Board discussed these changes on October 11, 2023 and December 11, 2023. At the December meeting, the Policy Committee voted to refer this policy revision to the full Board.

Summary of Changes and Updates to Public Contracting Rules

I. Updates to Reflect 2023 Legislative Changes Effective January 1, 2024

a. Updates to Competitive Procurement Thresholds

In the spring of 2023, the Oregon legislature adopted the following changes to competitive procurement thresholds that had been in place for well over a decade:

1. Raised the small procurement threshold (*i.e.*, the dollar amount below which no competition is required) from $10,000 to $25,000 for Construction contracts
2. Raised the small procurement threshold for Goods and Services contracts from $10,000 to $25,000

3. Raised the formal procurement threshold (*i.e.*, the dollar amount above which the District must conduct a formally advertised, public Request for Proposals or Invitations to Bid solicitation process) for Goods and Services contracts from $150,000 to $250,000

Per Senate Bill 1047, these changes to the Oregon Public Contracting Code are effective January 1, 2024. Staff recommends updating the District's Public Contracting Rules to reflect these legislative changes on or as soon as possible after January 1, 2024. See PPS 47-0250(c) and (d).

Local Contract Review Boards (at Portland Public Schools, this is the School Board) have discretion to adopt their own thresholds for Personal Services contracts. (Personal Services are those services that "require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the expertise of discretional judgment skills, and for which the quality of Services depends on attributes that are unique to the service provider." PPS 46-0500(2)). The District's current formal procurement threshold for Personal Services contracts is $150,000, which was made to align with the existing Goods and Services formal procurement threshold established by the legislature in 2003. Staff recommends increasing the District's formal procurement threshold for Personal Services to $250,000 to align with the new 2023 legislative update to the formal procurement threshold for Goods and Services.[1] See PPS 46-0505. These changes will also align with the formal procurement thresholds applicable to (1) procurements for contracts expending federal grant or pass-through funds, and (2) procurements for architecture, engineering, and related services contracts.

b. Other Minor Updates to Oregon Public Contracting Code and the Attorney General's Model Public Contracting Rules

Staff recommends the following additional changes to bring the District's Public Contracting Rules into alignment with new legislation and the Attorney General's Model Rules. Staff recommends adhering to the Model Rules language throughout the District's Public Contracting Rules, as the Model Rules promote consistency across Oregon public agencies, ease of administration and interpretation by staff, and common expectations among contractors who work with Oregon public agencies.

(1) Adoption of the Model Rule regarding the informal selection procedures for Architecture, Engineering, and Related Services contracts not exceeding $250,000 (PPS 48-0210)

(2) Adoption of a new Model Rule in the Attorney General's Model Rules regarding protests and judicial review of qualified products lists decisions (PPS 47-0745)

(3) Change to the Public Hearing mandate for exemptions from competitive bidding for public improvement contracts (PPS 49-0630(7). In 2021, the Oregon legislature amended ORS 279C.335(5) to require that interested parties must be given an opportunity to request a hearing. The District no longer needs to hold a public hearing unless one is requested. The Board will continue to vote on all requests for exemption from competitive bidding and use of alternative contracting methods for public improvement projects (such as Request for Proposals or Construction Manager/General Contractor).

[1] $150,000 in 2003 is equivalent to $257,802 in 2024.

(4) Numerous minor language changes and additions throughout to ensure alignment with Model Rules.

II. Update to Reflect Changes in Pricing/Buying Power

a. Raise Informal Procurement Threshold for Personal Services Contracts from $50,000 to $75,000 (PPS 46-0525(1))

Staff recommends increasing the threshold at which a three-quote or informal request for proposals process is required for Personal Services contracts. The $50,000 threshold has been in place for over a decade, during which time the buying power of $50,000 has significantly decreased. Further, if the Board raises the formal procurement threshold for Personal Services from $150,000 to $250,000, as described above, it makes sense to also shift the informal procurement threshold. With these changes, Personal Services contracts could be negotiated without competition if $75,000 or less, with a three-quote or informal Request for Proposals process if between $75,001 and $250,000, and with a formal, publicly advertised Request for Proposals process if above $250,000.

III. Removal of Administratively Burdensome Mandates That Do Not Align with the Oregon Public Contracting Code or Attorney General's Model Rules

a. Removal of the Amendment Cap for Personal Services contracts (PPS 46-0535(4))

In 2016, the Board adopted an amendment cap for Personal Services contracts that prohibits contract amendment to add scope or funds that would cause the total contract price to exceed 125% of the original contract price except in limited circumstances. See PPS 46-0535(4). This arbitrary amendment cap is not required by or included in the Oregon Public Contracting Code or the Model Rules. In the years since this cap has been in place, staff has observed significant, unintended adverse consequences of this amendment cap:

(1) In many cases, a small contract (*e.g.*, for a few sessions of professional development or a few hours of artist-in-residence time with students) cannot be amended to add additional days or sessions when it is determined that such addition is in the District's and/or students' interests. This forces the requesting school or department to draw up a new contract to add, for example, one new session at $300 to a $1000 contract. This strict rule serves no purpose but does add paperwork, time delay, and administrative burden.

(2) The rule encourages a series of contracts with the same contractor rather than a single amended contract with additional scope. As such, it can inadvertently promote skirting of competitive procurement thresholds and/or Board approval processes that would apply to any single contract with an amendment that caused it to cross a competitive procurement or Board approval threshold. For example, a $120,000 personal services contract amended to add an additional $35,000 would cross the current $150,000 Board approval threshold, as well as the formal procurement threshold. Purchasing & Contracting staff would review the proposed amendment for procurement compliance and put the amendment on the next Board contracts agenda. With the amendment cap in place preventing such amendment, the originating contract manager is likely to simply submit a new contract with the same contractor for $35,000,

and such a low-dollar contract will likely not be funneled through the Board approval process or reviewed for formal procurement threshold compliance.

Staff has been unable to identify any countervailing positive results of the amendment cap and therefore recommends removing it.

IV. New or Revised Direct Negotiation and Special Class Procurement Rules

a. New Rule to Allow Direct Negotiation of Medical Services (46-0525(14))

Staff recommends that the Board adopt a new rule allowing direct negotiation of contracts "for services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, laboratory technicians and those with specific license or unique skill to administer treatments for the health and well-being of people." In practice, the District always exempts medical services from competition under PPS 46-0525(3) (allowing direct negotiation where "the work is not project-driven but requires an ongoing, long term relationship of knowledge or trust") or PPS 46-0525(4) (allowing direct negotiation where "the contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical"). However, both of these more general exceptions require direct negotiation justification paperwork to explain the applicability of one or more of these provisions. To cut down on unnecessary paperwork, staff recommends adopting a clear direct negotiation rule for medical services. The language of the rule is taken from a similar direct negotiation rule adopted by Metro.

b. Revised Special Class Procurement Rules for Copyrighted Materials and Creative Works (PPS 47-0288(4)) and Software and Hardware Maintenance, License, Subscriptions, and Upgrades (PPS 47-0288(11))

Staff recommends updating the District's special class procurement rule allowing direct purchase without competition of copyrighted materials and creative works to more clearly cover curriculum materials in all modern electronic forms. Contracts for the procurement and distribution of textbooks have long been exempted from the Public Contracting Code per Oregon statute (ORS 279A.025) and PPS Public Contracting Rule (PPS 46-0130). However, over time the use of traditional textbooks has diminished as the use of digital and online curriculum resources has increased, and this special class procurement was adopted to reflect that modern reality. The revision to this special class procurement clarifies the language to ensure it covers all curriculum materials that are available from only one source.

For similar reasons, staff recommends updating the District's special class procurement rule allowing direct purchase without competition of software and hardware licenses and subscriptions available from only one source. The revision clarifies the language to ensure it covers all digital resources, including cloud-based programs and applications.

ATTACHMENTS

A. Redline of 2019 Public Contracting Rules

PORTLAND PUBLIC SCHOOLS

~~2019~~2024 PUBLIC

CONTRACTING RULES

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PPS DIVISION 45

DISTRICT CONTRACTS GENERALLY

PPS 45-0000 Generally

Except as expressly provided in other School Board Policies, PPS ~~Divisions~~divisions 45, 46, 47, 48, and 49 (collectively, the "Portland Public Schools Public Contracting Rules") govern all District Contracts. These ~~Division~~division 45 ~~Rules~~rules address delegation of contracting authority under ORS 279A.075 and 332.075, Ethics in Contracting, and ~~Procurement~~procurement from Qualified Rehabilitation Facilities. Divisions 46, 47, 48, and 49 govern Public Contracts as defined in ORS ~~Chapters~~chapters 279A, 279B, and 279C (the Public Contracting Code). Except as otherwise expressly provided in School Board Policy or these ~~Rules~~rules, these ~~Division~~division 45 ~~Rules~~rules apply to all District Contracts, including Public Contracts as defined in the Public Contracting Code.

PPS 45-0100 Definitions

As used in the Public Contracting Code and ~~Divisions~~divisions 45, 46, 47, 48, and 49 of these ~~Rules~~rules, and except as otherwise provided in School Board Policy:

(1) "District Contract" means all Contracts entered into by the District, including Public Contracts subject to the Public Contracting Code and ~~Divisions~~divisions 46, 47, 48, and 49, and all other Contracts or agreements entered into by the District. For the purpose of these Public Contracting Rules, "District Contract" does not include settlements of lawsuits or other claims against the District that continue to be governed by Board Policy 8.60.021-P, or the purchase, conveyance, acceptance, sale, or lease of real property or an interest in real property.

AUTHORITY TO APPROVE AND EXECUTE DISTRICT CONTRACTS

PPS 45-0200 Authority to Approve District Contracts; Delegation of Authority to Superintendent

(1) The District is the Contracting Agency within the meaning of the Public Contracting Code.

(2) Except as otherwise provided in these ~~Rules~~rules, the powers and duties of the Local Contract Review Board under these ~~Rules~~rules shall be exercised and performed by the School Board, and the powers and duties of the District under the ~~Rules~~rules shall be exercised and performed by the Superintendent.

(3) Except as provided in ~~Section~~section (4) of this ~~Rule~~rule or as otherwise expressly authorized in these ~~Rules~~rules, the School Board ~~must~~shall approve all District Contracts.

(4) Pursuant to ORS 279A.075 and 332.075(3), and except as expressly limited by other School Board Policy, the School Board delegates to the Superintendent the authority to enter into and approve payment on District Contracts in the following circumstances:

- **(a)** The District Contract is within appropriations made by the School Board and is not a collective bargaining agreement or a Service Contract that includes the provision of labor performed by employees of the School District, as defined in ORS 332.075(3); and
- **(b)** In any of the following circumstances:
  - **(A)** The total amount payable by the District under the individual District Contract does not exceed $150,000;
  - **(B)** The District Contract is for routine and customary expenditures, including but not limited to payroll, payroll taxes and benefits, utility bills, and postage;
  - **(C)** Advance authorization has been given by the School Board for the Superintendent to execute a particular District Contract or class of District Contracts;

(D) The District Contract is an Emergency ~~Procurement~~procurement;

(E) The District Contract is a ~~Change Order~~change order or Contract amendment to a prior-approved Contract authorized under these ~~Rules~~rules;

(F) An offer of judgment made in the course of litigation in with the District is a party when the Superintendent and general counsel determine that such an offer is in the best interest of the District or is to the District's tactical advantage; or

(G) These ~~Rules~~rules otherwise expressly authorize the Superintendent to approve the Contract.

(5) The Superintendent may designate in ~~Writing~~writing any District employee or employees to exercise all or a portion of the Superintendent's powers and duties under these ~~Rules~~rules.

(6) If the Superintendent authorizes an offer of judgment pursuant to PPS 45-0200(4)(b)(F) in an amount exceeding $25,000, the superintendent shall request that the general counsel draft a lawyer-client privileged memo to the School Board to explain the legal basis for the offer of judgment.

(7) No district employee or official shall authorize and no contractor shall undertake any work under a district contract prior to full execution of the contract by all authorized signatories. Notwithstanding the forgoing, the Superintendent may authorize work to begin under a contract prior to full execution in the following circumstances:

(a) The contract is an intergovernmental agreement pursuant to ORS ~~Chapter~~chapter 190, the parties have agreed in principal to the terms of the contract, and the only remaining step is circulation of the Contract for approval; or

(b) The contract is an amendment that is subject to approval of the Board of Education because it will increase the cost of the contract above the superintendent's contract approval authority, but the Board approval process will cause a delay in work completion that will prevent timely delivery of essential services. For the purposes of this exception, "essential services" means goods, services, personal services, or construction services necessary for a school to open on time, a class to start on time, a class or program to complete on time, to comply with conditions of grant that is otherwise at risk of loss, or other services critical to timely and complete education of district students. The Superintendent will only authorize such work in cases where the delay is caused by factors outside of the District's control and that could not have been identified when the contract was first negotiated.

ETHICS IN CONTRACTING

PPS 45-0300 Policy

These ~~Rules~~rules supplement and do not replace the Oregon Government Ethics Law (ORS 244.010 through 244.400). These ~~Rules~~rules are designed to accomplish the policy of ORS 244.010 that service as a public official is a public trust and that implementation of District Contracting under these ~~Rules~~rules and the Public Contracting Code should be free of undisclosed conflicts or undue influence.

PPS 45-0305 Ethics in the Solicitation and ~~Award~~award of District Contracts

District officers who participated in the process of development, selection, and ~~Award~~award of District Contracts ~~must~~shall comply with the following ~~Rules~~rules:

(1) Definitions:

(a) **"Business"** means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, and any other legal entity operated for

economic gain, but excluding any income producing, not-for-profit corporation that is tax exempt under ~~Section~~section 501(c) of the Internal Revenue Code with which the District officer or relative is associated only as a member or board director or in a non-remunerative capacity. If the business is privately held, the District official or relative is "associated with the business" if the Person is a director, officer, owner, or employee, or in which the Person owns or has owned stock, debt instruments, stock options, or other form of equity interest worth more than $1,000 in the preceding calendar year. If the business is publicly held, the District official or relative is "associated with the business" if the Person is a director or officer or owns or has owned $100,000 or more of stock, debt instruments, stock options, or other form of equity interest in the preceding calendar year. If the District official is required to file a statement of economic interest, "business" also includes a business listed as a source of income as required under ORS 244.060(3).[1]

(b) **"Conflict of interest"** means any action, decision, or recommendation by a District officer in the course of participating in a ~~Procurement~~procurement under these ~~Rules~~rules that would ("actual conflict of interest") or could ("potential conflict of interest") be to the private pecuniary benefit or detriment of the District officer, a relative of the District officer, or a business with which the District officer or relative is associated. For the purpose of this requirement:

(c) **"District officer"** means any person who is serving the District as an elected official, appointed official, employee, or agent, whether or not the person is compensated for those services.

(d) **"Gift"** means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions. "Gift" also includes something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(e) **"Relative"** means:

(A) The District officer's spouse or domestic partner;

(B) Children of the District officer, spouse, or domestic partner;

(C) Siblings, spouses of siblings, or parents of the public official, spouse, or domestic partner;

(D) Any individual for whom the District officer has a support obligation;

(E) Any individual for whom the District officer provides benefits related to the public official's public employment or from whom the District officer receives benefits; and

(F) Any person who resides with the public official.

(2) Disclosure of Conflict of Interest Required. Any District official participating in a District ~~Procurement~~procurement, whether for ~~Goods and Services~~goods or services, Personal ~~Services~~services, Public Works, Public Improvements, or any other District Contract shall disclose actual or potential conflicts of interest.

(a) Appointed District Officials. An appointed District official ~~must~~shall disclose actual or potential conflicts of interest in ~~Writing~~writing to the District official's appointing authority (the person who has hire-and-fire authority over the official). This ~~Writing must~~writing shall disclose the nature of the conflict and request the appointing authority to dispose of the matter. The

[1] The only District officials required to file a statement of economic interest are the Superintendent and the chief financial officer.

appointing authority shall respond in ~~Writing~~writing by designating an alternate to dispose of the matter or directing the District officer to dispose of the matter as directed by the appointing authority.

(b) Elected District Official or Officials Who Serve on Advisory Boards or Commissions. Such District officials shall publicly announce an actual or potential conflict of interest prior to taking any action on the matter giving rise to the conflict. If the conflict is an actual conflict of interest, the public official ~~must~~shall refrain from participating in the decision or discussion of the issue. If the conflict is only a potential conflict of interest, the public official may participate in the debate and decision following disclosure of the potential conflict.

(3) Gifts. District officers are prohibited from soliciting or receiving gifts with an aggregate value of in excess of $50 in a calendar year from any single source that could reasonably be known to have a legislative or administrative interest in any matter subject to the decision or vote of the District official. For the purpose of this section, a District official is considered a decision-maker in the ~~Procurement~~procurement process if he or she makes decisions or recommendations in regard to the drafting of the ~~Procurement, the solicitation~~procurement, the Solicitation process, the opening, review, or scoring of the ~~solicitation~~Solicitation, or a recommendation or decision to ~~Award~~award, correct, or reject a solicitation, or response to or resolution of a protest.

(4) Use of Office for Personal Gain Prohibited. District officers, employees, and agents are prohibited from using their official position for personal gain.

(5) Use of Confidential District Information for Gain Prohibited. District officers, employees, and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal financial gain.

PPS 45-0310 Additional Standards of Conduct for Procurement of District Contracts Funded in Whole or in Part by Federal ~~Award~~award

In addition to compliance with ORS 244 and PPS 45-0300 to 45-0305 with District employees, officers and agents in the selection, award, or administration of any contract ~~must~~shall comply with 2 CFR 318(c)(1) regarding procurement of District Contracts funded in whole or in part by Federal ~~Award~~award:

(1) No District employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal ~~Award~~award if such person has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of such persons immediate family, such persons partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. A district employer, officer, or agent shall notify such person's appointing authority and shall immediately cease participation in all procurement or award activities relating to or management of such contract.

(2) District officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts supported by a Federal ~~Award~~award. This section shall not apply to items that are excluded from the definition of "gift" in ORS 244.020.

(3) A district employer, officer, or agent who violates any of the standards set forth in PPS 45-0310 will be subject to discipline up to and including termination.

PPS 45-0315 Penalties

Any District employee, officer, or agent that fails to comply with PPS 45-0300 to 45-0310 can face investigation or penalty under ORS ~~Chapter~~chapter 244 and/or adverse employment action up to and including termination.

PROCUREMENT FROM QUALIFIED REHABILITATION FACILITIES ("QRF")

PPS 45-0405 QRF Definitions

(1) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services that the State ~~Procurement~~procurement Office has determined to be qualified under OAR 125-055-0015.

(2) "QRF Procurement List" means a listing of those nonprofit agencies for disabled individuals who currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 through 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State ~~Procurement~~procurement Office, under OAR 125-055-0020, to be suitable for purchase by Contracting Agencies such as the District.

PPS 45-0410 Required Procurement of QRF Products or Services

(1) As required by ORS 279.850(1), if the District intends to procure a Product or ~~Service~~service that is listed on the QRF ~~Procurement~~procurement List, the District ~~must~~shall procure that Product or ~~Service~~service, at the Price determined by the State of Oregon ~~Procurement~~procurement Office, from a QRF if the Product or ~~Service is of Specifications~~service is of specifications appropriate to the District's ~~Procurement~~procurement needs and is available within the time required by the District.

(2) The most current QRF ~~Procurement~~procurement List may be reviewed at the State of Oregon ~~Procurement~~procurement Office Web site at https://dasapp.oregon.gov/qrf/index.aspx.

(3) The Public Contracting Code does not apply to QRF ~~Procurements~~procurements pursuant to ORS 279A.025(4). QRF ~~Procurements~~procurements are therefore exempt from ~~Divisions~~divisions 46, 47, 48, and 49 of these ~~Rules~~rules.

PPS 45-0500 Contract Extensions

Except as otherwise provided in these ~~Rules~~rules:

(1) A Current Contract May Be Extended to Complete the Contract Work. If it appears that a District Contract will expire according to its terms before the ~~Work~~work provided under the Contract will be completed, the Superintendent may extend the Contract for such period of time necessary to complete the ~~Work~~work.

(2) An Expired Contract May Be Reinstated to Complete the Contract Work. If a District Contract inadvertently expires according to its terms before the ~~Work~~work provided under the Contract is completed, the Superintendent may reinstate the Contract for such period of time necessary to complete the ~~Work~~work. The reinstated Contract shall be deemed to begin upon the expiration of the prior Contract and end upon the termination date set forth in the extension.

(3) A Contract Extension May Not Include Substantive Amendments to the Contract. An extension may not be used to amend or change the scope of the Contract or increase the price of the Contract, except as otherwise may be allowed in these ~~Rules~~rules. Contract amendments are subject to PPS 46-0480, 47-0800, or 49-0910, depending on the type of Contract.

END OF DIVISION 45

PPS DIVISION 46

PUBLIC CONTRACTING RULES APPLICABLE TO ALL PUBLIC CONTRACTS AND PERSONAL SERVICES CONTRACTS

PPS 46-0000 Generally

These ~~Division~~division 46 ~~Rules~~rules are intended to implement the provisions of ORS 279A applicable to all public ~~Procurements~~procurements, and the provisions of the Uniform Guidance for all District Contracts supported in whole in part by a Federal ~~Award~~award. Division 46 also addresses delegation of contracting authority under ORS 279A.075 and 332.075, Contracts for Personal ~~Services~~services, and ethics in District Contracting.

PPS 46-0100 Application

(1) Pursuant to ORS 279A.065(5), the District hereby adopts its own ~~Public Contracting Rules ("Rules~~public contracting rules ("rules" or "a ~~Rule~~rule"). Pursuant to ORS 279A.065(1), the Attorney General's Model Rules do not apply to the District. Pursuant to ORS 279A.065(5), the District adopts these ~~Rules~~rules. These ~~Rules~~rules consist of the following ~~three Divisions~~four divisions:

- **(a)** Division 46 applies to all Public Contracts and implements ORS 279A.
- **(b)** Division 47 applies only to Public Contracts for ~~Goods and Services~~goods or services and implements ORS 279B.
- **(c)** Division 48 applies only to Public Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying ~~Services~~services and related service contracts and implements ORS 279C.100 through 279C.125
- **(d)** Division 49 applies only to Public Contracts for ~~Public Improvements~~Construction services and implements ORS 279C.300 through 279C.910.

(2) Most of these ~~Rules~~rules are adapted from the Attorney General's Model Rules and the numbering generally tracks the numbering in OAR Chapter 137 ~~Divisions~~divisions 46, 47, 48, and 49. Except where these ~~Rules~~rules differ from the Model Rules, the District intends its ~~Rules~~rules to be interpreted consistently with the Model Rules.

(3) These ~~Rules~~rules apply to Public Contracts first advertised on or after ~~July~~January 1, ~~2019~~2024.

(4) The District shall review the ~~Rules~~rules each time the Attorney General modifies the Model Rules to ensure compliance with statutory changes. The District may adopt other ~~Rules~~rules, and modify as necessary, to carry out the provisions of the Public Contracting Code pursuant to ORS 279A.070.

PPS 46-0110 Definitions

As used in the Public Contracting Code and ~~Divisions~~divisions 45, 46, 47, 48, and 49 of these ~~Rules~~rules, unless the context or a specifically applicable definition requires otherwise:

(1) ~~"~~**Addendum**~~"~~ or ~~"~~**Addenda**~~"~~ means an addition to or deletion ~~to~~from, a material change in, or general interest explanation of a Solicitation Document.

(2) ~~"~~**Administering Contracting Agency**~~"~~ means a governmental body in this state or in another jurisdiction that solicits and establishes the Original Contract for ~~Procurement of Goods, Services~~procurement of goods, services, or Public Improvements in a Cooperative ~~Procurement. "~~procurement. Administering Contracting Agency~~"~~ includes, for Interstate Cooperative ~~Procurements~~procurements, any governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations, to enter into Public Contracts.

(3) **"Award"** means, as the context requires, either the act or occurrence of the District's identification of the Person with whom the District ~~will~~shall enter into a Contract following the resolution of any protest of the District's selection of that Person and the completion of all Contract negotiations.

(4) **Benefit company** means a corporation or a limited liability company that is incorporated, organized, formed or created under ORS 60.754 and the corporation's articles of incorporation state that the corporation is a benefit company subject to ORS 60.750 to 60.770.

(5) **"Bid"** means a ~~Written~~written response to an Invitation to Bid.

(6) **"Bidder"** means a Person who submits a Bid in response to an Invitation to Bid.

(7) **"Brand Name or Equal Specification"** is defined in ORS 279B.200(1) and means a ~~Specification~~specification that uses one or more manufacturers' names, makes, catalog numbers, or similar identifying characteristics to describe the standard of quality, performance, functionality, or other characteristics needed to meet the District's requirements, and that authorizes Offerors to offer ~~Goods and Services~~goods or services that are equivalent or superior to those named or described in the ~~Specification~~specification.

(8) **"Brand Name Specification"** is defined in ORS 279B.200(2) and means a ~~Specification~~specification limited to one or more products, Brand Names, makes, manufacturers' names, catalog numbers, or similar identifying characteristics.

(9) **"CFR"** means the Code of Federal Regulations of the United States of America.

(10) **"Class Special ~~Procurement"~~procurement** is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065, and 279B.070, and is for the purpose of entering into a series of Contracts over time or for multiple ~~Projects~~projects for the acquisition of a specified class of ~~Goods~~goods or ~~Services~~services.

(11) **"Closing"** means the date and time ~~announced~~specified in a Solicitation Document as the deadline for submitting Offers.

(12) **"Code~~" or "~~** means the Public Contracting Code~~" is defined in ORS 279A.010 and means ORS Chapters 279A, 279B, and 279C.~~.

(13) **"Competitive ~~Sealed Bidding"~~ ~~is a Procurement~~sealed bidding** is a procurement process where a Contract is ~~Awarded~~awarded based on price pursuant to the lowest Responsive and Responsible ~~Bidder~~bidder.

(14) **"Competitive Range"** means the Proposers with whom the District ~~will~~shall conduct discussions or negotiations if the District intends to conduct discussions or negotiations in accordance with PPS 47-0261 or 49-0650~~. The size of the Competitive Range must be stated in the Solicitation Document.~~

(15) **Contract** means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by the District of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(16) ~~**(14) "**~~**Contract Price"** means, as the context requires, the maximum monetary obligation that the District either will or may incur under a Contract, including bonuses, incentives, and contingency amounts, if the Contractor fully performs under the Contract.

(17) ~~**(15) "**~~**Contract Review Board"** or **"Local Contract Review Board"** means the District Board of Directors acting as the Local Contract Review Board for the District under ORS 279A.060.

(18) ~~**(16) "Contracting Agency"**~~ is defined in ORS 279A.010(1)(b) and means a Public Body authorized by law to conduct a ~~Procurement. "~~procurement. Contracting Agency~~"~~ includes, but is not limited to, the Director of the Oregon Department of Administrative ~~Services~~services and any Person authorized by a Contracting Agency to conduct a ~~Procurement~~procurement on the Contracting Agency's behalf. ~~"~~Contracting Agency~~"~~ does not include the judicial department or the legislative department.

(19) ~~**(17) "Contractor"**~~ means the Person with whom the District enters into a Contract and is interchangeable with "Consultant" and "Provider."

(20) ~~**(18) "Cooperative Procurement"**~~**procurement** is defined in ORS 279A.200 and means a ~~Procurement~~procurement conducted by an Administering Contracting Agency on behalf of one or more governmental bodies. "Cooperative ~~Procurement~~procurement" includes, but is not limited to, multi-party Contracts and Price Agreements. "Cooperative ~~Procurement~~procurement" does not include an agreement formed among only governmental bodies under ORS ~~Chapter~~chapter 190 or other legal authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.

(21) ~~**(19) "Cooperative Procurement**~~**procurement Group"** means a group of authorized Contracting Agencies or other governmental body, domestic or foreign, joined through an intergovernmental agreement for the purposes of facilitating Cooperative ~~Procurements~~procurements pursuant to ORS 279A.200.

(22) ~~**(20) "Days"**~~ means calendar ~~Days~~days, except as otherwise specified in these rules.

(23) ~~**(21) "Designated Procurement Officer"**~~ means the individual designated and authorized by the Superintendent to perform certain ~~Procurement~~procurement functions described in these ~~Rules~~rules.

(24) ~~**(22) "Descriptive Literature" means the Offeror's materials submitted to provide information concerning the Goods and Services available in response to a solicitation.**~~ means the written information submitted with the Offer that addresses the goods and services included in the Offer.

(25) ~~**(23) "District"**~~ means School District No. 1J, Multnomah County, Oregon, doing business as Portland Public Schools.

~~**(24) "District Price Agreement"** means a Price Agreement issued by the District. Such Agreements may result from a Cooperative Procurement.~~

(26) ~~**"Disqualification"**~~ means a disqualification, suspension, or ~~debarment~~Debarment pursuant to ORS 200.065, 200.075, or 279A.110, or PPS 46-0210.

(27) ~~**"Electronic Advertisement"**~~ means the District's Solicitation ~~Documents or Request for Quotes~~Document, Request for quotes, Request for Information, or other document inviting participation in the District's ~~Procurements~~procurements available over the Internet via (a) the World Wide Web~~, (b) ORPIN, or (c) an Electronic Procurement~~ or some other internet protocol or (b) the District's electronic procurement System~~ other than ORPIN~~.

(28) ~~**"Electronic Offer"**~~ means a response to the District's Solicitation ~~Documents~~Document or Request for ~~Quotes~~quotes submitted to the District via (a) the World Wide Web or some other ~~Internet~~internet protocol or (b) ~~an Electronic Procurement System utilized by the District~~the District's electronic procurement System.

(29) ~~**"Electronic Procurement System"**~~ means ~~ORPIN or other system constituting~~ an information system that Persons may access through the Internet, using ~~HTTP (i.e.,~~ the World Wide Web~~), Telnet,~~ or some other Internet protocol, or that Persons may otherwise remotely access using a computer~~. An Electronic Procurement System~~ that enables Persons to send Electronic Offers and the District to post Electronic Advertisements, receive Electronic Offers, and conduct ~~any~~other activities related to ~~Procurement~~a procurement.

(30) **"Emergency"** means circumstances that:

(a) Could not have been reasonably 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.

(31) **"Emergency ~~Procurement~~"procurement** means a sourcing method pursuant to ORS 279B.080.

(32) **"Energy Savings Performance Contract"** means a Public Contract between the District and a Qualified Energy ~~Service~~service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(33) **"Engineer"** is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(2).

(34) **"Facsimile"** means an exact reproduction or copy of graphic or verbal material converted into electrical signals that are transmitted via telephone to produce a paper copy of the material on the receiving fax machine.

(35) **"Federal ~~Award~~"award** is defined in 2 CFR §200.38 and means, depending on the context, in either paragraph (a) or (b) of this section:

(a)

(i) The Federal financial assistance that that the District receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR §200.101 Applicability (such as the State of Oregon); or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that the District receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR §200.101 (Applicability).

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR §200.40 (Federal financial assistance), or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) "Federal ~~Award~~award" does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

(36) **"Findings"** is defined in ORS 279C.330 and means the justification for an exemption from ~~Competitive~~competitive Bidding for a Contract for a Public Improvement that includes, but is not limited to, information regarding:

(a) Operational, budget, and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(37) "Flexible Services Contractor Pool" or **"FSCP"** is a list of qualified contractors determined pursuant to a Request for Qualifications or other method of competitive solicitation with whom the Superintendent may enter into a Contract as provided for in these ~~Rules~~rules.

(38) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund, or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in ~~Writing~~writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide Fringe Benefits, but only when the Contractor or subcontractor is not required by other federal, state, or local law to provide any of these benefits.

(39) "Good-Faith Dispute" is defined in ORS 279C.580 and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective Work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment, and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(40) "Goods" is defined in ORS 279A.010(1)(i) and means supplies, equipment, materials, and personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified herein.

(41) "Goods and Services" or **"Goods or Services"** is defined in ORS 279A.010(1)(j) and means any combinations of any of the items identified in the definitions of "~~Goods~~goods" and "~~Services~~services."

(42) "Grant" is defined in ORS 279A.010(k) and means:

(a) An agreement under which the District receives money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the District and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which the District provides money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal laws or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other

assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by the District is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement or Public Works, as defined in ORS 279C.800, or

(B) For Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) The District pays moneys that the District has received under a Grant, and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the District.

(43) "Interstate Cooperative Procurement" is defined in ORS 279A.200 and means a Permissive Cooperative ~~Procurement~~procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the participating governmental bodies are located outside of their state.

(44) "Invitation to Bid" or **"ITB"** means the Solicitation Document issued to invite Offers from prospective Contractors ~~pursuant to~~under either ORS 279B.055 or 279C.335.

(45) "Joint Cooperative Procurement" is defined in ORS 279A.200 and means a Cooperative ~~Procurement~~procurement that identifies:

(a) The participating governmental bodies or the Cooperative ~~Procurement~~procurement Group;

(b) The Contract requirements or estimated Contract requirements for Price Agreements.

(46) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(5).

(47) "~~Life-Cycle~~Life Cycle Cost" means the total cost to the District of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

(48) "Life-Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of ~~Goods and Services~~goods or services (also referred to in this ~~Rule~~rule as "product, equipment, and service, separately or in any combination thereof").

(49) "Locality" is defined in ORS 279C.800 and means the following district in which the Public Works, or the major portion thereof, is to be performed: District 2, composed of Clackamas, Multnomah, and Washington Counties.

(50) "Lowest Responsible Bidder" means the lowest ~~Bidder~~bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(c) Has not been ~~debarred~~Debarred or disqualified by the District under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised Contract is a Public Improvement Contract.

(51) **~~"~~Model Rules~~"~~** means the Attorney General's Model Rules of ~~procedure~~Procedure for Public Contracting as required under ORS 279A.065.

(52) **~~"~~Nonprofit Procurement Organization~~"~~** means a local, state, or national organization formed as a tax-exempt entity under the United States Internal Revenue Code for the purpose of conducting large-scale or volume-competitive ~~Procurements~~procurements as an agent for its governmental and/or nonprofit members in order to obtain the most favorable pricing or terms.

(53) **~~"~~Nonresident Bidder~~"~~** is defined in ORS 279A.120 and means a ~~Bidder~~bidder who is not a resident ~~Bidder~~bidder.

(54) **~~"~~OAR~~"~~** means the Oregon Administrative Rules.

(55) **~~"~~Offer~~"~~** means a ~~Written Offer~~written offer to provide ~~Goods~~goods or ~~Services~~services in response to a Solicitation Document.

(56) **~~"~~Offeror~~"~~** means a Person who submits an Offer.

(57) **~~"~~Opening~~"~~** means the date, time, and place ~~announced~~specified in the Solicitation Document for the public opening of Offers.

~~**(57) "ORPIN"** means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office.~~

(58) ~~**(58) "**~~**ORS"** means the Oregon Revised Statutes.

(59) ~~**(59) "**~~**Original Contract"** is defined in ORS 279A.200(f) and means the initial Contract or Price Agreement solicited and ~~Awarded~~awarded during a Cooperative ~~Procurement~~procurement by an Administering Contracting Agency.

(60) ~~**(60) "**~~**Permissive Cooperative Procurement~~"~~** is defined in ORS 279A.200 and means a Cooperative ~~Procurement~~procurement in which the Purchasing Contracting Agencies are not identified.

(61) ~~**(61) "**~~**Person"** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity~~. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization, or any official representative of an employee or employer association.~~

(62) ~~**(62) "**~~**Personal Services"** means the ~~Services~~services or type of ~~Services~~services performed under a Personal ~~Services~~services Contract as defined in PPS 46-0500.

(63) ~~**(63) "**~~**Personal Services Contract"** or **~~"~~PSC~~"~~** is a Contract primarily for Personal ~~Services.~~services as designated in these rules. Personal services contract does not include a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100),

(64) ~~**(64) "**~~**Prevailing Rate of Wage"** is defined in ORS 279C.800 and means the rate of hourly wage, including all Fringe Benefits, paid in the Locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(65) ~~**(65)**~~ **"Price Agreement"** means a Public Contract for the ~~Procurement of Goods and Services~~procurement of goods or services at a set price with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide ~~Goods and Services~~goods or services in which the District does not guarantee a minimum or maximum additional purchase.

(66) ~~**(66) "Procurement"**~~ is defined in ORS 279A.010(1)(w) and means the act of purchasing, leasing, renting, or otherwise acquiring ~~Goods or Services. "~~goods or services. Procurement~~"~~ includes each function and procedure undertaken or required to be undertaken by the District to enter into a Public Contract, administer a Public Contract, and obtain the performance of a Public Contract under the Public Contracting Code.

(67) ~~**(67) "Procurement Description"**~~ is defined in ORS 279B.005(1)(b) and means the words used in a solicitation to describe the ~~Goods~~goods or ~~Services~~services to be procured. "~~Procurement~~procurement Description" includes ~~Specifications~~specifications attached to or made a part of the ~~solicitation~~Solicitation.

~~**(68) "Procurement File"** is a file containing documents relating to a specific Procurement or Procurements that is maintained in the District's Procurement Division or in another District department or division that is responsible for the Procurement.~~

(68) ~~**(69) "Product Sample"**~~ means the exact ~~Goods~~goods or a representative portion of the ~~Goods~~goods offered in an Offer, or the ~~Goods~~goods requested in the Solicitation Documents as a sample.

(69) ~~**(70) "Proposal"**~~ means a ~~Written~~written response to a Request for ~~Proposals~~proposal.

(70) ~~**(71) "Proposer"**~~ means a Person who submits a ~~Proposal~~proposal in response to a Request for ~~Proposals~~proposal.

(71) ~~**(72) "Public Agency"**~~ is defined in ORS 279C.800(5) and means the State of Oregon or any political subdivision thereof, or any county, city, district, authority, public corporation, or entity, and any instrumentality thereof organized and existing under law or charter.

(72) ~~**(73) "Public Body"**~~ is defined in ORS 279A.010(1)(y) and has the meaning given that term in ORS 174.109.

~~**(74) "Public Contract"** or **"Contract"** means, except where these Rules otherwise expressly indicate, a "Public Contract" as defined in ORS 279A.010 and means a sale or other disposal, or a purchase, lease, rental, or other acquisition by the District of personal property, Services, including Personal Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants.~~

(73) ~~**(75) "Public Contracting"**~~ is defined in ORS 279A.010(1)(aa) and means ~~Procurement~~procurement activities described in the Public Contracting Code relating to obtaining, modifying, or administering Public Contracts or Price Agreements.

(74) ~~**(76) "Public Improvement"**~~ is defined in ORS 279A.010 and means a ~~Project~~project for construction, reconstruction, or major renovation on real property by or for the District. "Public Improvement" does not include:

(a) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to ~~Project~~project design or inspection; or

(b) Emergency Work, minor alteration, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(75) ~~**(77) "Public Improvement Contract"**~~ means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(76) ~~**(78)**~~ **(a)** ~~"~~**Public Works"** ~~–~~ is defined in ORS 279C.800 and includes, but is not limited to:

(A) 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;

(B) A ~~Project for the construction, reconstruction,~~project that uses $750,000 or more funds of a public agency for constructing, reconstructing, painting or performing a major renovation~~, or painting of a privately owned~~ on a road, highway, building, ~~or~~ structure ~~of any type that uses funds of a private entity and $750,000 or more of funds of a Public Agency; or~~, or improvement of any;

(C) A ~~Project for the~~project that uses funds of private entity for construction ~~of~~ a privately owned road, highway, building, structure, or improvement of any type ~~that uses funds of a private entity and in which~~a public agency will use or occupy 25 percent or more of the square footage of the completed ~~Project will be occupied or used by a Public Agency.~~project;

(D) Notwithstanding the provisions of ORS 279C.810 (Exemptions) (2)(a), (b) and (c), a device, structure or mechanism, or a combination of devices, structures or mechanisms, that:

(i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures or buildings that a public body, as defined in ORS 174.109 ("Public body" defined), owns; or

(E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (Exemptions) (2)(b) and (c), construction, reconstruction, painting or major renovation of a road, highway, building, structure or improvement of any type that occurs, with or without using funds of a public agency, on real property that a public university listed in ORS 352.002 (Public universities) owns.

(b) ~~"~~Public Works~~"~~ ~~–~~ does not include:

(A) ~~The reconstruction or renovation of~~Reconstructing or renovating privately owned ~~real~~ property that ~~is leased by a Public Agency~~a public agency leases; or

(B) ~~The renovation by a~~A private nonprofit ~~entity~~entity's renovation of publicly owned real property that is more than 75 years old if:;

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a Public Agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

(77) ~~**(79)**~~ ~~**"Purchase Order"**~~ ~~–~~ means the District's document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. The District's use of a Purchase Order ~~must~~shall comply with the Public Contracting Code and these ~~Rules~~rules.

(78) ~~**(80) "Purchasing Contracting Agency"**~~ is defined in ORS 279A.200(1)(h) and means a governmental body that procures ~~Goods, Services~~goods, services, or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

(79) ~~**(81) "QBS"**~~ means the qualifications-based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services and Related ~~Services~~services Contracts under certain circumstances.

(80) ~~**(82) "Recycled Material"** means any material that would otherwise be a useless, unwanted, or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.~~**Materials** means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(81) ~~**(83) "Recycled Product"**~~ is defined in ORS 279A.010(1)(ii) and means all materials, ~~Goods~~goods, and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste, with not less than 10 percent of its total weight consisting of Post-consumer Waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(82) ~~**(84) "Request for Proposals"**~~**Proposal** or ~~**"RFP"**~~ is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(83) ~~**(85) "Request for Qualifications"**~~ or ~~**"RFQ"**~~ means a ~~Written~~written document issued by the District to which Contractors respond in ~~Writing~~writing by describing their experience with and qualifications for the ~~Work~~services, Personal services, or Architectural, Engineering or Land Surveying services, or Related services, described in the ~~Solicitation Document~~solicitation document.

(84) ~~**(86) "Request for Quotes"**~~ means a ~~Written~~written or oral request for prices, rates, or other conditions under which a potential Contractor would provide ~~Goods~~goods or perform ~~Services~~services, Personal ~~Services~~services, or Public Improvements described in the request.

(85) ~~**(87) "Responsible"**~~ means meeting the standards set forth in PPS 47-0640 or 49-0390(2), and not ~~debarred~~Debarred or disqualified by the District under PPS 47-0575 or 49-0370.

(86) ~~**(88) "Resident Bidder"**~~ is defined in ORS 279A.120 and means a ~~Bidder~~bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state, and has stated in the ~~Bid~~bid whether the ~~Bidder~~bidder is a "Resident ~~Bidder~~bidder."

(87) ~~**(89) "Responsible Offeror"** (also **"Responsible Bidder"** or **"Responsible Proposer"** as applicable)~~ means a Person who has submitted an Offer and met the standards set forth in PPS 47-0500 or PPS 49-0390(2), and who has not been ~~debarred~~Debarred or disqualified by the District under PPS 47-0575 or 49-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.

(88) ~~**(90)**~~ **"Responsive"** means having the ~~characteristics~~characteristic of substantial ~~completion~~compliance in all material respects with applicable solicitation requirements.

(89) ~~**(91)**~~ **"Responsive Offer"** ~~(also, "~~means, as the context requires, a Responsive Bid~~" or ",~~ Responsive Proposal,~~" as applicable) means an~~ or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(90) ~~**(92) "Retainage"**~~ is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the Contract by the District.

(91) ~~**(93) "Revenue Contract"**~~ means a Contract where the District is providing ~~Goods~~goods or ~~Services~~services to another party for compensation. Revenue Contracts are typically intergovernmental agreements with other education or education-related social service providers, or Contracts with other community partners in furtherance of the District's educational mission.

(92) ~~**(94) "School Board"**~~ means the District Board of Directors acting as the governing body of the District pursuant to ORS ~~Chapter~~chapter 332.

(93) ~~**(95) "Secondary Waste Content"**~~ or ~~**"Secondary Waste Materials"**~~ is defined in ORS 279A.010(1)(jj) and means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process, such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(94) ~~**(96) "Services"**~~ is defined in ORS 279A.010(1) and means ~~Services~~services other than Personal ~~Services~~services designated under PPS 46-0500 and ORS 279A.055.

(95) ~~**(97) "Signature"**~~ means any ~~Written~~written mark, word, or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a ~~Written~~written document to which the Person intends to be bound.

(96) ~~**(98) "Signed"**~~ means, as the context requires, that a ~~Written~~written document contains a ~~Signature~~signature or that the act of making a ~~Signature~~signature has occurred.

(97) ~~**(99) "Solicitation Document"**~~ means an Invitation to Bid, a Request for ~~Proposals~~proposals, Request for ~~Quotes~~quotes, or other similar document issued to invite Offers from prospective Contractors ~~pursuant to~~under ORS ~~Chapters~~chapter 279B or 279C. The following are not "Solicitation Documents" unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of ~~Bidders~~bidders, a request for information, a sole-source notice, an approval of a Special ~~Procurement~~procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(98) **Solicitation file** is a physical or electronic file containing documents relating to a specific procurement or procurements that is maintained in the District's procurement Division or in another District department or division that is responsible for the procurement.

(99) ~~**(100) "Specifications"**~~ means, with respect to ~~Goods~~goods or ~~Services~~services, any description of the physical or functional characteristics of, or of the nature of, ~~Goods and Services~~goods or services to be procured by the District, including any requirement for inspecting, testing, or preparing ~~Goods or Services~~goods or services for delivery and the quantities or qualities of materials to be furnished under the Contract. See ORS 279B.200(3). With respect to Public Improvements, "~~Specifications~~specifications" generally means any description of the result to be obtained and may, on occasion, describe the method and manner of doing the ~~Work~~work to be performed.

(100) ~~**(101) "Superintendent"**~~ means the District Superintendent or the Superintendent's designee.

(101) ~~**(102) "Uniform Guidance"**~~ means 2 CFR Part 200—Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal ~~Awards~~awards. The Uniform Guidance applies to all District Contracts funded in whole or in part by Federal ~~Award~~award.

(102) :

(a) **Veteran** means an individual who Served on active duty with the Armed Forces of the United States:

(A) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(B) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(C) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(D) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(E) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(i) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions;

(ii) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs;

(iii) Is a disabled veteran, as defined in ORS 408.225; or

(iv) Has been a reserve officer or member of a National Guard unit for at least five years before the individual seeks a certification under ORS 200.055.

(b) As used in paragraph (a) of this subsection, "active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(103) ~~**(103) "Work"**~~ means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.

(104) ~~**(104) "Writing"**~~ means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(105) ~~**(105)**~~ **"Written"** means existing in ~~Writing~~writing.

PPS 46-0120 Policy

The District shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these ~~Rules~~rules.

PPS 46-0130 Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, the District ~~must~~shall exercise all rights, powers, and authority related to Public Contracting in accordance with the Public Contracting Code and these ~~Rules~~rules.

(2) The District may make a ~~Procurement without Competitive Sealed Bidding, Competitive Sealed~~procurement without competitive sealed bidding, competitive sealed Proposals, or other competition required under ORS 279B.050 through 279B.085 or PPS 47-0255 through 47-0670, provided the ~~Procurement~~procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347), or other federal law that is, as determined by the Local Contract Review Board, similar to 10 U.S.C. 381 or ~~Section~~section 211 of the Electronic Government Act of 2002, in effectuating or promoting transfers of property to the District.

(3) Except as expressly provided herein, these ~~Rules~~rules do not apply to the Contracts or classes of Contracts described in ORS 279A.025(2), including the following District Contracts:

(a) Contracts between the District and:

(A) Another Contracting Agency;

(B) The Oregon Health and Science University;

(C) A public university listed in ORS 352.002

(D) ~~(C)~~ The Oregon State Bar;

(E) ~~(D)~~ A governmental body of another state;

(F) ~~(E)~~ The federal government;

(G) ~~(F)~~ An American Indian tribe or an agency of an American Indian tribe;

(H) ~~(G)~~ A nation, or a governmental body in a nation, other than the United States; or

(I) ~~(H)~~ An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

(iii) An American Indian tribe or an agency of an American Indian tribe;

(iv) A nation other than the United States; or

(v) A governmental body in a nation other than the United States.

(b) Agreements authorized by ORS ~~Chapter~~chapter 190 or by a statute, charter provision, ordinance, or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

(c) Insurance and ~~Service~~service Contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection;

(d) Grants;

(e) Contracts for professional or expert witnesses or Consultants to provide ~~Services~~services or testimony relating to existing or potential litigation or legal matters in which a Public Body is or may become interested;

(f) Acquisitions or disposals of real property or interest in real property;

(g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(h) Contracts for the ~~Procurement~~procurement or distribution of textbooks;

(i) ~~Procurements~~procurements by the District from an Oregon Corrections Enterprises program;

(j) Contracts, agreements, or other documents entered into, issued, or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a Public Body;

(B) ~~The making of program~~Program loans and similar extensions or advances of funds, aid, or assistance ~~by~~that a Public Body makes to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by a Public Body as authorized by law, and other financial transactions of a Public Body that by their character cannot practically be established under the competitive Contractor selection procedures of ORS 279B.050 through 279B.085;

(k) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303, and 243.565;

(l) Contracts for employee benefit plans as provided in ORS 243.860 through 243.886; or

(m) Any other Public Contracting of a Public Body specifically exempted from the Code by another provision of law.

(4) ~~Except as expressly provided herein, these Rules~~Rules adopted to implement ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to Contracts ~~entered into pursuant to~~made with qualified non-profit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 through 279.855.

MINORITIES, WOMEN, AND EMERGING SMALL BUSINESSES

PPS 46-0210 Subcontracting to and Contracting With Emerging Small Businesses; Disqualification

~~**(1)** As set forth in ORS 279A.105, the District may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:~~

~~**(a)** A business enterprise that is certified under ORS 200.055 as an emerging small business; or~~

~~**(b)** A business enterprise that is:~~

~~**(A)** Certified under ORS 200.055 as an emerging small business; and~~

~~**(B)** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development District.~~

(1) ~~**(2)** A~~For the purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or

(b) The Contractor certifies in ~~Writing~~a signed writing to the District that a substantial number of the subcontractor's employees, or subcontractors that will manufacture ~~the Goods or complete the Services~~or provide the goods or perform the services or Personal services under the Contract~~,~~ reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the District ~~must~~shall determine in each particular instance what proportion of a Contractor's or subcontractor's employees or subcontractors constitutes a substantial number.

(2) ~~**(3)** The~~ District ~~must~~shall include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the District, that the Offeror has not discriminated and will not discriminate against a subcontractor in the ~~Awarding~~awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a ~~disadvantaged~~disadvantaged business enterprise, a minority-owned

business, a women-owned business, an emerging small business or a veteran-owned business ~~enterprise that a service-disabled veteran owns~~.

(3) ~~**(4)**~~ **Disqualification**.

(a) The District may disqualify a Person from consideration for ~~Award~~award of the District's Contracts under ORS 200.065(5), or suspend a Person's right to ~~Bid~~bid on or participate in any ~~Public~~ Contract under ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (4)(~~d~~b) and (~~e~~c) of this ~~Rule~~rule.

~~**(b)** As provided in ORS 200.065 and 200.075, the District may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:~~

~~**(A)** For a Disqualification under ORS 200.065, the District may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another district pursuant to ORS 200.065.~~

~~**(B)** For a Disqualification under ORS 200.075, the District may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(2)(a) through (c).~~

~~**(c)** The District may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.~~

(b) ~~**(d)**~~ The District ~~must~~shall provide ~~Written~~written notice to the Person of a proposed Disqualification. The District shall deliver the ~~Written~~written notice by ~~person~~personal service or by registered or certified mail, return receipt requested. This notice ~~must~~shall:

(A) State that the District intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in ~~Writing~~writing within the time stated in the notice and that if the District does not receive the Person's ~~Written~~written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) ~~**(e)**~~ Hearing. The District ~~must~~shall schedule a hearing upon the District's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, The District ~~must~~shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing ~~prior to the hearing~~. The Contract Review Board may hold the hearing or may designate a hearings officer to conduct the hearing.

(d) ~~**(f)**~~ Notice of Disqualification. The District shall provide ~~Written~~written notice of the Disqualification to the Person. The District shall deliver the ~~Written~~written notice by person service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(4) ~~**(5)**~~ **Contract and Subcontract Conditions**. If the District awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8)[2] and 200.045(3),[3] or awards a Contract under ORS 279A.100:[4]

(a) The District ~~must~~shall provide, as a material condition of the Contract:

(A) That the Contractor ~~must~~shall maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor ~~must~~shall promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or ORS 279C.570 and 279C.580, whichever apply to the Contract;

(C) That the Contractor ~~must~~shall include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the District may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to ~~Section~~section (5) of this rule, the District ~~must~~shall verify the Contractor's and any subcontractor's compliance with Subsection (5)(a) of this rule.

(c) Subparagraph (~~5~~4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This ~~Section~~section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

CONTRACT PREFERENCES

PPS 46-0300 Preference for Oregon Goods ~~and~~or Services~~; Nonresident Bidders~~

(1) Tiebreaker Preference and Award When Offers Identical. Under ORS 279A.120, when the District receives Offers ~~that are~~ identical in price, fitness, availability, and quality and chooses to ~~Award~~award a Contract, the District ~~must Award~~shall award the Contract based on the following order of precedence:

(a) The District ~~must Award~~shall award the Contract to the Offeror among those submitting identical Offers ~~that~~who is offering ~~Goods and Services~~goods or services, or both, or Personal services that are manufactured, produced, or to be performed in Oregon.

[2] A bidder or proposer that the Governor's Policy Advisor for Economic and Business Equity determines has undertaken both a policy and a practice of actively pursuing participation by minority-owned businesses, women-owned businesses, businesses that ~~service-disabled~~ veterans own or emerging small businesses in all of the bidder's or proposer's bids or proposals, both public and private.

[3] A bidder or proposer has made good faith efforts to encourage required participants to participate by taking all of the actions list in ORS 200.045(3).

[4] An affirmative action program adopted under ORS 279A.100 for goods and services contracts or any other contract under $50,000.

(b) If two or more Offerors submit identical Offers and they all offer ~~Goods~~goods or ~~Services~~services, or both, or Personal ~~Services~~services, that are manufactured, produced, or to be performed in Oregon, the District ~~must Award~~shall award the Contract by drawing lots among the identical Offers. The District ~~will~~shall provide the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the District receives identical Offers and none of the identical Offers offer ~~Goods~~goods or ~~Services~~services, or both, or Personal ~~Services~~services, that are manufactured, produced, or to be performed in Oregon, then the District ~~must Award~~shall award the Contract by drawing lots among the identical Offers. The District ~~will~~shall provide to the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.

(2) Determining if Offers Are Identical. The District ~~will~~shall consider Offers identical in price, fitness, availability, and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability, and quality if the Bids are Responsive and offer the ~~Goods~~goods or ~~Services~~services, or both, or Personal ~~Services~~services, described in the Invitation to ~~Bid~~bid at the same price.

(b) Proposals received in response to a Request for ~~Proposals~~proposal are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for ~~Proposals~~proposal.

(c) Offers received in response to a Special ~~Procurement~~procurement conducted under ORS 279B.085 are identical in price, fitness, availability, and quality if, after completing the contracting procedure approved by the Contract Review Board, the District determines, in ~~Writing~~writing, that two or more Proposals are equally advantageous to the District.

(d) Offers received in response to an ~~Intermediate Procurement~~intermediate procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the District in accordance with ORS 279B.070(4).

(3) Determining if Goods or Services or Personal Services Are Manufactured or Produced in Oregon. In applying ~~Section~~section (1) of this ~~Rule~~rule, the District ~~will~~shall determine whether a Contract is predominantly for ~~Goods, Services~~goods, services, or Personal ~~Services~~services and then use the predominant purpose to determine if the ~~Goods, Services~~goods, services, or Personal ~~Services~~services are manufactured, produced, or performed in Oregon. The District may request, either in a Solicitation Document, following Closing, or at any other time the District determines is appropriate, any information the District may need to determine if the ~~Goods, Services~~goods, services, or Personal ~~Services~~services are manufactured or produced in Oregon. The District may use any reasonable criteria to determine if ~~Goods, Services~~goods, services, or Personal ~~Services are~~services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the District applies those criteria equally to each Offer.

(4) Procedure for Drawing Lots. When this ~~Rule~~rule calls for the drawing of lots, the District shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Discretionary Preference and Award. Under ORS 279A.128, the District may provide, in a Solicitation Document for ~~Goods, Services~~goods, services, or Personal ~~Services~~services, a specified percentage preference of not more than 10 percent for ~~Goods~~ (i) goods fabricated or processed entirely in Oregon or ~~Services~~services or Personal ~~Services~~services performed entirely in Oregon or (ii) for goods or

services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754 and has the majority of the benefit company's regular, full-time workforce located in this state, if the goods or services cost not more than five percent more than the goods or services available from a contractor that is not a benefit company. When the District provides for a preference under this section and more than one Offeror qualifies for the preference, the District may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The District may establish a preference percentage higher than 10 percent by ~~Written~~written order that finds ~~good cause~~Good Cause to establish the higher percentage and that explains the District's reasons and evidence for finding ~~good cause to~~Good Cause to establish a higher percentage. The District may not apply the preferences described in this section in a ~~Procurement~~procurement for Emergency Work, minor alterations, ordinary repairs or maintenance of public improvements, or construction Work that is described in ORS 297C.320.

PPS 46-0310 Reciprocal Preferences

(1) When evaluating Bids pursuant to PPS 47-0255 through 47-0257, 49-0390, or PPS 49-0640 through 49-0660, the District ~~must~~shall add a percentage increase to the Bid of a Nonresident ~~Bidder~~bidder equal to the percentage, if any, of the preference that would be given to that ~~Bidder~~bidder in the state in which the ~~Bidder~~bidder resides. The District may rely on the list prepared and maintained by the ~~state~~Oregon Department of Administrative services pursuant to ORS 279A.120(4) to determine ~~both~~ whether the Nonresident ~~Bidder's~~bidder's state gives preference to in-state ~~Bidders~~bidders and the amount of such preference.

PPS 46-0320 Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring the District to ~~Award~~award a Contract to the lowest or best Offeror, and in accordance with ~~Section~~section (2) of this ~~Rule~~rule, the District may give preference to the ~~Procurement of Goods~~procurement of goods manufactured from Recycled Materials whenever the District uses ~~Competitive Sealed Bidding or Competitive Sealed~~competitive sealed bidding or competitive sealed Proposals and as set forth in this ~~Rule~~rule.

(2) In comparing ~~Goods~~goods from two or more Offerors, if at least one Offeror Offers ~~Goods~~goods manufactured from Recycled Materials and at least one Offeror does not, the District may select the Offeror offering ~~Goods~~goods manufactured from Recycled Materials if each of the following four conditions exists:

- **(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 5 percent, or a higher percentage if a ~~Written~~written determination is made by the District and set forth in the Solicitation Document. For purposes of making the foregoing determination, the District ~~must~~shall consider the costs of the ~~Goods~~goods following any adjustments the District makes to the price of the ~~Goods~~goods for purposes of evaluation pursuant to PPS 46-0310.

(3) Offerors ~~must~~shall certify in their Offers:

- **(a)** The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and
- **(b)** Both the post-consumer and Secondary Waste Content thereof.

(4) To be eligible for a preference under ORS 279A.125 and this ~~Rule~~rule:

- **(a)** The Offeror ~~must~~shall indicate which materials and supplies contain verifiable recycled content; and

(b) Such products ~~must~~shall meet the requirements of ORS 279A.125 and this ~~Rule~~rule.

(5) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.

(6) Offers that contain false information about (a) the percentage of Recycled Product, post-consumer, and Secondary Waste Content or (b) verifiable recycled content, ~~must~~shall be rejected as non-responsive, and the Offeror offering false information may be deemed non-responsible.

PPS 46-0330 Solicitations and Specifications to Comply With School Board Environmental and Sustainability Policies.

The District shall develop specifications for and procure ~~Goods, Services~~goods, services, and Public Improvements in compliance with the applicable School Board environmental and sustainability policies, including, but not limited to Board Policy 3.30.080-P (Resource Conservation), 3.30.082-P (Environmentally Sustainable Business Practices), and 8.80.010-P (High Performance Facility Design), and related Administrative Directives adopted by the Superintendent.

COOPERATIVE PROCUREMENT

PPS 46-0400 Authority for Cooperative Procurements

(1) The District may participate in, sponsor, conduct, or administer any of the following:

(a) Joint Cooperative ~~Procurements~~procurements to establish Original Contracts or Contracts for the acquisition of ~~Goods and Services~~goods or services using a source-selection method substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085, or to establish Original Contracts or Contracts for Public Improvements that use a ~~Competitive~~competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.

(b) Permissive Cooperative ~~Procurements~~procurements to establish Original Contracts or Contracts for the acquisition of ~~Goods and Services~~goods or services only, using a source-selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(c) Interstate Cooperative ~~Procurements~~procurements to establish Original Contracts or Contracts for the acquisition of ~~Goods and Services~~goods or services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(2) The District ~~must~~shall determine, in ~~Writing~~writing, whether the ~~solicitation and Award~~Solicitation and award process for an Original Contract arising out of a Cooperative ~~Procurement~~procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085 in accordance with ORS 279A.200(2). This ~~Written~~written documentation ~~must~~shall be maintained in the District's ~~Procurement File~~Solicitation file.

PPS 46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If the District is an Administering Contracting Agency of a Cooperative ~~Procurement~~procurement, the District may establish the conditions under which Persons may participate in the Cooperative ~~Procurement~~procurement administered by the District. Such conditions may include, without limitation, whether each Person who participates in the Cooperative ~~Procurement must~~procurement shall pay administrative fees to the Administering Contracting Agency, whether each Person ~~must~~shall enter into a ~~Written~~written agreement with the District, and any other matters related to the administration of the Cooperative ~~Procurement~~procurement and the resulting Original Contract. When acting as an Administering Contracting Agency, the District may, but is not required to, include provisions in the Solicitation Document

for a Cooperative ~~Procurement~~procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these ~~Rules~~rules.

(2) If the District is acting as a Purchasing Contracting Agency and enters into a Contract based on a Cooperative ~~Procurement~~procurement, the District shall comply with the Code and these ~~Rules~~rules, including, without limitation, those sections of the Code and these ~~Rules~~rules that govern:

(a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative ~~Procurement~~procurement;

(b) The advertisement of the Solicitation Document related to the Cooperative ~~Procurement~~procurement; and

(c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative ~~Procurement~~procurement.

PPS 46-0420 Joint Cooperative Procurements

(1) Applicability. The District may participate in, sponsor, conduct, or administer a Joint Cooperative ~~Procurement~~procurement for the purchase of ~~Goods~~goods or ~~Services~~services or Public Improvements. The District ~~must~~shall comply with the procedures set out in ORS 279A.210 and these ~~Rules~~rules to procure ~~Goods and Services~~goods or services or Public Improvements using a Joint Cooperative ~~Procurement~~procurement. Only the Participating agencies listed in the ~~solicitation~~Solicitation and original Contract Documents may enter into a Contract through a Joint Cooperative ~~Procurement~~procurement. A Joint Cooperative ~~Procurement~~procurement may not be a Permissive Cooperative ~~Procurement~~procurement.

(2) Solicitation Requirements. The District may administer or participate in a Joint Cooperative ~~Procurement~~procurement only if:

(a) The Administering Contracting Agency's solicitation and ~~Award~~award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060, or 279B.085, or uses a ~~Competitive~~competitive Bidding process substantially equivalent to the ~~Competitive~~competitive Bidding process in ORS 279C;

(b) The Administering Contracting Agency's solicitation and the Original Contract or Price Agreement identifies the Cooperative ~~Procurement~~procurement Group or each participating Purchasing Contracting Agency and specifies the estimated Contract requirements; and

(c) No material change is made in the terms, conditions, or prices of the Contract between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

PPS 46-0430 Permissive Cooperative Procurements

(1) Applicability. The District may only participate in, sponsor, conduct, or administer a Permissive Cooperative ~~Procurement~~procurement for the purchase of ~~Goods~~goods or ~~Services~~services, but not for Public Improvements. The District ~~must~~shall comply with the procedures set out in ORS 279A.215 and these ~~Rules~~rules to procure ~~Goods and Services~~goods or services using a Permissive Cooperative ~~Procurement~~procurement. A Permissive Cooperative ~~Procurement~~procurement is not a Joint Cooperative ~~Procurement~~procurement.

(2) Solicitation Requirements. The District may establish or participate in a Contract or Price Agreement through a Permissive Cooperative ~~Procurement~~procurement only if:

(a) The Administering Contracting Agency's solicitation and ~~Award~~award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The Administering Contracting Agency's solicitation and the Original Contract allow other Contracting Agencies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract;

(c) The Contractor agrees to extend the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency; and

(d) No material change is made in the terms, conditions, or prices of the Contract or Price Agreement between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

PPS 46-0440 Required Public Notice if Permissive Cooperative ~~Procurement~~procurement Is Over $250,000

(1) The District ~~must~~shall publish a notice of its intent to enter into a Contract through a Permissive Cooperative ~~Procurement~~procurement if the District estimates that it will spend in excess of $250,000 for the purchase of the ~~Goods and Services~~goods or services to be acquired under the Contract.

(2) For purposes of determining if the District ~~must~~shall give a notice of intent, the District ~~will~~shall spend in excess of $250,000 for ~~Goods and Services~~goods or services procured under the Contract if:

(a) The District intends to make payments, in aggregate, over the term of the Contract in excess of $250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;

(b) The District's Contract expressly provides for payment, whether a fixed or maximum price, in excess of $250,000; or

(c) At the time the District enters into the Contract, the District reasonably contemplates, based on historical or other data available to the District, that the total payments it will make for the ~~Goods~~goods or ~~Services~~services, or Personal ~~Services~~services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(3) The notice of intent ~~must~~shall contain the following information:

(a) A description of the ~~Procurement~~procurement;

(b) An estimated amount of the ~~Procurement~~procurement;

(c) The name of the Administering Contracting Agency, and

(d) A time, place, and date by which comments ~~must~~shall be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Permissive Cooperative ~~Procurement~~procurement.

(4) The notice ~~must~~shall be published:

(a) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of Invitations to Bid or Requests for Proposals; and

(b) No fewer than seven ~~Days~~days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative ~~Procurement~~procurement.

(5) Vendors ~~must~~shall submit comments within seven ~~Days~~days after the notice of intent is published.

(6) If the District receives comments on its intent to establish a Contract, the District ~~must~~shall, prior to establishing a Contract or Price Agreement:

(a) Make a ~~Written~~written determination that establishing a Contract is in the best interest of the District.

(b) Provide a copy of the ~~Written~~written determination to all vendors that submitted comments.

PPS 46-0450 Interstate Cooperative Procurements

(1) Applicability. The District may only participate in an Interstate Cooperative ~~Procurement~~procurement for the purchase of ~~Goods and Services~~goods or services pursuant to ORS 279A.220 and these ~~Rules~~rules to procure ~~Goods~~goods or ~~Services~~services, but not Public Improvements.

(2) Solicitation Requirements. The District may establish a Contract or Price Agreement through an Interstate Cooperative ~~Procurement~~procurement only if:

(a) The Administering Contracting Agency's solicitation and ~~Award~~award process for the Original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The Administering Contracting Agency's solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract; and

(c) The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency.

PPS 46-0460 Advertisements of Interstate Cooperative Procurements

The District may only participate in an Interstate Cooperative ~~Procurement~~procurement if at least one of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative ~~Procurement~~procurement lists the District, or the Cooperative ~~Procurement~~procurement Group of which the District is a member, as a party that may establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The District;

(c) The Cooperative ~~Procurement~~procurement Group, or a member of the Cooperative ~~Procurement~~procurement Group of which the District is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with PPS 46-0460(1), the District gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative ~~Procurement~~procurement.

(a) The notice of intent ~~must~~shall contain the following information:

(A) A description of the ~~Procurement~~procurement;

(B) An estimated amount of the ~~Procurement~~procurement;

(C) The name of the Administering Contracting Agency, and;

(D) A time, place, and date by which comments ~~must~~shall be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Interstate Cooperative ~~Procurement~~procurement.

(b) The notice ~~must~~shall be published:

(A) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of ITB or RFP; and

(B) No fewer than seven ~~Days~~days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative ~~Procurement~~procurement.

(c) Vendors ~~must~~shall submit comments within seven ~~Days~~days after the notice of intent is published.

(d) If the District receives comments on its ~~Intent~~intent to establish a Contract, the District ~~must~~shall, prior to establishing a Contract or Price Agreement:

(A) Make a ~~Written~~written determination that establishing a Contract is in the best interest of the District.

(B) Provide a copy of the ~~Written~~written determination to all vendors that submitted comments.

PPS 46-0470 Protest and Disputes; Cooperative Procurements

(1) An Offeror or potential Offeror wishing to protest the ~~Procurement~~procurement process, the contents of a Solicitation Document related to a Cooperative ~~Procurement~~procurement, or the ~~Award~~award or proposed ~~Award~~award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425, unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative ~~Procurement~~procurement, or disputes related to a Contract arising out of a Cooperative ~~Procurement~~procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of the District or other Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative ~~Procurement~~procurement shall not affect the rights or remedies of the District or any other Contracting Agency that participates in the Cooperative ~~Procurement~~procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative ~~Procurement~~procurement.

PPS 46-0480 Contract Amendments; Cooperative ~~Procurements~~procurements

The District may amend a Contract entered into pursuant to a Cooperative ~~Procurement~~procurement as set forth in PPS 47-0800 or PPS 49-0910, as applicable.

PERSONAL SERVICES CONTRACTS

PPS 46-0500 Personal Services Contract Definition

(1) Pursuant to ORS 279A.055(2), a Contract for Personal ~~Services~~services ("PSC") is a Contract primarily for the provision of Services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of ~~Services~~services depends on attributes that are unique to the service provider.

(2) PSCs that fall within the definition in ~~Section~~section (1) of this ~~Rule~~rule include, but are not limited to, the following:

- **(a)** Contracts for ~~Services~~services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant, or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying ~~Services~~services and other construction-related professional services subject to ~~Division~~division 48 of these ~~Rules~~rules;
- **(b)** Contracts for ~~Services~~services as an artist in the performing or fine arts, including any Person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
- **(c)** Contracts for ~~Services~~services that are specialized, creative, or research-oriented;
- **(d)** Contracts for educational services;
- **(e)** Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and
- **(f)** Contracts for other professional or technical consulting services not listed above.

(3) The Contract Review Board delegates to the Superintendent the discretion to decide whether a particular type of Contract or ~~Service~~service falls within the definition of "Personal ~~Services~~services Contract" as set forth in Sections (1) and (2) of this ~~Rule~~rule.

(4) The District shall not use PSCs to obtain and pay for the ~~Services~~services of an employee. A PSC may be used only to obtain and pay for the ~~Services~~services of an independent Contractor.

PPS 46-0505 Personal Service Contract Formal Selection Procedures

The District ~~will~~shall use a formal selection procedure if the estimate contract amount of personal services contract is greater than $~~150,000~~250,000. All formal RFP and RFQ solicitations ~~must~~shall comply with the requirements for ~~Competitive Sealed~~competitive sealed Proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the Sealed ~~Proposal Procurement~~proposal procurement methods set forth in PPS 47-0260 to 47-0263.

PPS 46-0510 PSC Informal Selection Procedures

The District may use an informal selection process to obtain Personal ~~Services~~services when a formal selection process is not required.

(1) The informal selection process ~~must~~shall solicit responses/Proposals from at least three qualified Contractors offering the required ~~Services~~services. If three Proposals are not reasonably available, fewer will suffice, but the District shall make a ~~Written~~written record of the effort made to obtain at least three Proposals.

(2) The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including, but not limited to, each Proposer's:

(a) Particular capability to perform the ~~Services~~services required;

(b) Experienced staff available to perform the ~~Services~~services required, including each Proposer's recent, current, and projected workloads;

(c) Performance history;

(d) Approach and philosophy used in providing ~~Services~~services;

(e) Fees or costs;

(f) Geographic proximity to the ~~Project~~project or the area where the ~~Services~~services are to be performed; and

(g) Work volume previously ~~Awarded~~awarded by the District, with the object of effecting an equitable distribution of Contracts among qualified Contractors. But distribution ~~must~~shall not violate the policy of selecting the most highly qualified Contractor to perform the ~~Services~~services at a fair and reasonable price.

Written confirmation of solicitation attempts and responses with Contractor names and addresses shall be maintained in the District's ~~Procurement File~~Solicitation file.

PPS 46-0515 Other Approved Solicitation Methods

(1) Request for Qualifications. An RFQ may be used to determine that competition does not exist for a particular ~~Service~~service, to establish a list of qualified Contractors for RFPs or for informal solicitations under these ~~Rules~~rules, or to establish an FSCP as provided in PPS 46-0520.

(a) The RFQ ~~must~~shall at least describe the particular specialty desired, the qualifications the Contractor ~~must~~shall have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the Contractor's particular capability to perform the required ~~Services~~services; the number of experienced staff available to perform the required ~~Services~~services, including specific qualifications and experience of personnel; a list of similar ~~Services~~services the Contractor has completed with references concerning past performance; and any other information necessary to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed ~~Services~~services. The RFQ ~~must~~shall include the date, time, and place of the meeting.

(c) Unless the RFQ establishes that competition does not exist or that Contracts will be individually negotiated with Contractors in an FSCP, each Contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required ~~Services~~services and have an opportunity to submit a ~~Proposal~~proposal or Price ~~Quote~~quote in response to the District's subsequent RFP.

(2) Price Agreements. The District may enter into Price Agreements for Personal ~~Services~~services. Such Price Agreements shall be solicited as otherwise required by these ~~Rules~~rules based on the maximum Contract amount.

(3) Cooperative ~~Procurement~~procurement. The District may contract for Personal ~~Services~~services pursuant to a Cooperative ~~Procurement~~procurement in compliance with PPS 46-0400 to 46-0480.

PPS 46-0520 Flexible Services Contractor Pool

The Superintendent may establish an FSCP for a particular class of ~~Services~~services where the need for such ~~Services~~services is ongoing in nature, where it is difficult to anticipate the ~~Service~~service need, time, amount,

or availability of Contractors, or where ~~Service~~service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these ~~Rules~~rules. An FSCP shall comply with the following requirements:

(1) Solicitation to Create an FSCP. An FSCP can be established pursuant to an RFQ, an RFP, ~~Competitive Quotes~~competitive quotes, or such other method of competitive ~~Procurement~~procurement as the Superintendent deems to be appropriate given the ~~Services~~services to be procured.

(a) The Superintendent shall document in the ~~Procurement File~~Solicitation file the reasons for establishing an FSCP consistent with this ~~Rule~~rule. This documentation ~~must~~shall be reviewed and approved by the Director of ~~Procurement~~procurement as demonstrating that the ~~Procurement~~procurement qualifies for use of an FSCP under these ~~Rules~~rules.

(b) The solicitation shall describe the class of Contracts that can be ~~Awarded~~awarded to Contractors in the FSCP. The District may not ~~Award~~award Contracts outside the designated class of Contracts to the FSCP.

(c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(d) The solicitation may request a binding Price ~~Quote~~quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(e) The solicitation may set or limit the value of the ~~Work~~work performed by the FSCP.

(2) Contracting for Work From an FSCP.

(a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual ~~Projects~~projects within the established scope of the ~~Work~~work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual ~~Projects~~projects will be offered, negotiated, and ~~Awarded~~awarded sequentially to Contractors on the FSCP list. Once the superintendent has offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The ~~Project~~project is for Work that is a continuation of, addition to, or connected with Work previously performed by a Contractor on the list and such prior experience means that it is in the best interest of the District to ~~Award~~award the Contract to the Contractor that performed the prior Work.

(D) The nature of the ~~Project~~project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal ~~Procurement~~procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in ~~Writing~~writing in the ~~Procurement File~~Solicitation file.

(b) An FSCP established under this section will expire after three years from the date of Closing of the ~~solicitation~~Solicitation, unless reestablished as provided in this ~~Rule~~rule.

(c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of ~~Work~~work or any Work at all.

(d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of ~~Work~~work from other Contractors through any other ~~Procurement~~procurement method authorized under these ~~Rules~~rules.

(e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of ~~Work~~work.

PPS 46-0525 PSC Selection by Negotiation

The Superintendent may procure Personal ~~Services~~services with Contractors through direct negotiation in any of the following circumstances:

(1) The Contract Price is not more than $~~50,000~~75,000.

(2) The Superintendent has established an FSCP pursuant to PPS 46-0520(2) for a particular class of ~~Projects~~projects, and the Contractor is on the FSCP list.

(3) The nature of the ~~Work~~work is not ~~Project-driven~~project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such Work include insurance brokerage/agent of record services, medical services, and audit services.

(4) The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such ~~Services~~services can include, but are not limited to, education ~~Services~~services, academic and staff coaching, school sports officiation, and community relations.

(5) The Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(6) A Contract for which a non-District funding source, e.g., a Grant or a federal, state, or city contract, identifies the Contractor in the funding award or makes a funding award conditioned upon the ~~Service~~service being performed by a specific Contractor. The following ~~must~~shall be documented to the ~~Procurement File~~Solicitation file:

(a) The name of the external funding source;

(b) The background on how the funding source selected the Contractor(s); and

(c) A copy of the funder's document naming the Contractor.

(7) A Contract where the student, parent, or other third-party participant selects the service provider and the process for selecting qualified Contractors has been approved in advance by the Director of ~~Procurement~~procurement.

(8) The Contract is entered into pursuant to an emergency declared by the Superintendent.

(9) The Contract is for the provision of child care services to District students where the Contractor is paid directly by a non-District funding source (generally parents).

(10) The Contract is for the provision of tutoring to eligible District students attending private schools as per Title I.

(11) The Contract is for interim staff or temporary staffing services.

(12) The Contract is for the provision of therapeutic placement with outside agencies or programs to meet needs identified in a student's Individualized Education Program ("IEP").

(13) The Contract is for legal services. For the purposes of this section, "legal services" means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.

(14) The Contract is for services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, laboratory technicians and those with specific license or unique skill to administer treatments for the health and well-being of people."

PPS 46-0530 PSC Contract Requirements

District PSCs ~~must~~shall contain the mandatory Contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the Contract involves lawn or landscape maintenance, ORS 279B.225.

PPS 46-0535 PSC Contract Amendments

(1) The District may amend any Personal ~~Services~~services Contract if the District, in its sole discretion, determines that the ~~Amendment~~amendment is within the scope of the Solicitation and that the ~~Amendment~~amendment would not materially impact the field of competition for the Personal ~~Services~~services described in the final form of the original ~~Procurement~~procurement document. In making this determination, the District shall consider potential alternative methods of procuring the ~~Services~~services contemplated under the proposed ~~Amendment~~amendment. An ~~Amendment~~amendment would not materially impact the field of competition for the ~~Services~~services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the ~~Procurement~~procurement document were re-issued to include the additional ~~Services~~services.

(2) The District may ~~Amend~~amend any Contract if the additional ~~Services~~services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.

(3) All ~~Amendments~~amendments to Contracts ~~must be in Writing, must be Signed~~shall be in writing, shall be signed by an authorized representative of the Consultant and the District, and ~~must~~shall receive all required approvals before the ~~Amendments~~amendments will be binding on the District.

~~**(4)** A single contract amendment or cumulative amendments may not increase the total Contract Price to greater than 125 percent of the original Contract Price, except in any of the following circumstances:~~

~~**(a)** The Superintendent determines that the need for the amendment is caused by unforeseen conditions or circumstances and conducting a new procurement would result in unreasonable additional cost or delay. For the purposes of this section:~~

~~**(A)** An "unforeseen condition or circumstance" is one that is discovered after the original contract was solicited and awarded that could not have been reasonably anticipated as part of the original solicitation or contract.~~

~~**(B)** "Unreasonable additional cost or delay" means that the cost of conducting a new procurement and/or awarding a new contract is likely to exceed the cost of a contract amendment and/or that the delay caused by conducting a new procurement would cause a break in service, require repetition of earlier work, or cause a delay in completion of the contract that would be detrimental to the District program or service benefiting from the contract.~~

~~**(b)** The Superintendent determines that the amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original contract. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or that specifically allows for alternates or additional work.)~~

~~**(c)** The Amendment is presented to the School Board as part of the Board's business consent agenda and the Board approves the Amendment based upon the circumstances of the particular contract. The Superintendent shall set forth the justification for the Amendment in a supplementary staff report enclosed with the Board's consent agenda.~~

(4) ~~**(5)**~~ **Amendments That Would Cause a Contract to Exceed the Superintendent's Authority**. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 ~~must~~shall be approved by the School Board except as provided in PPS 45-0200(7)(b).

PROCUREMENT OF CONTRACTS FUNDED IN WHOLE OR IN PART BY FEDERAL AWARD

PPS 46-0600 General Rule: Federal Law Prevails in Case of Conflict

When a District contract involves federal funds that require compliance with federal statutes or regulations, the federal statutes and regulations govern over any conflicting provisions in these rules or the State of Oregon Public Contracting Code. See ORS 279A.030. Notwithstanding the foregoing, when both state and federal prevailing rates of wage apply to a particular, the District shall require payment not less than the higher of the applicable state or federal prevailing rate of wage. See ORS 279C.830.

PPS 46-0605 ~~Procurements~~procurements Subject to the Uniform Guidance

~~Procurement~~procurement of contracts supported in whole or in part by Federal ~~Award~~award are generally subject to the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 to 200.326. PPS 46-600 to 625 are intended to comply with Uniform Guidance and supersede other District procurements with regard to procurement of contracts supported in whole or in part by Federal ~~Award~~award.

PPS 46-0610 General ~~Procurement~~procurement Standards for Contracts Subject to the Uniform Guidance

If the District contract is supported in whole or in part by a Federal ~~Award~~award, the following provisions apply to the Contract:

(1) The District shall apply the procedures in these rules to avoid acquisition of unnecessary or duplicative items. The District ~~will~~shall consolidate or break out procurements when necessary to make a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(2) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the District is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(3) The District is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(4) The District ~~will~~shall include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(5) The District ~~will~~shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(6) The District ~~will~~shall maintain records sufficient to detail the history of the particular procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(7) Time and Material Contracts.

(a) The District may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. For the purposes of this section "time and materials type contract" means a contract whose cost to the District is the sum of:

(A) The actual cost of materials; and

(B) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(b) All time and materials contract shall include a ceiling price that the contractor exceeds at its own risk.

(c) The District ~~will~~shall conduct sufficient oversight of a time a time and materials type contract to obtain reasonable assurance that the contractor is using efficient methods and cost controls.

PPS 46-0615 Required Competition

All procurement transactions for contracts supported in whole or in part by federal award ~~must~~shall be conducted in a manner providing full and open competition consistent with the standards of this section.
(1) Contractors that develop or draft specifications, requirements, statements of work, and invitations to ~~bid~~Bid or requests for proposals ~~must~~shall be prohibited from competing for such procurement.

(2) The District ~~will~~shall not unreasonable restrict competition by:

(a) Imposing unreasonable prequalification requirements;

(b) Requirement unnecessary experience and excessive bonding;

(c) Allowing or requiring non-competitive pricing practices between firms or affiliated companies;

(d) Awarding non-competitive contracts to consultants that are on retaining contracts;

(e) Allowing organizational conflicts of interest;

(f) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; or

(g) Taking any arbitrary action in the procurement process.

(3) The District may not apply any statutory or administratively imposed state or local geographical preferences except where allowed or mandated by applicable federal statutes. Nothing in this section preempts state licensing requirements. In addition, contracts for architectural and engineering services may include geographical location as a selection criterion provided its applications leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(4) A District procurement ~~must~~shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, but should not be so detailed or restrict that it unduly restricts competition; and

(b) Identify all requirements that bidders or proposers ~~must~~shall fulfill and all other factors to be used in evaluating bids or proposals.

(5) The District ~~must~~shall ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the District ~~must~~shall allow potential bidders to qualify during the ~~solicitation~~Solicitation period.

PPS 46-0620 Procurement by Micro-Purchases

~~Procurement~~procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. The current micro-purchase threshold is set at $10,000, but is periodically adjusted. The most current threshold is set forth at 48 CFR Subpart 2.101 (Definitions). To the extent practicable, the District ~~must~~shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable.

PPS 46-0625 Procurement by Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. The Simplified Acquisition threshold is set at $250,000, but is periodically adjusted. The most current threshold is set forth at 48 CFR Subpart 2.1. If small purchase procedures are used, the District ~~must~~shall obtain price or rate quotation from an adequate number of qualified sources.

PPS 46-0630 Procurement by Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) supported by a Federal ~~Award must~~award shall be awarded to the responsible bidder whose ~~bid~~Bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed ~~bid~~Bid method is the preferred method for procuring construction, if the conditions in paragraph (1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(a) A complete, adequate, and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business; and

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(a) Bids ~~must~~shall be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids ~~must~~shall be publicly advertised;

(b) The invitation for bids, which will include any specifications and pertinent attachments, ~~must~~shall define the items or services in order for the bidder to properly respond;

(c) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids ~~must~~shall be opened publicly;

(d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs ~~must~~shall be considered in determining which ~~bid~~Bid is lowest. Payment discounts will only be used to determine the low ~~bid~~Bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is a sound documented reason.

PPS 46-0635 Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used for contracts supported by a Federal ~~Award~~award, the following requirements apply:

(1) Requests for proposals ~~must~~shall be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals ~~must~~shall be considered to the maximum extent practical;

(2) Proposals ~~must~~shall be solicited from an adequate number of qualified sources;

(3) The District ~~will~~shall establish a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts ~~must~~shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Notwithstanding ORS 279C.100 to 279C.124 and OAR ~~Division~~division 48, qualifications-based selection can only be used in procurement of A/E professional services.

PPS 46-0640 Procurement by Noncompetitive Proposals

~~Procurement~~procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only for contracts supported by a Federal ~~Award~~award when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or

(4) After solicitation of a number of sources, competition is determined inadequate.

PPS 46-0645 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

(1) The District ~~must~~shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps ~~must~~shall include:

- **(a)** Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- **(b)** Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- **(c)** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (f) of this section.

PPS 46-0650 Procurement of Recovered Materials

The District and its contractors ~~must~~shall comply with ~~Section~~section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of ~~Section~~section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PPS 46-0655 Contract Cost and Price

(1) The District ~~must~~shall perform a cost or price analysis in connection with every procurement action supported by a Federal ~~Award~~award in excess of the Simplified Acquisition Threshold including contract modifications. The District ~~must~~shall make independent estimates before receiving bids or proposals.

(2) The District ~~must~~shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration ~~must~~shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under the Federal ~~Award~~award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR Subpart E—Cost Principles. The District may reference its own cost principles that comply with the Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

PPS 46-0660 Federal ~~Awarding~~awarding Agency or Pass-Through Entity Review

At the request the Federal awarding agency or the pass through entity, the District ~~will~~shall make available all relevant procurement documents for review as required by 2 CFR ~~Section~~section 200.324.

PPS 46-0665 Bonding Requirements

For construction or facility improvement contracts or subcontracts supported by a Federal ~~Award~~award exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements ~~must~~shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the ~~bid~~Bid price. The "bid guarantee" ~~must~~shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument

accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

PPS 46-0670 Mandatory Contract Provisions

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the District under a Federal ~~Award must~~award shall contain provisions covering the following, as applicable.

(1) Contracts for more than the Simplified Acquisition Threshold (see Subsection 5) ~~must~~shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(2) All contracts in excess of $10,000 ~~must~~shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 ~~must~~shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities ~~must~~shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors ~~must~~shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors ~~must~~shall be required to pay wages not less than once a week. The non-Federal entity ~~must~~shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract ~~must~~shall be conditioned upon the acceptance of the wage determination. The non-Federal entity ~~must~~shall report all suspected or reported violations to the Federal awarding agency. The contracts ~~must~~shall also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient ~~must~~shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity ~~must~~shall report all suspected or reported violations to the Federal awarding agency.

(5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers ~~must~~shall include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor

~~must~~shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic ~~must~~shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient ~~must~~shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended. Contracts and subgrants of amounts in excess of $150,000 ~~must~~shall contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations ~~must~~shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(8) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) ~~must~~shall not be made to parties listed on the government-wide exclusions in the System for ~~Award~~award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties ~~debarred~~Debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 ~~must~~shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier ~~must~~shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(10) Additional Requirements of the Specific Federal ~~Award~~award. In addition to the requirements of this section, a specific Federal ~~Award~~award may contain other procurement requirements or mandatory contract clauses. The District officer, employee, or agent that is responsible for procurement of a contract subject to a Federal ~~Award~~award shall review the requirements of the specific Federal ~~Award~~award and shall incorporate such requirements into the procurement process or proposed contract.

END OF DIVISION 46

PPS DIVISION 47

PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR SERVICES OTHER THAN PERSONAL SERVICES

PPS 47-0000 Generally

These ~~Division~~division 47 ~~Rules~~rules implement ORS 279B applicable to public ~~Procurements~~procurements for ~~Goods~~goods or ~~Services~~services, or both.

PPS 47-0250 Methods of Source Selection

(1) Except as permitted in these ~~Rules~~rules, the District ~~must Award~~shall award a Public Contract for ~~Goods~~goods or ~~Services~~services, or both, by one of the following sourcing methods:

- **(a)** Competitive ~~Sealed Bidding~~sealed bidding (also known as Invitation to Bid or ITB) pursuant to ORS 279B.055 and PPS 47-0255 and 47-0257;
- **(b)** Competitive ~~Sealed~~sealed Proposals (also known as Request for ~~Proposals~~proposal or RFP) pursuant to ORS 279B.060 and PPS 47-0260 through 47-0263;
- **(c)** Small ~~Procurements~~procurements ($~~10,000~~25,000 or less) pursuant to ORS 279B.065 and PPS 47-0265;
- **(d)** Intermediate ~~Procurements~~procurements (more than $~~10,000~~25,000 to $~~150,000~~250,000) pursuant to ORS 279B.070 and PPS 47-0270;
- **(e)** Sole-source ~~Procurement~~procurement pursuant to ORS 279B.075 and PPS 47-0275;
- **(f)** Emergency ~~Procurement~~procurement pursuant to ORS 279B.080 and PPS 47-0280;
- **(g)** Special ~~Procurement~~procurement pursuant to ORS 279B.085 and PPS 47-0285, including the Class Special ~~Procurements~~procurements set forth in PPS 47-0288; or
- **(h)** Cooperative ~~Procurement~~procurement pursuant to ORS 279A.200 and PPS 46-0400 through 46-0480.

PPS 47-0252 Procurement of Service Contracts Over $250,000 in Compliance With ORS 279B.030 Through 279B.036

(1) Unless the District determines that it is not feasible to perform the ~~Services~~services with the District's own personnel and resources pursuant to ~~Section~~section (4) of this ~~Rule~~rule, before conducting a ~~Procurement~~procurement of a Contract for ~~Services~~services with an estimated Contract Price that exceeds $250,000 the District shall conduct a ~~Written~~written cost analysis in accordance with ~~Section~~section (2) of this ~~Rule~~rule. The cost analysis ~~must~~shall compare an estimate of the District's cost in performing the ~~Services~~services with an estimate of the cost that a potential Contractor would incur in performing the ~~Services~~services. The District may proceed with the ~~Procurement~~procurement only if it determines that the District would incur more cost in performing the ~~Services~~services with its own personnel and resources than in procuring the ~~Services~~services from a Contractor. For the purposes of this section, "Contract for ~~Services~~services" does not include:

- **(a)** Contracts for Personal ~~Services~~services as defined in PPS 46-0500.
- **(b)** Contracts for ~~Services~~services exempted from compliance with the Public Contracting Code by ORS 197.025 or other state statute.
- **(c)** Procurements for Client ~~Services~~services as defined in OAR 125-246-0110. "Client ~~Services~~services" means any ~~Services~~services that directly or primarily support a Client, whether or not the Client is the recipient through the provision of voluntary or mandatory

~~Services~~services. Client ~~Services~~services also means any ~~Goods~~goods that are incidental or specialized in relation to any ~~Services~~services defined in this section. Client ~~Services~~services may include, but are not limited to (where these terms are used in another statute, they ~~must~~shall have that meaning):

(A) Housing, including utilities, rent, or mortgage, or assistance to pay utilities, rent, or mortgage;

(B) Sustenance, including clothing;

(C) Employment training or skills training to improve employability;

(D) Services for people with disabilities;

(E) Foster care or foster care facilities;

(F) Residential care or residential care facilities;

(G) Community housing;

(H) In-home care, including home-delivered meals;

(I) Medical care, services, and treatment, including, but not limited to:

(i) Medical, dental, hospital, psychological, psychiatric, therapy, vision;

(ii) Alcohol and drug treatment;

(iii) Smoking cessation;

(iv) Drugs, prescriptions, and non-prescriptions; or

(v) Nursing services and facilities.

(J) Transportation or relocation;

(K) Quality of life, living skills training;

(L) Personal care;

(M) Legal services and expert witness services;

(N) Religious practices, traditions, and services, separately or in any combination thereof; and

(O) Educational services. The term "Client ~~Services~~services" does not include benefits or services provided as a condition of employment with an agency.

(2) In the cost analysis required under ~~Section~~section (1) of this ~~Rule~~rule, the District shall consider cost factors that include the following:

(a) Cost of Using the District's Own Personnel and Resources. When estimating the District's costs of performing the ~~Services~~services, the District ~~will~~shall consider cost factors that include:

(A) Salary or wage and benefit costs for District employees who ~~are~~would be directly involved in performing the ~~Services, including~~services to the extent those costs reflect the proportion of the activity of those employees in the direct provision of services. The costs include those salary or wage and benefit costs of the employees who inspect, supervise, or monitor the performance of the ~~Services~~services to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject ~~Services~~services.

(B) The material costs necessary ~~for~~to the performance of the ~~Services~~services, including the costs for ~~the~~ space, energy, transportation, storage, ~~raw and finished materials,~~ equipment, and supplies used or consumed in the provision of the ~~Services~~services.

(C) ~~Costs~~The costs incurred in planning for, training for, starting up, implementing, transporting, and delivering the ~~Services~~services.

(D) Any costs related to stopping and dismantling a ~~Project~~project or operation because the District intends to procure a limited quantity of ~~Services~~services or to procure the ~~Services~~services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the ~~Services~~services. These costs exclude the District's indirect overhead costs for existing salaries or wages and benefits for administrators, and costs for rent, equipment, utilities, and materials except to the extent that the costs are attributable solely to performing the ~~Services~~services and would not exist unless the District performs the ~~Services~~services.

(F) ~~Oregon Laws 2009, Chapter 880, Section 3~~ORS 279B.003 (1)(a) provides that an estimate of the District's costs of performing the ~~Services~~services includes the costs described in Sections (A) through (E) of this ~~Rule~~rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the ~~Services~~services. For example, if the District has accounted for its actual costs for performing the ~~Services~~services under consideration, or reasonably comparable ~~Services~~services in a relatively recent ~~Services Project~~services project, the District may consider those actual costs in making its estimate.

(b) Costs of a Potential Contractor. When estimating a Contractor's costs of performing the ~~Services~~services, the District ~~will~~shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and employees:

(i) Who work in the industry or business most closely involved in performing the ~~Services~~services; and

(ii) Who would be necessary and directly involved in performing the ~~Services~~services or who would inspect, supervise, or monitor the performance of the ~~Services~~services;

(B) The material costs necessary to the performance of the ~~Services~~services, including costs for space, energy, transportation, storage, raw and finished materials, equipment, and supplies used or consumed in the provision of the ~~Services~~services; and

(C) The miscellaneous costs related to performing the ~~Services~~services, including, but not limited to, reasonably foreseeable fluctuations in the costs for the items in Sections (A) through (C) of this ~~Rule~~rule.

(D) ~~Oregon Laws 2009, Chapter 880, Section 3~~ORS 279B.033 (1)(a) provides that an estimate of the District's costs of performing the ~~Services~~services includes the costs described in Sections (A) through (E) of this ~~Rule~~rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the ~~Services~~services. For example, if the District, in the reasonably near past, received Bids or Proposals for the performance of ~~Services~~services under consideration, or reasonably comparable ~~Services~~services, the District may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the District may consider what it actually paid out under a Contract for the same or similar ~~Services.~~services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years

preceding the date of the cost estimate. The District shall take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the services.

(3) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the District to perform the services and the estimated costs a potential Contractor would incur in performing the services under section (5)(c), the District may proceed with the procurement only if the District would incur more cost in performing the services with the District's own personnel and resources than it would incur in procuring the services from a Contractor...

(4) ~~(3)~~ Exceptions.

(a) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated ~~in Section (2)(b) of this Rule are lower than the costs estimated in Section (2)(a) of this Rule~~for the District to perform the services exceed the estimated a potential Contractor would incur in performing the services is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated ~~in Section~~under section (2)(b)(A) of this ~~Rule~~rule are lower than the salary or wage and benefit costs for employees of the District estimated in ~~Section~~section (2)(a)(A) of this ~~Rule~~rule, the District may not proceed with the ~~Procurement~~procurement.

(b) Exception Based on Lack of District Personnel and Resources; Reporting. In cases ~~where~~in which the District determines that it would incur less cost in providing the ~~Services~~services with the District's own personnel and resources, the District may nevertheless proceed with the ~~Procurement~~procurement if, at the time the District intends to conduct a ~~Procurement~~procurement, the District determines that it lacks personnel and resources ~~that are necessary~~ to perform the ~~Services~~services within the time ~~in which the Services are required. If~~ the District requires them. When the District conducts a ~~Procurement~~procurement under this section, the District ~~will~~shall:

(A) Make and keep a ~~Written~~written determination that it lacks personnel and resources to perform the ~~Services~~services within the time the District requires them and the basis for the District's decision to proceed with the ~~Procurement~~procurement.

(B) Provide to the Contract Review Board, each calendar quarter, copies of each ~~Written~~written cost analysis and ~~Written~~written determination.

(5) ~~(4)~~ Provision of Services by District Not Feasible. The District may proceed with a ~~Procurement~~procurement of a Contract for ~~Services~~services without conducting a cost analysis required under Sections (1) and (2) of this ~~Rule~~rule if the District makes ~~Written Findings~~written findings that use of the District's own personnel or resources to perform the ~~Services~~services is not feasible. Reasons include, but are not limited to, the following.

(a) The District lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the ~~Services~~services. In making the ~~Finding~~finding, the District shall compare the District's capability, experience, or expertise in the field most closely involved in performing the ~~Services~~services with a potential Contractor's capability, experience, or expertise in the same or a similar field.

(b) Special circumstances require the District to procure the ~~Services~~services by Contract. Special circumstances may include, but are not limited to, the following:

(A) The terms under which the District receives a Grant or other funds for use in a ~~Procurement~~procurement require the District to obtain ~~Services~~services through an independent contractor;

(B) Other state or federal law requires the District to procure ~~Services~~services through an independent contractor;

(C) The ~~Procurement~~procurement is for ~~Services~~services that are incidental to a Contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(D) The District cannot accomplish policy, administrative, or legal goals, including, but not limited to, avoiding conflicts of interest or ensuring independent or unbiased ~~Findings~~findings in cases when using the District's existing personnel or Persons that the District could hire through a regular or ordinary process would not be suitable;

(E) The ~~Procurement~~procurement is for Emergency ~~Services~~services pursuant to PPS 47-0280;

(F) The ~~Procurement~~procurement is for ~~Services~~services, the need for which is so urgent, temporary, or occasional that attempting to perform the ~~Services~~services with the District's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the ~~Services~~services;

(G) The ~~Services~~services that the District intends to procure will be completed within six months after the date on which the Contract for the ~~Services~~services is executed; or

(H) Any other circumstances, conditions, or occurrences that would make the ~~Services~~services, if performed by the District's own employees and resources, incapable of being managed, utilized, or dealt with successfully in terms of the quantity, timeliness of completion, success in obtaining desired results, or other reasonable needs of the District.

PPS 47-0255 Competitive Sealed Bidding; One-Step Solicitations~~competitive sealed bidding~~

(1) Generally. The District may procure ~~Goods and Services by Competitive Sealed Bidding~~goods or services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a ~~Competitive Sealed Bidding~~competitive sealed bidding solicitation and ~~must~~shall contain the information required by ORS 279B.055(2) and by ~~Section~~section (2) of this ~~Rule~~rule. The District ~~must~~shall provide public notice of the ~~Competitive Sealed Bidding~~competitive sealed bidding solicitation as set forth in PPS 47-0300.

(2) Invitation to Bid. In accordance with ORS 279B.055(2), an Invitation to Bid ~~must~~shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by ~~Written~~written Addendum.

(B) A ~~Procurement~~procurement description;

(C) The form and instructions for submission of Bids, including the time, date, and place that Bids are due, and any other special information, e.g., whether Bids may be submitted by electronic means (see PPS 47-0330 for required provisions of electronic Bids);

(D) The time, date, and place of Opening;

(E) Key contact information as follows:

(i) The office or location where the Solicitation Documents may be reviewed;

(ii) The name of the person designated for receipt of Bids;

(iii) The name and title of the person designated by the District as the contact person for the ~~Procurement~~procurement, if different from the person designated to receive Bids.

(F) A statement that each ~~Bidder must~~bidder shall identify whether the ~~Bidder~~bidder is a "resident ~~Bidder~~bidder," as defined in ORS 279A.120(1);

(G) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See PPS-46-0210(2)); and

(H) How the District ~~will~~shall notify ~~Bidders~~bidders of Addenda, and how the District ~~will~~shall make Addenda available (see PPS 47-0430);

(I) A time, date, and place that prequalification applications, if any, ~~must~~shall be filed, and the classes of work, if any, for which ~~Bidders must~~bidders shall be prequalified in accordance with ORS 279B.120;

(J) The following statements:

(i) "The District may cancel the ~~Procurement~~procurement or reject any or all Bids in accordance with ORS 279B.100."

(ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.

(b) District Need to Purchase. The character of the ~~Goods or Services~~goods or services that the District is purchasing including, if applicable, a description of the acquisition, ~~Specifications~~specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by ~~Oregon Laws 2009, Chapter 880, Section 5~~ORS 279B.055(2)(c), the District's description of its need to purchase ~~must~~shall:

(A) Identify the scope of the ~~Work~~work to be performed under the resulting Contract, if the District ~~Awards~~awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the District for ~~good cause~~Good Cause specifies otherwise, the scope of ~~Work must~~work shall require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the ~~Goods or Services~~goods or services that the District is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, ~~and~~ protest process, and evaluation process;

(B) The District ~~must~~shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information that the District has available concerning future use; and

(C) If the District intends to ~~Award~~award Contracts to more than one ~~Bidder~~bidder pursuant to PPS 47-0600(4)(c), the District ~~must~~shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will ~~Award. This may be left to the~~

~~District's discretion at the time of the Award, provided it is so described in the Solicitation Document~~award.

(d) Applicable Preferences Pursuant to ORS 279B.055(6)(b).

(A) Preference for Oregon ~~Goods and Services~~goods or services pursuant to ORS 279A.120 and PPS 46-0300 and PPS 46-0310; and

(B) Preference for Recycled Materials pursuant to ORS 279A.125 and PPS 46-0320.

(e) Terms and Conditions. All contractual terms and conditions in the form of Contract provisions that the District determines are applicable to the ~~Procurement~~procurement. As required by ~~Oregon Laws 2009, Chapter 880, Section 5~~ORS 279B.055(2)(h), the Contract terms and conditions ~~must~~shall specify the consequences of the Contractor's failure to perform the scope of ~~Work~~work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The District's reduction or withholding of payment under the Contract;

(B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional Work necessary to perform the statement of ~~Work~~work or to meet the performance standards established by the resulting Contract; and

(C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(f) Whether Bid Security Is Required.

(g) Good Cause. For the purposes of this ~~Rule~~rule, "~~good cause~~Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a ~~Finding~~finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the ~~Procurement File~~Solicitation file the basis for the determination of ~~good cause~~Good Cause for specification otherwise. The District ~~will~~shall have ~~good cause~~Good Cause to specify otherwise under the following circumstances:

(A) The use or purpose to which the ~~Goods or Services~~goods or services will be put does not justify a requirement that the Contractor meet the ~~highest prevalent~~highest prevalent standards in performing the Contract;

(B) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the ~~Goods or Services~~goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, ~~Services~~services, or information technology including hardware, ~~Services~~services, or software with which the ~~Goods or Services~~goods or services will be used, integrated, or coordinated;

(C) The circumstances of the industry or business that provides the ~~Goods or Services~~goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments that a reliable ~~highest prevalent~~highest prevalent standard does not exist or has not been developed;

(D) Any other circumstances in which the District's interest in achieving economy, efficiency, compatibility, or availability in the ~~Procurement of the Goods or Services~~procurement of the goods or services reasonably outweighs the District's practical need for the ~~highest prevalent~~highest prevalent standard in the applicable or closest industry or business that supplies the ~~Goods~~goods or ~~Services~~services to be delivered under the resulting Contract.

PPS 47-0257 CompetitiveMultistep Sealed Bidding; Multi-Step Solicitations

~~**Multi-Step Sealed Bidding**~~

(1) Generally. The District may procure ~~Goods~~goods or ~~Services~~services by using ~~Multi-Step Sealed Bidding~~multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. ~~Multi-Step Sealed Bidding~~multistep sealed bidding is a phased ~~Procurement~~procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive Sealed Bidding, inviting ~~Bidders~~bidders who submitted technically eligible submittals in the first phase to submit ~~Competitive Sealed Price~~competitive sealed price Bids in the second phase. The Contract ~~must~~shall be ~~Awarded~~awarded to the lowest Responsible ~~Bidder~~bidder.

(3) Public Notice. When The District uses ~~Multi-Step Sealed Bidding~~multistep sealed bidding, the District shall give public notice for the first phase in accordance with PPS 47-0300. Public notice is not required for the second phase. However, the District shall give notice of the second phase to all ~~Bidders~~bidders, inform ~~Bidders~~bidders of the right to protest Addenda issued after the initial Closing under PPS 47-0430, and inform ~~Bidders~~bidders excluded from the second phase of the right, if any, to protest their exclusion under PPS 47-0720.

(4) Procedures Generally. In addition to the procedures set forth in PPS 47-0300 through 47-0490, the District shall employ the procedures set forth in this ~~Rule for Multi-Step Sealed Bidding~~rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of ~~Multi-Step~~Multistep Sealed Bidding.

(a) Form. The District shall initiate ~~Multi-Step Sealed Bidding~~multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for ~~Competitive Sealed~~competitive sealed Bids except as provided in this ~~Rule~~rule. In addition to the requirements set forth in PPS 47-0255(2), the ~~Multi-Step~~multistep Invitation to Bid ~~must~~shall state:

(A) That the ~~solicitation is a Multi-Step Sealed Bid Procurement~~Solicitation is a multistep sealed Bid procurement and describe the process that the District ~~will~~shall use to conduct the ~~Procurement~~procurement;

(B) That the District requests unpriced submittals and that the District ~~will~~shall consider price Bids only in the second phase and only from those ~~Bidders~~bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether ~~Bidders must~~bidders shall submit price Bids at the same time as unpriced submittals and, if so, that ~~Bidders must~~bidders shall submit the price Bids in a separate sealed envelope; and

(D) The criteria to be used in the evaluation of unpriced submittals.

(b) Evaluation. The District shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of ~~Multi-Step~~Multistep Sealed Bidding.

(a) After the completion of phase one, if the District does not cancel the ~~solicitation~~Solicitation, the District shall invite each eligible ~~Bidder~~bidder to submit a price Bid.

(b) The District shall conduct phase two as any other ~~Competitive Sealed Bid Procurement~~competitive sealed Bid procurement except:

(A) As specifically set forth in this ~~Rule~~rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

PPS 47-0260 Competitive Sealed Proposals~~; One-Step Solicitations~~

(1) Generally. The District may procure ~~Goods and Services by Competitive Sealed~~goods or services by competitive sealed Proposals as set forth in ORS 279B.060. The District shall use a Request for ~~Proposal~~proposal to initiate a ~~Competitive Sealed Proposal~~competitive sealed proposal. The Request for ~~Proposal must~~proposal shall contain the information required by ORS 279B.060(2) and by ~~Section~~section (2) of this ~~Rule~~rule. The District shall provide public notice of the Request for ~~Proposals~~proposal as set forth in PPS 47-0300.

(2) Request for Proposal. In accordance with the provisions required by ORS 279B.060(2), the Request for ~~Proposal must~~proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or ~~optional~~voluntary; and

(iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by ~~Written~~written Addendum.

(B) A ~~Procurement~~procurement description.

(C) A time, date, and place that prequalification applications, if any, ~~must~~shall be filed, and the classes of work, if any, for which ~~Bidders must~~bidders shall be prequalified in accordance with ORS 279B.120.

(D) The form and instructions for submission of Proposals, ~~including the time, date, and place that Proposals are due,~~ and any other special information, e.g., whether Proposals may be submitted by electronic means (see PPS 47-0330 for required provisions of electronic Proposals);

(E) The time, date, and place of Opening;

(F) The office where the Solicitation Document may be reviewed;

(G) Key contact information, as follows~~:~~;

~~**(i)** The office or location where the Solicitation Documents may be reviewed;~~

(i) ~~**(ii)**~~ The name of the Person designated for receipt of Proposals.

(ii) ~~**(iii)**~~ The name and title of the person designated by the District as the contact Person for the ~~Procurement~~procurement, if different from the Person designated to receive Proposals.

(H) Proposers' certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) (See PPS 46-210(2); and

(I) How the District ~~will~~shall notify Proposers of Addenda and how the District ~~will~~shall make Addenda available. (See PPS 47-0430.)

(J) The following statements:

(i) "The District may cancel the ~~Procurement~~procurement or reject any or all Proposals in accordance with ORS 279B.100."

(ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.

(b) District Need to Purchase. The character of the ~~Goods or Services~~goods or services the District is purchasing including, if applicable, a description of the acquisition, ~~Specifications~~specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by ORS 279B.060(2)(c), the District's description of its need to purchase ~~must~~shall:

(A) Identify the scope of the ~~Work~~work to be performed under the resulting Contract, if the District ~~Awards~~awards one; and

(B) Outline the anticipated duties of the Contractor under any resulting Contract; and

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, ~~Transportation Planning or Land Surveying Services or Related Services~~transportation planning or land surveying services or related services that are subject to ORS 279C.100 through 279C.125 or PPS 46-0500 through 46-0525, or the District for ~~good cause~~Good Cause specifies otherwise, the scope of ~~Work must~~work shall require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the ~~Goods or Services~~goods or services that the District is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.

(B) The District ~~must~~shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e), including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Proposals will be evaluated in the subsequent tiers. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible the criteria shall:

(i) Afford the District the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;

(ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and

(iii) Permit the District to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the District of entering into a Contract based on each ~~Proposal~~proposal, considering information available to the District and subject to the understanding that the actual Contract costs may vary as a result of the Statement of ~~Work~~work ultimately negotiated or the quantity of ~~Goods or Services~~goods or services for which the District contracts.

(C) If the District's solicitation process calls for the District to establish a ~~Competitive~~competitive Range, the District shall generally describe, in the Solicitation Document, the criteria or parameters that the District ~~will~~shall apply to determine the ~~Competitive~~competitive Range. The District, however, ~~may~~ subsequently may determine or adjust the number of Proposers in the ~~Competitive~~competitive Range in accordance with PPS 47-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), and 282.210.

(A) Preference for Oregon ~~Goods and Services~~goods or services, pursuant to ORS 279A.120 and PPS 46-0300 and PPS 46-0310;

(B) Preference for Recycled Materials, pursuant to ORS 279A.125 and PPS 46-0320; and

(C) Performance within the state of public printing, binding, and stationery Work, pursuant to ORS 282.210.

(e) Contractual Terms and Conditions. All contractual terms and conditions the District determines are applicable to the ~~Procurement~~procurement. The District's determination of contractual terms and conditions that are applicable to the ~~Procurement~~procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions ~~that~~ the District will not include in the Request for ~~Proposals~~proposal because the District either will reserve them for negotiation or will request Proposers to offer or suggest those terms or conditions. (See PPS 47-0260(3).)

(f) Consequences of Failure to Perform. As required by ORS 279B.060(2)(h), the Contract terms and conditions ~~must~~shall specify the consequences of the Contractor's failure to perform the scope of ~~Work~~work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The District's reduction or withholding of payment under the Contract;

(B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional ~~Work~~work necessary to perform the scope of ~~Work~~work or to meet the performance standards established by the resulting Contract; and

(C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(g) Whether ~~Proposal~~proposal security is required.

(3) The District may include the applicable contractual terms and conditions in the form of Contract provisions or legal concepts to be included in the resulting Contract. Further, the District may specify that it will include or use ~~Proposers'~~Proposer's terms and conditions that have been pre-negotiated under PPS 47-550(8), but the District may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent that those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under PPS 47-0730.

(4) For multiple ~~Award~~award Contracts, the District may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under PPS 47-0730.

(5) **Good Cause**. For the purposes of this ~~Rule~~rule, "~~good cause~~Good Cause" means a reasonable explanation for not requiring the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the ~~Goods or Services Under~~goods or services under the Contract, and may include an explanation of circumstances that support a ~~Finding~~finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the ~~Procurement File~~Solicitation file the basis for the determination of ~~good cause~~Good Cause or for specifying otherwise. The District ~~will~~shall have ~~good cause~~Good Cause to specify otherwise when the District determines that:

(a) The use or purpose to which the ~~Goods or Services~~goods or services will be put does not justify a requirement that the Contractor meet the ~~highest prevalent~~highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the ~~Goods or Services~~goods or services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or ~~ongoing Services~~on-going services with which the ~~Goods or Services~~goods or services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the ~~Goods or Services~~goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable ~~highest prevalent~~highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the District's interest in achieving economy, efficiency, compatibility, or availability in the ~~Procurement of the Goods or Services~~procurement of the goods or services reasonably outweighs the District's practical need for the ~~highest prevalent~~highest standard prevalent in the applicable or closest industry or business that supplies the ~~Goods~~goods or ~~Services~~services to be delivered under the resulting Contract.

(6) Optional Proposal Requirements.

(a) As provided in the Request for ~~Proposals~~proposal or in ~~Written~~written Addenda issued thereunder, the District may conduct site tours, demonstrations, individual or group discussions, and other informational activities with Proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the ~~solicitation~~Solicitation requirements or to consider and respond to requests for modifications of the ~~Proposal~~proposal requirements. The District shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.

(b) For purposes of evaluation, when provided for in the Request for ~~Proposals~~proposal, the District may employ methods of Contractor selection that include, but are not limited to:

(A) An ~~Award or Awards~~award or awards based solely on the ranking of Proposals;

(B) Discussions leading to best and final Offers, in which the District may not disclose private discussions leading to best and final Offers;

(C) Discussions leading to best and final Offers, in which the District may not disclose information derived from Proposals submitted by competing Proposers;

(D) Serial negotiations, beginning with the ~~highest ranked~~highest ranked Proposer;

(E) Competitive simultaneous negotiations;

(F) ~~Multi-Tiered~~multi-tiered competition designed to identify, at each level, a class of Proposers that fall within a ~~Competitive~~competitive Range or to otherwise eliminate from consideration a class of lower-ranked Proposers;

(G) A ~~Multi-Step~~multistep Request for ~~Proposals~~proposal requesting the submission of unpriced technical submittals, and then later issuing a Request for ~~Proposals~~proposal limited to the Proposers whose technical submittals the District had determined to be qualified under the criteria set forth in the initial Request for ~~Proposals~~proposal; or

(H) Any combination of methods described in this paragraph as authorized or prescribed by these ~~Rules~~rules.

(c) Revisions of Proposals may be permitted after the submission of Proposals and before ~~Award~~award for the purpose of obtaining best Offers or best and final Offers.

(d) After the opening of Proposals, the District may issue or electronically post an Addendum to the Request for ~~Proposals~~proposal that modifies the criteria, rating process, and procedure for any tier of competition before the start of the tier to which the Addendum applies. The District shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. The District shall issue or post the Addendum at least five ~~Days~~days before the start of the subject tier of competition or as otherwise determined by the District to be adequate to allow eligible Proposers to prepare for the competition in accordance with rules adopted under ORS 279A.065.

(7) The cancellation of Requests for Proposals and the rejection of Proposals ~~must~~shall be in accordance with ORS 279B.100.

(8) In the Request for ~~Proposals~~proposal, the District shall describe the methods by which the District ~~will~~shall make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. The District shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the District's decision.

(9) The District shall issue or electronically post the notice of intent to ~~Award~~award described in ORS 279B.135 to each Proposer who was evaluated in the final competitive tier.

(10) If a Contract is ~~Awarded~~awarded, the District shall ~~Award~~award the Contract to the responsible Proposer whose ~~Proposal~~proposal the District determines in ~~Writing~~writing to be the most advantageous to the District based on the evaluation process and evaluation factors described in the Request for ~~Proposals~~proposal, any applicable preferences described in ORS 279A.120 and 279A.125, and, when applicable, the outcome of any negotiations authorized by the Request for ~~Proposals~~proposal. Other factors may not be used in the evaluation. When the Request for ~~Proposals~~proposal specifies or authorizes the ~~Award~~award of multiple Public Contracts, the District shall ~~Award~~award Public Contracts to the responsible Proposers who qualify for the ~~Award~~award of a Contract under the terms of the Request for ~~Proposals~~proposal.

(11) The District may issue a request for information, a request for interest, a Request for Qualifications, or other preliminary documents to obtain information useful in the preparation of a Request for ~~Proposals~~proposal.

PPS 47-0261 Procedures for Competitive Range; Multi-Tiered and Multi-Step Solicitations~~Multistep Proposals~~

(1) Generally. The District may use one or more, or any combination of procure ~~Goods and Services~~goods or services employing any combination of the methods of Contractor selection ~~as~~ set forth in ~~PPS 47-0260(3)(b)~~ORS 279B.060(7), 279B.0608 and this rule to procure goods or services. In addition to the procedures set forth in PPS 47-0300 through 47-0490 for methods of Contractor selection, the District may provide for a ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep selection process that permits ~~Award to the highest ranked~~award to the highest ranked Proposer at any tier or step, calls for the establishment of a ~~Competitive~~competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

(2) Methods. When conducting a ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep selection process, the District may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In ~~Multi-Tiered and Multi-Step~~multi-tiered and multistep competitions, the District may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the District.

(3) District May Elect to ~~Award~~award Contract Prior to Completion of Stages. When the District's Request for ~~Proposals~~proposal prescribes a ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep Contractor selection process, the District nevertheless may, at the completion of any stage in the competition and on determining the ~~most advantageous~~Most Advantageous Proposer (or, in multiple ~~Award~~award situations, on determining the ~~Awardees~~awardees of the Public Contracts), ~~Award~~award a Contract (or Contracts) and conclude the ~~Procurement~~procurement without proceeding to subsequent stages. The District also may, at any time, cancel the ~~Procurement~~procurement under ORS 279B.100.

(4) Exclusion Protest. The District may provide, before the notice of an intent to ~~Award~~award, an opportunity for a Proposer to protest exclusion from the ~~Competitive~~competitive Range or from subsequent phases of ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep sealed Proposals as set forth in PPS 47-0720.

(5) Award Protest. The District shall provide an opportunity to protest its ~~Intent~~intent to ~~Award~~award a Contract pursuant to ORS 279B.410 and PPS 47-0740. An Affected Offeror may protest, for any of the bases set forth in PPS 47-0720(2), its exclusion from the ~~Competitive~~competitive Range or from any phase of a ~~Multi-Tiered or Multi-Step Sealed Proposal~~multi-tiered or multistep sealed proposal process, or may protest an Addendum issued following initial Closing, if the District did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the District.

(6) Competitive Range. When the District's solicitation process conducted under ORS 279B.060(8) calls for the District to establish a ~~Competitive~~competitive Range at any stage in the ~~Procurement~~procurement process, the District may do so as follows:

(a) Determining Competitive Range.

(A) The District may establish a ~~Competitive~~competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for ~~Proposals~~proposal. After evaluation of all Proposals in accordance with the criteria in the Request for ~~Proposals~~proposal, the District may determine and rank the Proposers in the ~~Competitive~~competitive Range. Notwithstanding the foregoing, however, in instances in which the District determines that a single Proposer has a reasonable chance of being determined the most ~~advantageous~~Advantageous Proposer, the District need not determine or rank Proposers in the ~~Competitive~~competitive Range. In addition, notwithstanding the foregoing, the District may establish a ~~Competitive~~competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The District may establish the number of Proposers in the ~~Competitive~~competitive Range in light of whether the District's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most ~~advantageous~~Advantageous Proposer.

(b) Protesting Competitive Range. The District ~~must~~shall provide ~~Written~~written notice to all Proposers identifying Proposers in the ~~Competitive~~competitive Range. The District may provide an opportunity for Proposers excluded from the ~~Competitive~~competitive Range to protest the District's evaluation and determination of the ~~Competitive~~competitive Range in accordance with PPS 47-0720.

(7) Discussions. The District may initiate oral or ~~Written~~written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for ~~Proposals~~proposal. In conducting discussions, the District:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a ~~Proposal~~proposal as a result of discussions. The conditions, terms, or price of the ~~Proposal~~proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for ~~Proposals~~proposal.

(d) At any time during the time allowed for discussions, the District may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) Negotiations.

(a) Serial Negotiations Allowed. The District may commence serial negotiations with the ~~highest-ranked~~highest ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. The District may negotiate:

(A) The statement of ~~Work~~work;

(B) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for ~~Proposals~~proposal or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for ~~Proposals~~proposal or Addenda thereto. Proposers shall not submit for negotiation, and a District shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for ~~Proposals~~proposal or any Addendum.

(b) Terminating Negotiations. At any time during discussions or negotiations the District conducts under this ~~Rule~~rule, the District may terminate discussions or negotiations with the ~~highest-ranked~~highest ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the District reasonably believes that:

(A) The eligible Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the District is conducting serial negotiations and the District terminates negotiations with an eligible Proposer, the District may then commence negotiations with the next highest-scoring eligible Proposer, and continue the sequential process until the District has either:

(A) Determined to ~~Award~~award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the ~~Procurement~~procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the District chooses to conduct competitive negotiations, the District may negotiate simultaneously with competing eligible Proposers. The District:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the District notifies all of the eligible Proposers with whom the District ~~will~~shall engage in negotiations of the District's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a ~~Proposal~~proposal resulting from negotiations ~~must~~shall be reduced to ~~Writing~~writing.

(9) Best and Final Offers. If the District requires best and final Offers, the District ~~must~~shall establish a common date and time by which eligible Proposers ~~must~~shall submit best and final Offers. If the District is dissatisfied with the best and final Offers, the District may make a ~~Written~~written determination that it is in the District's best interest to conduct additional discussions, negotiations or change the District's requirements and require another submission of best and final Offers. The District ~~must~~shall inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The District shall evaluate Offers as modified by the best and final Offers. The District shall conduct the evaluations as described in OAR PPS 47-0600. The District may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(10) ~~Multi-Step Sealed~~multistep sealed Proposals. The District may procure ~~Goods~~goods or ~~Services~~services by using ~~Multi-Step Competitive Sealed~~multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). ~~Multi-Step Sealed~~multistep sealed Proposals is a phased ~~Procurement~~procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit ~~Competitive Sealed Price~~competitive sealed price Proposals on the technical Proposals. The District ~~must Award~~shall award the Contract to the Responsible Proposer submitting the most advantageous ~~Proposal~~proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When the District uses ~~Multi-Step Sealed~~multistep sealed Proposals, the District shall give public notice for the first phase in accordance with PPS 47-0300. Public notice is not required for the second phase. However, the District shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under PPS 47-0720.

(b) Procedure for Phase One of ~~Multi-Step Sealed~~multistep sealed Proposals. The District may initiate a ~~Multi-Step Sealed~~multistep sealed Proposals ~~Procurement~~procurement by issuing a Request for ~~Proposals~~proposal in the form and manner required for ~~Competitive Sealed~~competitive sealed Proposals except as provided in this ~~Rule~~rule. In addition to the requirements required for ~~Competitive Sealed~~competitive sealed Proposals, the ~~Multi-Step~~multistep Request for ~~Proposals must~~proposal shall state:

(A) That unpriced technical Proposals are requested;

(B) That the ~~solicitation is a Multi-Step Sealed Proposal Procurement~~Solicitation is a multistep sealed proposal procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the ~~Goods or Services~~goods or services being procured shall be furnished generally in accordance with the Proposer's technical ~~Proposal~~proposal as found to be finally qualified and shall meet the requirements of the Request for ~~Proposals~~proposal.

(c) Addenda to the Request for ~~Proposals~~Proposal. After receipt of unpriced technical Proposals, Addenda to the Request for ~~Proposals~~proposal shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for ~~Proposals~~proposal.

(f) Discussion of Unpriced Technical Proposals. The District may seek clarification of a technical ~~Proposal~~proposal of any Proposer who submits a qualified, or potentially qualified, technical ~~Proposal~~proposal. During the course of such discussions, the District shall not disclose any information derived from one unpriced technical ~~Proposal~~proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, the District may employ any combination of the methods of Contractor selection that call for the establishment of a ~~Competitive~~competitive Range or include discussions, negotiations, or best and final Offers as set forth in this ~~Rule~~rule.

(h) Procedure for Phase Two. On the completion of phase one, the District shall invite each qualified Proposer to submit price Proposals. The District shall conduct phase two as any other ~~Competitive Sealed Proposal Procurement~~competitive sealed proposal procurement except as set forth in this ~~Rule~~rule.

(i) No public notice need be given of the request to submit Price Proposals because such notice was previously given.

PPS 47-0265 Small Procurements

(1) Generally. For ~~Procurements of Goods and Services~~procurements of goods or services less than or equal to the dollar amount stated in ORS 279B.065, the District may ~~Award~~award a Contract as a Small ~~Procurement~~procurement in any manner ~~deemed~~the District deems practical or convenient ~~by the District~~, including by direct selection or ~~Award~~award.

(2) Amendments. The District may amend a Contract ~~Awarded~~awarded as a Small ~~Procurement~~procurement in accordance with PPS 47-0800.

(3) No Fragmentation. A ~~Procurement~~procurement may not be artificially divided or fragmented so as to constitute a Small ~~Procurement~~procurement. See ORS 279B.065(2).

PPS 47-0270 Intermediate Procurements

(1) Generally. For ~~Procurements of Goods and Services~~procurements of goods or services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, the District may ~~Award~~award a Contract as an ~~Intermediate Procurement~~intermediate procurement pursuant to ORS 279B.070.

(2) Intermediate Solicitation Process. When conducting an ~~Intermediate Procurement~~intermediate procurement, the District shall seek at least three informally solicited ~~Competitive Price Quotes or Competitive~~competitive Price quotes or competitive Proposals from prospective Contractors. The District shall keep a ~~Written~~written record of the sources of the ~~Quotes~~quotes or Proposals received. If three ~~Quotes~~quotes or Proposals are not reasonably available, fewer will suffice, but the District shall make a ~~Written~~written record of the effort made to obtain the ~~Quotes~~quotes or Proposals.

(3) Negotiations. The District may negotiate with a prospective Contractor who offers to provide ~~Goods~~goods or ~~Services~~services in response to an ~~Intermediate Procurement~~intermediate procurement to

clarify its ~~Quote~~quote or Offer or to effect modifications that will make the ~~Quote~~quote or Offer more ~~advantageous~~Advantageous to the District.

(4) ~~Award~~award. If a Contract is ~~Awarded~~awarded, the District shall ~~Award~~award the Contract to the Offeror whose ~~Quote or Proposal~~quote or proposal will best serve the interests of the District, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and Contractor responsibility under ORS 279B.110.

(5) Amendments. The District may amend a Contract ~~Awarded as an Intermediate Procurement~~awarded as an intermediate procurement in accordance with PPS 47-0800.

(6) No Fragmentation. A ~~Procurement~~procurement may not be artificially divided or fragmented so as to constitute an ~~Intermediate Procurement~~intermediate procurement. See ORS 279B.070(2).

PPS 47-0275 Sole-Source Procurements

(1) Generally. The Superintendent is delegated the authority to determine whether ~~Goods~~goods and ~~Service~~service or a class of ~~Goods and Services~~goods or services are available from only one source pursuant to ORS 279B.075. The Superintendent's determination ~~must~~shall be based on ~~Written Findings~~written findings that may include information that:

- **(a)** The efficient utilization of existing ~~Goods or Services~~goods or services requires the acquisition of compatible ~~Goods~~goods or ~~Services~~services;
- **(b)** The ~~Goods or Services~~goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- **(c)** The ~~Goods or Services~~goods or services are for use in a pilot or an experimental ~~Project~~project; or
- **(d)** Other ~~Findings~~findings that support the conclusion that the ~~Goods or Services~~goods or services are available from only one source.

(2) Public Notice. If the Contract amount is greater than $150,000, the District shall give public notice of the Superintendent's determination that the ~~Goods~~goods or ~~Services~~services or class of ~~Goods or Services~~goods or services are available from only one source. The District shall publish such notice in a manner similar to public notice of ~~Competitive Sealed~~competitive sealed Bids under ORS 279B.055(4) and PPS 47-0300. The public notice shall describe the ~~Goods~~goods or ~~Services~~services to be acquired by a sole-source ~~Procurement~~procurement, identify the prospective Contractor, and include the date, time, and place that protests are due. The District shall give ~~affected~~Affected Persons at least seven ~~Days~~(7) days from the date of the notice of the determination that the ~~Goods or Services~~goods or services are available from only one source to protest the sole-source determination.

(3) Protest. An ~~affected~~Affected Person may protest the Superintendent's determination that the ~~Goods~~goods or ~~Services~~services or class of ~~Goods or Services~~goods or services are available from only one source in accordance with PPS 47-0710.

PPS 47-0280 Emergency Procurements

(1) Generally. The Superintendent may ~~Award~~award a Public Contract as an Emergency ~~Procurement~~procurement. The Superintendent will document the nature of the emergency and describe the method used for selection of the particular Contractor. See ORS 279B.080.

(2) Construction Services. For ~~an~~ Emergency ~~Procurement~~procurement of construction ~~services that are not Public Improvements~~, the District shall ensure competition for a Contract for the Emergency Work that is reasonable and appropriate under the emergency circumstances. In conducting the ~~Procurement~~procurement, the District shall set a solicitation time period that the District determines to be reasonable under the

Emergency circumstances, and may issue ~~Written~~written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity. See PPS 49-0150.

SPECIAL ~~PROCUREMENTS~~PROCUREMENTS (CONTRACTING EXEMPTIONS)

PPS 47-0285 ~~Special Procurements~~SpecialProcurements; Purpose and Application

The District may ~~Award~~award a Public Contract as a Special ~~Procurement~~procurement pursuant to the requirements of ORS 279B.085 without using ~~Competitive Sealed Bidding or Competitive Sealed~~competitive sealed bidding or competitive sealed Proposals or other competitive procedures as otherwise required by these ~~Rules~~rules. The Contract Review Board ~~must~~shall approve Special ~~Procurements~~procurements. The Contract Review Board may approve the following two types of Special ~~Procurements~~procurements:

(1) A "Class Special ~~Procurement" is a Procurement~~procurement" is a procurement procedure for entering into a series of Contracts over time or for multiple ~~Projects~~projects based on the classification of the Contract.

(2) A "Contract-Specific Special ~~Procurement" is a Procurement~~procurement" is a procurement procedure for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single ~~Project~~project.

PPS 47-0287 Special Procurements; Request Procedures

(1) To seek approval of an additional Special ~~Procurement~~procurement, the Superintendent shall submit a ~~Written~~written request to the Contract Review Board. The request ~~must~~shall describe the contracting procedure, the ~~Goods and Services~~goods or services or class of ~~Goods and Services~~goods or services that are the subject of the Special ~~Procurement~~procurement, and the circumstances that justify the use of a Special ~~Procurement~~procurement under the standards set forth in ~~Section~~section (2) of this ~~Rule~~rule.

(2) The Contract Review Board shall review and may approve a request for a Special ~~Procurement~~procurement if the Contract Review Board finds that the use of the Special ~~Procurement~~procurement:

(a) Is unlikely to encourage favoritism in the ~~Awarding~~awarding of Public Contracts or to substantially diminish competition for Public Contracts; and

(b) **(A)** Is reasonably expected to result in substantial cost savings to the District or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with ~~Procurement~~procurement requirements that would otherwise be applicable to the ~~Procurement~~procurement under ~~Division~~division 47 of these ~~Rules~~rules.

(3) The District shall give public notice of approval of a Special ~~Procurement~~procurement in the manner provided in ORS 279B.055(4) and PPS 47-0300. The notice will describe the ~~Goods~~goods or ~~Services~~services or class of ~~Goods or Services~~goods or services subject to the Special ~~Procurement~~procurement, and shall give ~~affected~~Affected Persons at least seven ~~Days~~days from the date of notice of the approval of the Special ~~Procurement~~procurement to protest the Special ~~Procurement~~procurement.

(4) An ~~affected Person~~Affected person may protest the approval of a Special ~~Procurement~~procurement in accordance with ORS 279B.400 and PPS 47-0700.

(5) An approved Class Special ~~Procurement~~procurement shall be added to enumerated Class Special ~~Procurements~~procurements in PPS 47-0288.

PPS 47-0288 Approved Class Special Procurements

The Contract Review Board declares the following classes of Contracts for ~~Goods or Services~~goods or services listed in this section as Class Special ~~Procurements~~procurements for which Contracts may be ~~Awarded~~awarded without compliance with the competitive ~~Procurement~~procurement requirements that would otherwise be applicable to the ~~Procurement~~procurement under ~~Division~~division 47 of these ~~Rules~~rules. Unless an alternative ~~Procurement~~procurement process is particularly specified in these ~~Rules~~rules, the selection procedures for such Class Special ~~Procurements~~procurements shall be as the Superintendent determines will result in a Contract that will best serve the interests of the District. Prior to utilizing a Class Special ~~Procurement~~procurement, the Superintendent will document in ~~Writing~~writing in the ~~Procurement File~~Solicitation file the reasons why the Contract qualifies as a Class Special ~~Procurement~~procurement under these ~~Rules~~rules, including any required ~~Findings~~findings. Except as otherwise provided in this ~~Rule~~rule, the School Board ~~must~~shall approve any Contracts ~~Awarded~~awarded pursuant to Special ~~Procurement~~procurement if the Contract Price exceeds the Superintendent's delegated authority under PPS 45-0200. The Contract Review Board hereby designates the following classes of Contracts for Special ~~Procurement~~procurement:

(1) Advertising Contracts. The District may purchase advertising in any medium, regardless of the dollar value of the Contract. The District may sell advertising for District publications or activities, regardless of the dollar value of the Contract.

(2) Equipment Repair/Overhaul. The District may enter into a Public Contract for equipment repair or overhaul without competitive ~~Procurement~~procurement, subject to the following conditions:

- **(a)** Where the extent of the repair or overhaul is unknown or not easily identified; or
- **(b)** Where service or parts requirements are unpredictable; or
- **(c)** Service or parts required are for equipment for which specially trained personnel are required, and such personnel are available from only one source; and
- **(d)** Conducting a competitive process is impractical. The District ~~must~~shall document in the ~~Procurement File~~Solicitation file the reasons why a competitive process was deemed to be impractical

(3) Specifications.

- **(a)** "Or Equal" Specification.
  - **(A)** A Brand Name or Equal Specification may be used when the use of a Brand Name or Equal Specification is advantageous to the District, because the Brand Name describes the standard of quality, performance, functionality, and other characteristics of the product needed by the District.
  - **(B)** The Superintendent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
  - **(C)** Nothing in this section may be construed as prohibiting the Superintendent from specifying one or more comparable products as examples of the quality, performance, functionality, or other characteristics of the product needed by the District.
- **(b)** Specifying a Particular Make or Product. A Brand Name Specification may be prepared and used only if the Superintendent determines for a solicitation or a class of solicitations that only the identified Brand Name Specification will meet the needs of the District based on one or more of the following ~~Findings~~findings:

(A) That use of a Brand Name Specification is unlikely to encourage favoritism in the ~~Awarding~~awarding of Public Contracts or substantially diminish competition for Public Contracts;

(B) That use of a Brand Name Specification would result in substantial cost savings to the District;

(C) That there is only one manufacturer or seller of the product of the quality, performance, or functionality required;

(D) That the equipment or supplies being procured are used in athletic programs or physical education programs; or

(E) That efficient utilization of existing ~~Goods~~goods requires the acquisition of compatible ~~Goods~~goods or ~~Services~~services. For the purposes of this ~~Finding~~finding, "compatibility" includes, without limitation, technical compatibility, technological equity, and equivalent ease of training, durability, and use. "Compatibility" also includes, without limitation, compatibility among equipment in a standardized technology bundle developed to deliver curriculum in a classroom.

(4) Copyrighted Materials and Creative Works. The District may directly purchase copyrighted materials or creative works regardless of dollar value if available from only one source. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, ~~new adopted~~all adopted curriculum materials and tools in any format, including without limitation hard copy, electronic, digital or online. Examples of such curriculum material include textbooks, workbooks, curriculum kits, on-line curriculum, instructional software applications and related digital resources, assessments, assessment materials and reports~~,~~. This exemption also includes reference materials~~,~~ in any format, including without limitation books, periodicals, audio and visual media, and non-mass-marketed software. Examples of creative works covered by this Class Special ~~Procurement include, but are not limited to~~procurement including without limitation, artwork, music, uncopyrighted writings, and similar works.

(5) Insurance and Employee Benefits. The District may purchase liability, property damage, workers' compensation, and other insurance and insurance services Contracts, and employee benefits, without ~~Competitive Procurement~~competitive procurement and regardless of dollar amount, by selecting either a vendor directly or by appointing an agent of record. For the purpose of this Special ~~Procurement~~procurement, "employee benefits" includes, but is not limited to, "employee benefit plans" as defined in ORS 243.105(1), plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886, plans provided through the School District No. 1J Health and Welfare Trust, flexible benefit plans as defined in ORS 243.221, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans, long-term care insurance, health care coverage to retired officers, employees, spouses, and children, employee assistance plans, and expense reimbursement plans.

(6) Spot Buys. This Special ~~Procurement~~procurement provides a process for the District to procure products that are available for a limited period of time at "lower-than-normal" prices (also referred to as "spot buys").

(a) Regardless of dollar value and without ~~Competitive Procurement~~competitive procurement, the District may purchase "spot buys."

(b) Conditions. The District may procure an unlimited dollar value of products when any of the following conditions are present:

(A) A non-exclusive mandatory-use Contract or regularly scheduled ~~Bid~~bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing mandatory-use Contract, recent ~~Bid~~bid, or based on obtaining at least three ~~Quotes~~quotes, and the amount saved exceeds any additional administrative costs incurred to purchase the item using this Special ~~Procurement~~procurement;

(C) The product being purchased has limited availability (i.e., the product may no longer be available or available at the special price upon completion of normal ~~Bid~~bid processes); or

(D) Any mandatory-use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special ~~Procurement~~procurement.

(c) Notwithstanding Subsection 6(b) of this section, the District may not purchase a spot buy if doing so would jeopardize fulfillment of a guaranteed minimum volume under an existing mandatory-use Contract;

(d) Documentation. Purchases may only be made under this Special ~~Procurement~~procurement if the Superintendent documents to the ~~Procurement File~~Solicitation file that the conditions set forth in ~~Section~~section (6)(b) apply to the proposed purchase.

(e) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on "spot-buy" Contracts in any dollar amount, but will report the nature and amount of the Contract to the School Board as provided in PPS 45-0200(6).

(7) Price Agreements.

(a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase ~~Goods or Services~~goods or services for an anticipated need at a predetermined price, but the Contract ~~must~~shall be let by a ~~Competitive Procurement~~competitive procurement process pursuant to the requirements of these ~~Rules~~rules.

(b) The Superintendent may purchase the ~~Goods and Services~~goods or services from a Contractor ~~Awarded~~awarded a Price Agreement without first undertaking additional ~~Competitive~~competitive solicitation up to the amount set forth in the Price Agreement.

(c) The Superintendent may use the Price Agreement entered into by another Public Agency when the Original Contract was let pursuant to PPS 46-0400 through 46-0480;

(d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

(8) Purchase of Used Personal Property. The District may purchase used property or equipment. "Used personal property or equipment" is property or equipment that has been placed in its intended use by a previous owner or user for a time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used" at the time of the District purchase. "Used personal property or equipment" generally does not include property or equipment if the District was the previous user, whether under a lease, as part of a demonstration, trial, or pilot project, or under a similar arrangement. Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for the purchase of used personal property in any dollar amount.

(9) Sale of Used Personal Property.

(a) The Superintendent may sell used personal property without obtaining ~~Competitive~~competitive Bids or ~~Quotes~~quotes if a liquidation sale would bring in greater revenue to the District than would be gained through Bids. As used in this section, "surplus personal property" is property or

equipment that has been determined to no longer be useful to the District. It may be property or equipment that the District has used for some time and that is fully used up or obsolete. It may be property or equipment that is the natural excess or leftover from a ~~Project~~project, such as cable, wire, carpet, etc., that has been cut or partially used in some manner so that it cannot be returned to the supplier for a refund.

(b) For sales of surplus property valued at more than $25,000 per item or lot, the Superintendent ~~must~~shall attempt to obtain at least three ~~Competitive Quotes~~competitive quotes. The Superintendent will keep a ~~Written~~written record of the source and number of ~~Quotes~~quotes received. If three ~~Quotes~~quotes are not available, a ~~Written~~written record ~~must~~shall be made of the attempt to obtain three ~~Quotes~~quotes.

(c) The Superintendent may sell used personal property regardless of price via an electronic auction or sales service including, without limitation, eBay, Craigslist, or other similar Internet-based auctions or marketplaces. If the service does not otherwise provide for a competitive sales process, the Superintendent will establish a minimum ~~Bid~~bid, a time period for acceptance of Bids, and will not sell the property unless the Superintendent receives a minimum of three Bids. The sale will be ~~Awarded~~awarded to the highest Responsible ~~Bidder~~bidder submitting a Responsive Bid, except that the Superintendent may accept a lower ~~Bid~~bid if transportation or other costs associated with collection or delivery of the property would offset the higher ~~Bid~~bid amount.

(d) The Superintendent may sell, sell at a discount, or donate used personal property to another school district, to another Public Body, or to a nonprofit corporation that provides educational, social, or other important services to the District, District students, or families of District students.

(e) If the Superintendent determines that the used personal property has no market value, or that the market value is so low that the staff time or cost involved in selling the property is likely to exceed the value of the used personal property, the Superintendent may dispose of the property as the Superintendent determines is in the best interest of the District.

(10) Reverse Auctions.

(a) A reverse auction means a process for the purchase of ~~Goods and Services~~goods or services from the lowest ~~Bidder~~bidder. The District ~~must~~shall conduct reverse auctions by first publishing a solicitation that describes its requirements and Contract terms and conditions. Then the District ~~must~~shall solicit online Bids from all interested ~~Bidders~~bidders through an Internet-based program. The solicitation ~~must~~shall set forth a start and end time for Bids and specify the following type of information to be disclosed to ~~Bidders~~bidders during the reverse auction:

(A) The prices of the other ~~Bidders~~bidders or the price of the most ~~Competitive Bidder~~competitive bidder;

(B) The rank of each ~~Bidder~~bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the ~~Bidders~~bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B), and (C) above. Before the reverse auction commences, ~~Bidders must~~bidders shall be required by the District to assent to the Contract terms and conditions, either in ~~Writing~~writing or by an Internet "click" agreement. The ~~Bidders~~bidders then compete for the ~~Award~~award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the District. The identity of the ~~Bidders must~~bidders shall not be revealed during this process. Only the successively lower price(s), ranks, scores, and related details,

separately or in any combination thereof, will be revealed to the participants. The District may cancel this solicitation if the District determines that it is in the District's best interest. At the end of this Bidding process, the District ~~must Award~~shall award any potential Contract to the lowest Responsible ~~Bidder~~bidder, or in the case of multiple ~~Awards~~awards, lowest Responsible ~~Bidders~~bidders pursuant to ORS 279A.055(10)(b). This process allows the District to test and determine the suitability of the ~~Goods and Services~~goods or services before making the ~~Award~~award.

(11) Software and Hardware Maintenance, Licenses, Subscriptions, Other Digital Resources and Upgrades. The Superintendent may directly enter into a Contract or renew existing Contracts for information technology and telecommunications hardware or software maintenance, software licenses~~,~~ and subscriptions~~,~~ (including for programs, applications, and other digital or electronic resources), and upgrades without competitive solicitation where the maintenance, upgrades, subscriptions, and licenses are either available from only one source or, if available from more than one provider, are obtained from the District's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the District's hardware or software system. The Superintendent shall document in the ~~Procurement File~~Solicitation file the facts that justify either that maintenance, licenses, subscriptions, and upgrades were available from only one source or, if from more than one source, from the current vendor.

(12) Hazardous Material Abatement.

(a) The Superintendent may enter into Public Contracts without ~~Competitive Procurement~~competitive procurement, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted by the Oregon Department of Environmental Quality ("DEQ") under ORS ~~Chapter~~chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this exemption.

(b) The Superintendent ~~must~~shall, to the extent reasonable under the circumstances, encourage competition by attempting to obtain informal ~~Quotes~~quotes from potential suppliers of ~~Goods and Services~~goods or services.

(c) The department responsible for managing or coordinating the clean-up ~~must~~shall submit a ~~Written~~written description of the circumstances that require the clean-up and a copy of the DEQ order for the clean-up to the District Purchasing Department.

(d) The District Purchasing and Contracting Department ~~must~~shall record the measures taken under ~~Section~~section (12)(b) of this ~~Rule~~rule to encourage competition, the amount of the ~~Quotes~~quotes or Proposals obtained, if any, and the reason for selecting the Contractor to whom ~~Award~~award is made.

(e) The District may not contract pursuant to this exemption in the absence of an order from the DEQ to clean up a site that includes a time limit that would not allow the District to hire a Contractor under normal ~~Competitive Procurement~~competitive procurement procedures. ~~Goods and Services~~goods or services to perform other hazardous material removal or clean-up will be purchased in accordance with normal ~~Competitive Procurement~~competitive procurement procedures as described in these ~~Rules~~rules and policies.

(f) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for hazardous material abatement in any dollar amount.

(13) Purchase of Products for Resale to Students and Staff. The District may purchase personal property for resale to students and staff without ~~Competitive Procurement~~competitive procurement and regardless of dollar amount.

(14) Radio and Television Contracts for Student Activities.

(a) Generally. The Superintendent ~~must use a Competitive Procurement~~shall use a competitive procurement method (e.g., an Invitation to Bid or Request for ~~Proposals~~proposal) to obtain ~~Written~~written Bids or Proposals to provide commercial radio and television ~~Services~~services for any student activity or District program, including athletics, if the value of the ~~Services~~services totals more than $150,000, regardless of whether the District is paying or receiving revenue under the Contract.

(b) Specific and Ancillary Services. The Solicitation Document used to invite Bids or Proposals to furnish radio or television ~~Services~~services to District programs ~~must~~shall include the minimum ~~Bidder~~bidder or qualifications and ~~Service~~service specifications and will conform to the other requirements of the "Request for ~~Proposal" Rule~~proposal" rule herein. The Solicitation Document may invite interested ~~Bidders~~bidders or Proposers to offer other ancillary ~~Services~~services. Each ancillary ~~Service~~service, if offered, ~~must~~shall be accompanied by a dollar value that reflects the current purchase price for the ~~Service~~service and a description of the ~~Service~~service and its use and application.

(c) Term of Contract. A Contract for radio or television ~~Services~~services may be ~~Awarded~~awarded for up to five years.

(15) Donated Materials or Services. The District may directly negotiate a Contract with a Person to perform ~~Services~~services or provide ~~Goods or Services~~goods or services regardless of dollar amount, if:

(a) The Person has agreed to donate all or a significant portion of the materials or ~~Services~~services necessary to perform the ~~Work~~work; and

(b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular ~~Project~~project and any requirements that the District deems necessary or beneficial to protect the District.

(16) Manufacturer Direct Supplies. The District may purchase ~~Goods~~goods directly from a manufacturer if a large-volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). ~~Procurements~~procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.

(17) Benson House Program Contracts. The District may directly negotiate a Contract for ~~Goods~~goods and/or ~~Services~~services without complying with the ~~Competitive Procurement~~competitive procurement requirements of these ~~Rules~~rules where the Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(18) Purchases Under Contracts Solicited by Nonprofit Procurement Organizations of Which the District Is a Member. The District may purchase ~~Goods~~goods and/or ~~Services~~services under a Contract or ~~Procurement~~procurement solicited by a Nonprofit ~~Procurement~~procurement Organization of which it is a member. For the purposes of this Special ~~Procurement, such a Procurement~~procurement, such a procurement Organization will be considered to be an "Administering Contracting Agency" and a "Contracting Purchasing Group" under PPS 46-0400 through 46-0480. Such ~~Procurement must~~procurement shall otherwise comply with the requirements for permissive, joint, or Interstate Cooperative ~~Procurements~~procurements, as applicable, pursuant to PPS 46-0400 through 46-0480.

(19) Secure, Specialized Transportation for Special Needs Students. The Superintendent may contract directly for transportation services for special needs students where such transportation need requires a transportation service with skills or equipment tailored to the needs of the particular special needs student or class of special needs students. For the purposes of this Special ~~Procurement~~procurement, a "special needs student" is a student with special physical, mental, developmental, or security needs such that District

transportation, public transportation, or other private general transportation providers (taxicabs, town car services, charter services, etc.) cannot provide safe, beneficial, or timely service. Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for secure, specialized transportation, in any dollar amount.

(20) FSCP. The Superintendent may establish an FSCP for ~~Goods, Services~~goods, services, or construction services that are not Public Improvements for a particular class of ~~Services~~services, where the need for such ~~Services~~services is ongoing in nature, where it is difficult to anticipate the ~~Service~~service need, time, amount, or availability of Contractors, or where ~~Service~~service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these ~~Rules~~rules. An FSCP shall comply with the following requirements:

(a) Solicitation to Create an FSCP. An FSCP for ~~Goods or Services~~goods or services shall be solicited based on the total cost of the ~~Work~~work estimated to be ~~Awarded~~awarded through the FSCP during its life. If the total amount of the ~~Work~~work is estimated to be over $150,000, the Superintendent shall use a ~~Competitive Sealed~~competitive sealed Proposals process as provided in PPS 47-0260. If the total amount of the ~~Work~~work is $150,000 or less, the FSCP may be solicited pursuant to the ~~Intermediate Procurement~~intermediate procurement process set forth in PPS 47-0270.

(A) The Superintendent shall document the reasons for establishing an FSCP consistent with this ~~Rule~~rule in the ~~Procurement File~~Solicitation file. This documentation ~~must~~shall be reviewed and approved by the Director of ~~Procurement~~procurement as demonstrating that the procurement qualifies for use of an FSCP under these ~~Rules~~rules.

(B) The solicitation shall describe the class of Contracts that can be ~~Awarded~~awarded to Contractors in the FSCP. The District may not ~~Award~~award Contracts outside the designated class of Contracts to the FSCP.

(C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(D) The solicitation may request a binding Price ~~Quote~~quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(E) The solicitation may set or limit the value of the ~~Work~~work to be performed by the FSCP.

(b) Contracting for Work from an FSCP. Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform certain ~~Services~~services or provide certain ~~Goods~~goods within the established scope of the ~~Work~~work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual ~~Services~~services or ~~Goods~~goods will be offered, negotiated, and ~~Awarded~~awarded sequentially to Contractors on the FSCP list. Once the Superintendent has offered a Contract to all of the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer a Contract to Contractors out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The ~~Project~~project is for ~~Goods or Services~~goods or services that is a continuation of, addition to, or connected with ~~Goods or Services~~goods or services previously performed by

a Contractor on the list, and such prior experience means that it is in the best interest of the District to ~~Award~~award the Contract to the Contractor that performed the prior Work or provided the prior ~~Goods~~goods.

(D) The nature of the ~~Project~~project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an ~~Intermediate Procurement~~intermediate procurement pursuant to PPS 47-0270 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in ~~Writing~~writing in the ~~Procurement File~~Solicitation file.

(c) An FSCP established under this ~~Rule~~rule will expire after three years from the date of Closing of the ~~solicitation~~Solicitation, unless reestablished as provided in this ~~Rule~~rule.

(d) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of ~~Work~~work or orders, or any Work or orders at all.

(e) The establishment of an FSCP does not preclude the Superintendent from procuring ~~Goods or Services~~goods or services that would otherwise fall within the FSCP from other Contractors through any other ~~Procurement~~procurement method authorized under these ~~Rules~~rules.

(f) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory, or other capability needed to perform the class of ~~Work~~work or provide the required ~~Goods~~goods or ~~Services~~services.

(g) If an FSCP for construction services is reasonably estimated to include Public Works ~~Projects~~projects that will total over $50,000 during the life of the FSCP, Public Works Contracts ~~Awarded~~awarded to Contractors on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(21) Contracts for Price-Regulated Items. The Superintendent may contract for the direct purchase of ~~Goods or Services~~goods or services where the rate or price for the ~~Goods or Services~~goods or services being purchased is established by federal, state, or local regulatory authority without competitive solicitation.

(22) Service Monopoly. The Superintendent may enter into Contracts for Work by a utility or other entity that has been granted a monopoly for ~~Services~~services for a specific geographic area or provision of a type of ~~Service~~service and by agreement the utility or entity is either entitled to or is required to perform the required Work.

(23) Investment Contracts. The Superintendent may contract for the investment of District funds or the borrowing of funds by the District when such investment or borrowing is contracted pursuant to statute, rule, or constitution. The Superintendent shall use competitive methods where possible to achieve the best value for the District.

(24) Rating Agency Contracts. The District may purchase the ~~Services~~services of Moody's Investors ~~Service~~service, Standard & Poor's, or similar rating agencies.

(25) Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt. The Superintendent may purchase gasoline, diesel fuel, heating oil, lubricants, and asphalt using the ~~Intermediate Procurement~~intermediate procurement Process set forth in PPS 47-0270 regardless of dollar amount.

(26) Hotel, Catering, and Space Rental Contracts.

(a) The Superintendent may rent a room or meeting facility in a hotel, event space, or other venue for District purposes without competitive procurement.

(b) The Superintendent may hire a caterer without competitive procurement where use of a particular caterer or catering service is a condition of rental of a facility.

(27) Specialized Assistive Equipment for Students. The superintendent may directly procure specialized assistive equipment for students, including without limitation positioning equipment for orthopedically impaired students and assistive technology for blind/vision impaired, deaf/hard of hearing, and deaf/blind students, and augmentative and alternative communication equipment for students who require such assistance.

(28) Service, Repair, or Maintenance Services for Products under Warranty. The superintendent may directly procure service, repair, or maintenance services from a manufacturer, dealer, or authorized service provider for a product or a system subject to a warranty when the terms of the warranty require use of a particular maintenance service provider or providers, or when the manufacturer or approved provider ~~must~~shall diagnose a problem because the system or part is proprietary.

PROCUREMENT PROCESS

PPS 47-0300 Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. The District shall provide public notice of every Solicitation Document in accordance with ~~Section~~section (2) of this ~~Rule~~rule. The District may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the District's ~~Procurements~~procurements;

(b) Placing notice on the District's ~~Electronic Procurement~~electronic procurement System; or

(c) Placing notice on the District's Internet World Wide Web site.

(2) Advertising. The District shall advertise every notice of a Solicitation Document as follows:

(a) The District shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5) in at least one newspaper of general circulation in the District and in as many other publications as the District may determine; or

(b) The District may publish the advertisement for Offers on the District's ~~Electronic Procurement~~electronic procurement System instead of publishing notice in a newspaper of general circulation ~~as authorized~~required by ORS 279B.055(4~~)(c~~) when the District determines that doing so is more cost effective.

(c) Notice shall be given at least seven ~~Days~~days prior to the ~~solicitation~~Solicitation Closing day.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the ~~Goods~~goods or ~~Services~~services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with ~~Sections~~2ections (2)(a) or (b) above and Closing, which shall not be less than ~~seven Days~~fourteen (14) days for an Invitation to Bid and ~~14 Days~~thirty (30) days for a Request for ~~Proposals~~proposal, unless the District determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with ~~Section~~section (2)(a) or (b) above and Closing be less than seven ~~Days~~(7) days as set forth in ORS 279B.055(4)(f). The District shall document the specific reasons for the shorter public notice period in the ~~Procurement File~~Solicitation file;

(d) The date that Persons ~~must~~shall file applications for prequalification if prequalification is a requirement, and that the class of ~~Goods~~goods or ~~Services~~services is one for which Persons ~~must~~shall be prequalified;

(e) The office where Contract terms, conditions, and ~~Specifications~~specifications may be reviewed;

(f) The name, title, and address of the individual authorized by the District to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the District deems appropriate.

(4) Posting Advertisement for Offers. The District shall post a copy of each advertisement for Offers at the principal business office of the District. An Offeror may ~~request~~obtain a copy of the advertisement for Offers upon request.

(5) Fees. The District may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The District shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with PPS 47-0430.

PPS 47-0310 Bids or Proposals Are Offers

(1) Offer and Acceptance. The Bid or ~~Proposal~~proposal is the ~~Bidder's~~bidder's or Proposer's Offer to enter into a Contract.

(a) In ~~Competitive Bidding and Competitive~~competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the District's acceptance for the period specified in PPS 47-0480. The District may elect to accept the Offer at any time during the specified period, and the District's ~~Award~~award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a ~~Competitive Proposal~~competitive proposal is a "Firm Offer" for the period specified in PPS 47-0480, the District may elect to discuss or negotiate certain contractual provisions, as identified in these ~~Rules~~rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the ~~Rules~~rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the ~~Rules~~rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent that the Proposer is authorized to propose certain terms and conditions pursuant to PPS 47-0262, a Proposer ~~must~~shall not make its Offer contingent upon the District's acceptance of any terms or conditions (including ~~Specifications~~specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By ~~Signing~~signing and returning the Offer, the Offeror acknowledges ~~that~~ it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for ~~Proposals~~proposal permits Proposers to propose alternative terms or conditions under PPS 47-0261, the Offeror's Offer ~~shall include~~includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in ~~Writing~~writing, and Offeror's agreement to perform the scope of ~~Work~~work and meet the performance standards set forth in the final negotiated scope of ~~Work~~work.

PPS 47-0320 ~~Facsimile~~facsimile Bids and Proposals

(1) District Authorization. The District may authorize Offerors to submit ~~Facsimile~~facsimile Offers. If the District determines that ~~Bid or Proposal~~bid or proposal security is or will be required, the District should not authorize ~~Facsimile~~facsimile Offers unless the District has another method for receipt of such security.

Prior to authorizing the submission of ~~Facsimile~~facsimile Offers, the District ~~must~~shall determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District ~~must~~shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard ~~Facsimile~~facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to Be Included in Solicitation Document. In addition to all other requirements, if the District authorizes a ~~Facsimile~~facsimile Offer, the District ~~will~~shall include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A '~~Facsimile~~facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit ~~Facsimile~~facsimile Offers in response to this Solicitation Document. The entire response ~~must~~shall arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to ~~Sign~~sign their ~~Facsimile~~facsimile Offers;

(d) A provision substantially in the form of the following: "The District reserves the right to ~~Award~~award the Contract solely on the basis of a ~~Facsimile~~facsimile Offer." However, upon the District's request the apparent successful Offeror ~~must~~shall promptly submit its complete original ~~Signed~~signed Offer;

(e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, ~~and~~ communications protocol~~.~~; and

(f) A provision that ~~provides that~~ the District is not responsible for any failure attributable to the transmission or receipt of the ~~Facsimile~~facsimile Offer including, but not limited to, the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

PPS 47-0330 ~~E-Procurement~~Electronic procurement

(1) Electronic ~~Procurement~~procurement Authorized.

(a) The District may conduct all phases of a ~~Procurement~~procurement, including, without limitation, the posting of Electronic Advertisements and the receipt of electronic Offers, by electronic methods if and to the extent the District specifies in a Solicitation Document, a Request for

~~Quotes~~quotes, or any other ~~Writing that instructs Persons~~written instructions on how to participate in the ~~Procurement~~procurement.

(b) The District ~~must~~shall open an Electronic Offer in accordance with electronic security measures in effect at the District at the time of its receipt of the Electronic Offer. Unless the District provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The District's use of electronic ~~Signatures must~~signatures shall be consistent with applicable statutes and ~~Rules~~rules. The District ~~must authorize, and~~ may limit the use of, electronic methods of conducting a ~~Procurement~~procurement based on the best interests of the District, as determined by the District.

(d) If the District determines that ~~Bid or Proposal~~bid or proposal security is or will be required, the District should not authorize Electronic Offers unless the District has another method for receipt of such security.

(2) Rules Governing ~~Electronic Procurements~~electronic procurements. The District ~~must~~shall conduct all portions of an ~~Electronic Procurement~~electronic procurement in accordance with these ~~Division~~division 47 ~~Rules~~rules, unless otherwise set forth in this ~~Rule~~rule.

(3) Preliminary Matters. As a condition of participation in an ~~Electronic Procurement~~electronic procurement, the District may require potential Contractors to register with the District before the date and time on which the District ~~will~~shall first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the ~~Procurement~~procurement, such as procedures that the District may use to attribute, authenticate, or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic ~~Signature~~signature.

(4) Offer Process. The District may specify that Persons ~~must~~shall submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the District specifies that Persons may submit multiple Electronic Offers during a specified period of time, the District ~~must~~shall designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the District ~~will~~shall accept Electronic Offers for a period of time ~~other than~~, then at the designated date and time that the District ~~will~~shall first receive Electronic Offers, the District ~~must~~shall begin to accept real time Electronic Offers on an ~~Electronic Procurement~~electronic procurement System, and ~~must~~shall continue to accept Electronic Offers in accordance with ~~Section~~section (5)(b) of this ~~Rule~~rule until the date and time specified by the District, after which the District ~~will~~shall no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When the District conducts an ~~Electronic Procurement~~electronic procurement that provides that all Electronic Offers ~~must~~shall be submitted by a particular date and time, the District ~~must~~shall receive the Electronic Offers in accordance with these ~~Division~~division 47 ~~Rules~~rules.

(b) When the District specifies that Persons may submit multiple Electronic Offers during a period of time, the District ~~must~~shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the ~~date~~day and time that the District first receives Electronic Offers, the District ~~must~~shall post ~~and update~~on the District's Electronic

procurement System, and updated on a real-time basis:, the lowest Electronic Offer price or highest ranking Electronic Officer.

~~(i) The prices of the other Bidders or the price of the most Competitive Bidder;~~

~~(ii) The rank of each Bidder (e.g., (1) "winning" or "not winning" or (2) "1st, 2nd, or higher";~~

~~(iii) The scores of the Bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or~~

~~(iv) Any combination of (i), (ii), and (iii) above. At any time before the date and time after which the District will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.~~

(B) A Person may not increase the price set forth in an Electronic Offer after the date and time that the District first accepts Electronic Offers.

(c) ~~(C)~~ A Person may withdraw an Electronic Offer only in compliance with these ~~Division~~division 47 ~~Rules~~rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the ~~E-Procurement~~E-procurement System. In the event of a failure of the District's Electronic procurement System that interferes with the ability of Persons to submit Electronic Offers, protest, or to otherwise participate in the ~~Procurement~~procurement, the District may cancel the ~~Procurement~~procurement in accordance with PPS 47-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ~~system~~Electronic procurement System becomes available.

BID AND PROPOSAL PREPARATION

PPS 47-0400 Offer Preparation

(1) Instructions. ~~Offerors must~~(1) Instructions. An Offeror shall submit and ~~Sign their Offers~~sign its Offer in accordance with the instructions set forth in the Solicitation Document. ~~Offerors must initial any corrections or erasures to their Offers.~~An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. ~~Offerors must~~An Offeror shall submit ~~their~~its Offer on the form(s) provided in the Solicitation Document, unless ~~Offerors are~~an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. ~~Offerors must~~An Offeror shall provide the District with all documents and Descriptive Literature required by the Solicitation Document.

PPS 47-0410 Offer Submission

(1) Product Samples and Descriptive Literature. The District may require Product Samples or Descriptive Literature if the District determines either is necessary or desirable to evaluate the quality, features, or characteristics of an Offer. The District ~~will~~shall dispose of Product Samples, or make them available for the Offeror to retrieve, in accordance with the Solicitation Document.

(2) Identification of Offers.

(a) To ensure proper identification and handling, Offers ~~must~~shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable. If the District permits Electronic Offers or ~~Facsimile~~facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or ~~Facsimile~~facsimile Offers in accordance

with these ~~Division~~division 47 ~~Rules~~rules and the instructions set forth in the Solicitation Document. The District ~~will~~shall not consider ~~Facsimile or Electronic~~facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The District is not responsible for Offers submitted in any manner, format, or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. ~~Offerors are~~The Offeror is responsible for ensuring that the District receives ~~their Offers~~its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

PPS 47-0420 Pre-Offer Conferences

(1) Purpose. The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the ~~Procurement~~procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The District may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If the District holds a pre-Offer conference, it ~~must~~shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a ~~Written~~written Addendum to the Solicitation Document.

(5) District Announcement. The District ~~must~~shall set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 47-0255(2) or 47-0260(2).

PPS 47-0430 Addenda to Solicitation Document

(1) Issuance; Receipt. The District may change a Solicitation Document only by ~~Written~~written Addenda. An Offeror ~~must~~shall provide ~~Written~~written acknowledgment of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda.

(2) Notice and Distribution. The District ~~must~~shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document ~~must~~shall specify how the District ~~will~~shall provide notice of Addenda and how the District ~~will~~shall make the Addenda available before Closing, and at each subsequent step or ~~phase~~tier of evaluation if the District ~~will~~shall engage in a ~~Multi-Step Competitive Sealed Bidding~~multistep competitive sealed bidding process in accordance with PPS 47-0257, or a ~~Multi-Tiered or Multi-Step Competitive Sealed Proposals~~multi-tiered or multistep competitive sealed proposals process in accordance with PPS 47-0261. The following is an example of how the District may specify how it will provide notice of Addenda: "The District will not mail notice of Addenda, but will ~~post public~~publish notice of any Addenda on the District's ~~Web~~web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The District ~~must~~shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the District ~~must~~shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding ~~Section~~subsection (3)(a) of this ~~Rule~~rule, an Addendum that modifies the evaluation criteria, selection process, or procedure for any step or ~~phase~~tier of competition under a ~~Multi-Step Sealed Bidding or Multi-Step Sealed~~multistep sealed bidding or multistep sealed Proposals process issued in accordance with PPS 47-0257 or 47-0261 ~~must~~shall be issued no fewer than five ~~Days~~days before the beginning of that tier or step ~~or phase of~~of competition, unless the District determines that a shorter period is sufficient to allow ~~the~~ Offerors to prepare for that tier or step ~~or phase~~ of competition. The District ~~must~~shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step ~~or phase~~ of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a ~~Written~~written request for change or protest to the Addendum, as provided in PPS 47-0730, by the close of the District's next business ~~Day~~day after issuance of the Addendum, or up to the last ~~Day~~day allowed to submit a request for change or protest of the ~~solicitation~~Solicitation under PPS 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with PPS 47-0730, then the District may consider an Offeror's request for change or protest to the Addendum only, and the District shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this ~~Section~~section (4) of this ~~Rule~~rule, the District is not required to provide a protest period for Addenda issued after ~~the~~ initial Closing during a ~~Multi-Tiered or Multi-Step Procurement~~multi-tiered or multistep procurement process conducted pursuant to ORS 279B.055 or 279B.060.

PPS 47-0440 Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in ~~Writing~~writing prior to the Closing. An Offeror ~~must~~shall prepare and submit any modification to its Offer to the District in accordance with PPS 47-0400 and PPS 47-0410, unless otherwise specified in the Solicitation Document. Any modification ~~must~~shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror ~~must~~shall mark the submitted modification as follows:

(a) Bid (or ~~Proposal~~proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by ~~Written~~written notice submitted on the Offeror's letterhead, ~~Signed~~signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing upon presentation of appropriate identification and evidence of authority satisfactory to the District.

(b) The District may release an unopened Offer withdrawn under ~~Section~~section (2)(a) of this ~~Rule~~rule to the Offeror or its authorized representative, after voiding any date and ~~time stamp~~time stamp mark.

(c) The Offeror ~~must~~shall mark the ~~Written~~written request to withdraw an Offer as follows:

(A) Bid (or ~~Proposal~~proposal) Withdrawal; and

(B) Solicitation Document Number (or ~~other identification~~Other Identification as specified in the Solicitation Document).

(3) Documentation. The District ~~must~~shall include all documents relating to the modification or withdrawal of Offers in the appropriate ~~Procurement File~~Solicitation file.

PPS 47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. The District ~~must~~shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District ~~must~~shall not open the Offer or modification upon receipt, but ~~must~~shall maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District ~~must~~shall return the Offer or modification to its secure and confidential state until Opening. The District ~~must~~shall document the resealing for the ~~Procurement File~~Solicitation file (e.g., "District inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. The District ~~must~~shall publicly open Offers including any modifications made to the Offer pursuant to PPS 47-0440(1). In the case of Invitations to Bid, to the extent practicable, the District ~~must~~shall read aloud the name of each ~~Bidder~~bidder and such other information as the District considers appropriate. However, the District may withhold from disclosure information marked by the Offeror as "confidential" or a "trade secret" in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

PPS 47-0460 Late Offers, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District ~~must~~shall not consider late Offers, withdrawals, or modifications except as permitted in PPS 47-0470 or 47-0261.

PPS 47-0470 Mistakes

(1) ~~General~~Generally. To protect the integrity of the ~~Competitive Procurement~~competitive procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) District Treatment of Mistakes. The District ~~must~~shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before the ~~Award~~award of the Contract, the District may take the following action:

(a) The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of ~~Signed~~signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a ~~Signature~~signature appears elsewhere in the Offer evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided~~:~~ that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality, or delivery.

~~**(b)**~~ The District may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the District's correction in ~~Writing~~writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by

dividing the total price for the units by the quantity of units for that item, or missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices ~~will~~shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(a) ~~**(c)**~~ The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this ~~section~~subsection or an error in judgment;

(C) That the error cannot be corrected or waived under ~~Section~~subsection (b) of this ~~Rule~~section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;

(G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the District.

(b) ~~**(d)**~~ The criteria in ~~Section~~subsection (2)(c) of this ~~Rule must~~rule shall determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria ~~also must~~shall apply to the question of whether the District ~~will~~shall permit an Offeror to withdraw its Offer without forfeiture of its ~~Bid~~bid bond (or ~~Proposal~~other bid or proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually ~~Awarded~~awarded by the District, whether by ~~Award~~award to the next lowest Responsive and Responsible ~~Bidder~~bidder, the most advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The District ~~must~~shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.

(4) Identification of Mistakes ~~After~~after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following ~~Award~~award, an Offeror is bound by its Offer, and may ~~only~~ withdraw its Offer or rescind a Contract entered into pursuant to this ~~Division~~division 47 only to the extent permitted by applicable law.

PPS 47-0480 Time for District Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid, and binding on the Offeror for not less than ~~60 Days~~thirty (30) days following Closing unless otherwise specified in the Solicitation Document.

PPS 47-0490 Extension of Time for Acceptance of Offer

The District may request, orally or in ~~Writing~~writing, that Offerors extend, in ~~Writing~~writing, the time during which the District may consider their Offer(s). If an Offeror agrees to such extension, the Offer ~~must~~shall continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

QUALIFICATIONS AND DUTIES

PPS 47-0500 Responsibility of ~~Offerors~~Bidders and Proposers

(1) Determination. Before ~~Awarding~~awarding a Contract, the District ~~must~~shall determine that the ~~Offeror~~bidder submitting the lowest ~~Bid or Proposal or~~bid or Proposer submitting the most advantageous ~~Offer~~proposal is Responsible. The District ~~must~~shall use the standards set forth in ORS 279B.110 and PPS 47-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event the District determines ~~an Offeror~~a bidder or Proposer is not Responsible, it ~~must~~shall prepare a ~~Written~~written determination of non-Responsibility as required by ORS 279B.110 and ~~must~~shall reject the Offer.

PPS 47-0525 Qualified Products Lists

(1) Authority. The District may develop and maintain a qualified products list pursuant to ORS 279B.115 in instances in which the testing or examination of ~~Goods~~goods before initiating a ~~Procurement~~procurement is necessary or desirable in order to best satisfy the requirements of the District. For purposes of this section, "~~Goods~~goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

(2) Notice. In the initial development of any qualified products list, the District shall give public notice, in accordance with PPS 47-0300, of the opportunity for potential Contractors, sellers, or suppliers to submit ~~Goods~~goods for testing and examination to determine their acceptability for inclusion on the list, and may solicit in ~~Writing~~writing representative groups of potential Contractors, sellers, or suppliers to submit ~~Goods~~goods for the testing and examination. Any potential Contractor, seller, or supplier, even though not solicited, may offer its ~~Goods~~goods for consideration.

(3) Inclusion to Be Based on Tests or Examinations. The District's inclusion of ~~Goods~~goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 through 192.505, the District may make the test or examination results public in a manner that protects the identity of the potential Contractor, seller, or supplier that offered the ~~Goods~~goods for testing or examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 through 192.505, the District may keep confidential trade secrets, test data, and similar information provided by a potential Contractor, seller, or supplier if so requested in ~~Writing~~writing by the potential Contractor, seller, or supplier.

(4) List Does Not Constitute Prequalification. The inclusion of ~~Goods~~goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective Contractor, seller, or supplier of ~~Goods~~goods on the qualified products list.

PPS 47-0550 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions

(1) Prequalification of Prospective Offerors. Pursuant to ORS 279B.120 and 279B.125, the District may prequalify prospective ~~Bidders~~bidders or Proposers to submit Bids or Proposals for Public Contracts to provide particular types of ~~Goods~~goods or ~~Services~~services.

(2) Notice of Prequalification. The District shall, in response to the receipt of a prequalification application submitted under ~~Section~~section (1) of this ~~Rule~~rule, notify the prospective ~~Bidder~~bidder or Proposer whether the prospective ~~Bidder~~bidder or Proposer is qualified based on the standards of responsibility listed in ~~Section~~section (7), the type and nature of Contracts that the prospective ~~Bidder~~bidder or Proposer is qualified to compete for and the time period for which the prequalification is valid. If the District does not prequalify a prospective ~~Bidder~~bidder or Proposer as to any Contracts covered by the prequalification process, the notice ~~must~~shall specify which of the standards of responsibility listed in ~~Section~~section (7) the prospective ~~Bidder~~bidder or Proposer failed to meet. Unless the reasons are specified, the prospective ~~Bidder~~bidder or Proposer shall be deemed to have been prequalified in accordance with the application.

(3) Revocation of Prequalification. If the District subsequently discovers that a prospective ~~Bidder~~bidder or Proposer that prequalified under Sections (1) and (2) of this ~~Rule~~rule is no longer qualified, the District may revoke the prequalification upon reasonable notice to the prospective ~~Bidder~~bidder or Proposer, except that a revocation is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued. Notwithstanding this prohibition against revocation of prequalification, the District may determine that a prequalified Offeror is not Responsible prior to Contract ~~Award~~award.

(4) Application. When the District permits or requires prequalification of ~~Bidders~~bidders or Proposers, a prospective ~~Bidder~~bidder or Proposer who wishes to prequalify shall submit a prequalification application to the District on a form prescribed by the District. Upon receipt of a prequalification application, the District shall investigate the prospective ~~Bidder~~bidder or Proposer as necessary to determine whether the prospective ~~Bidder~~bidder or Proposer is qualified. The determination shall be made in less than 30 ~~Days~~days, if practicable, if the prospective ~~Bidder~~bidder or Proposer requests an early decision to allow the prospective ~~Bidder~~bidder or Proposer as much time as possible to prepare a ~~Bid or Proposal~~bid or proposal for a Contract that has been advertised. In making its determination, the District shall consider only the applicable standards of responsibility listed in ~~Section~~section (7). The District shall promptly notify the prospective ~~Bidder~~bidder or Proposer whether the prospective ~~Bidder~~bidder or Proposer is qualified.

(5) Contents of Notice. If the District finds that a prospective ~~Bidder~~bidder or Proposer is qualified, the notice ~~must~~shall state the type and nature of Contracts that the prospective ~~Bidder~~bidder or Proposer is qualified to compete for and the period of time for which the prequalification is valid. If the District finds that the prospective ~~Bidder~~bidder or Proposer is not qualified as to any Contracts covered by the ~~Rule~~rule, resolution, ordinance, or other regulation, the notice ~~must~~shall specify the reasons given under ~~Section~~section (7) below. To be entitled to a hearing under PPS 47-0760, a prospective ~~Bidder~~bidder or Proposer shall, within three business ~~Days~~days after receipt of the notice, notify the District that the prospective ~~Bidder~~bidder or Proposer demands a hearing under PPS 47-0760.

(6) Revocation or Reissuance Process. If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective ~~Bidder~~bidder or Proposer and that the prospective ~~Bidder~~bidder or Proposer is no longer qualified or is less qualified, the District may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective ~~Bidder~~bidder or Proposer. The notice ~~must~~shall specify the reasons given under ~~Section~~section (2) for revocation or revision of the prequalification of the prospective ~~Bidder~~bidder or Proposer and inform the prospective ~~Bidder~~bidder or Proposer of the right to a hearing under PPS 47-0760. To be entitled to a hearing under PPS 47-0760, a prospective ~~Bidder~~bidder or Proposer shall, within three business ~~Days~~days after receipt of the notice, notify the District that the prospective ~~Bidder~~bidder or Proposer demands a hearing under PPS 47-0760. A revocation or revision does not apply to any Contract for which an advertisement for Bids or Proposals was issued before the date the notice of revocation or revision was received by the prequalified prospective ~~Bidder~~bidder or Proposer.

(7) Standards of Responsibility. In determining whether a ~~Bidder~~bidder or Proposer has met the standards of responsibility pursuant to ORS 279B.110(2), the District shall consider whether a ~~Bidder~~bidder or Proposer has:

(a) 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 ~~Bidder~~bidder or Proposer to meet all contractual responsibilities;

(b) A satisfactory record of performance. The District shall document the record of performance of a ~~Bidder~~bidder or Proposer if the District finds the ~~Bidder~~bidder or Proposer non-responsible under this section;

(c) A satisfactory record of integrity. The District shall document the record of integrity of a ~~Bidder~~bidder or Proposer if the District finds the ~~Bidder~~bidder or Proposer non-responsible under this section;

(d) Qualified legally to contract with the District;

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a ~~Bidder~~bidder or Proposer fails to promptly supply information requested by the District concerning responsibility, the District shall base the determination of responsibility on any available information or may find the ~~Bidder~~bidder or Proposer non-responsible; and

(f) Not been ~~debarred~~Debarred by the District under PPS 47-0575.

(8) Pre-Negotiation. The District may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future ~~Procurements~~procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in ~~Section~~section 1 or the pre-negotiation may be a separate process and not part of the prequalification process. Unless required as part of the prequalification process, the failure of the District and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to ~~Procurements~~procurements. The District may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the District has pre-negotiated different terms and conditions with Proposers or, when permitted, Proposers offer different terms and conditions, the District may consider the terms and conditions in the ~~Proposal~~proposal evaluation process.

PPS 47-0560 Request for Qualifications ("RFQ")

For purposes of this section, an RFQ may be used without the RFQ constituting a prequalification pursuant to PPS 47-0550, if the District establishes the RFQ to determine whether competition exists to perform the needed ~~Services~~services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing an RFP. If the District establishes a closed, exclusive, or binding list of qualified Contractors, then the District ~~must~~shall comply with ~~Section~~section (1) of this ~~Rule~~rule. The District is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(1) Content of RFQ. At a minimum, the RFQ ~~must~~shall describe the particular specialty desired, the qualifications the Contractor(s) ~~must~~shall have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required ~~Services~~services; the number of experienced staff available to perform the required ~~Services~~services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the District to evaluate Contractor qualifications. All RFQs ~~must~~shall:

(a) Be in ~~Writing~~writing;

(b) Provide that the District may, at any time during the ~~solicitation~~Solicitation process, reject any or all Proposals or cancel the ~~solicitation~~Solicitation without liability if it is in the public interest to do so; and

(c) Provide that the District is not responsible for any costs of any Proposers incurred while submitting Proposals, and that all Proposers who respond to solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(2) Pre-Submission Meeting. A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed ~~Services~~services. The RFQ ~~must~~shall include the date, time, and place of the meeting(s).

(3) Notice and Opportunity to Submit RFQ. Unless the RFQ establishes that competition does not exist or unless the ~~solicitation~~Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications ~~must~~shall receive a notice, or other materials as appropriate, in addition to the general public, of any required ~~Services~~services and have an opportunity to submit a ~~Proposal~~proposal in response to the District's subsequent RFP.

PPS 47-0575 Debarment of Prospective Offerors

(1) Generally. The District may ~~debar~~Debar prospective Offerors for the reasons of discriminating against a subcontractor in the ~~Awarding~~awarding of a Contract because the subcontractor is a minority, women or emerging small business enterprise, a disadvantage business enterprise or a veteran-owned business as set forth in ORS 279A.110, or after providing notice and the opportunity for hearing as set forth in Sections (5)-(8).

(2) Responsibility. Notwithstanding the limitation on the term for ~~debarment~~Debarment in ORS 279B.130(1)(b), the District may determine that a previously ~~debarred~~Debarred Offeror is not Responsible prior to Contract ~~Award~~award.

(3) Imputed Knowledge. The District may attribute improper conduct of a Person or their affiliate or affiliates having a ~~Contract~~contract with a prospective Offeror to the prospective Offeror for purposes of ~~debarment~~Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. The District may allow a ~~debarred~~Debarred Person to participate in solicitations and Contracts on a limited basis during the ~~debarment~~Debarment period upon ~~Written~~written determination that participation is advantageous to the District. The determination ~~must~~shall specify the factors on which it is based and define the extent of the limits imposed.

(5) Debarment Process. The District may ~~debar~~Debar a prospective ~~Bidder~~bidder or Proposer from consideration for ~~Award~~award of the District's Contracts for the reasons listed in ~~Section~~section (6) of this ~~Rule~~rule after providing the prospective ~~Bidder~~bidder or Proposer with notice and a reasonable opportunity to be heard.

(a) The District may not ~~debar~~Debar a prospective ~~Bidder~~bidder or Proposer under this section for more than three years.

(6) Reasons for Debarment. A prospective ~~Bidder~~bidder or Proposer may be ~~debarred~~Debarred from consideration for ~~Award~~award of the District's Contracts if:

(a) The prospective ~~Bidder~~bidder or Proposer 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 a public or private contract or subcontract.

(b) The prospective ~~Bidder~~bidder or Proposer 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 ~~Bidder's~~bidder's or Proposer's responsibility as a Contractor.

(c) The prospective ~~Bidder~~bidder or Proposer has been convicted under state or federal antitrust statutes.

(d) The prospective ~~Bidder~~bidder or Proposer has committed a violation of a Contract provision that is regarded by the District 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. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for ~~debarment~~Debarment.

(e) The prospective ~~Bidder~~bidder or Proposer does not carry workers' compensation or unemployment insurance as required by statute.

(7) Written Debarment Decision Required. The District shall issue a ~~Written~~written decision to ~~debar~~Debar a prospective ~~Bidder~~bidder or Proposer under this section. The decision ~~must~~shall:

(a) State the reasons for the action taken;

(b) Inform the ~~debarred~~Debarred prospective ~~Bidder~~bidder or Proposer of the appeal rights of the prospective ~~Bidder~~bidder or Proposer under PPS 47-0760; and

(c) Be mailed or otherwise furnished immediately to the ~~debarred~~Debarred prospective ~~Bidder~~bidder or Proposer.

(8) A prospective ~~Bidder~~bidder or Proposer that wishes to appeal ~~debarment~~Debarment shall, within three business ~~Days~~days after receipt of notice of ~~debarment~~Debarment, notify the District that the prospective ~~Bidder~~bidder or Proposer appeals the ~~debarment~~Debarment as provided in PPS 47-0760.

OFFER EVALUATION AND AWARD

PPS 47-0600 Offer Evaluation and ~~Award~~award

(1) District Evaluation. The District ~~must~~shall evaluate Offers only as set forth in the Solicitation Document pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b) based on the requirements set forth in the ITB or RFP, and in accordance with applicable law. The District ~~must~~shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident ~~Bidders~~bidders: In determining the lowest Responsive Bid, the District ~~must~~shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and PPS 46-0310 for nonresident ~~Bidders~~bidders.

(B) Public Printing: The District ~~must~~shall, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

(C) Award When Bids are Identical: If the District determines that one or more Bids are identical under PPS 46-0300, the District ~~must Award~~shall award a Contract in accordance with the procedures set forth in PPS 46-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical: If the District determines that one or more Proposals are identical under PPS 46-0300, the District ~~must Award~~shall award a Contract in accordance with the procedures set forth in PPS 46-0300.

(B) Public Printing: The District ~~must~~shall, for the purpose of evaluating Proposals, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

(c) Recycled Materials. When procuring ~~Goods~~goods, the District shall give preference for Recycled Materials as set forth in ORS 279A.125 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 5 percent, or a higher percentage if the District makes a ~~Written~~written determination.

(2) Clarification of Bids or Proposals. After ~~the~~ Opening, the District may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the District's sole discretion, needing clarification ~~must be afforded~~shall be accorded such an opportunity. The District ~~must~~shall document clarification of any Offeror's ~~Bid~~bid or ~~Proposal~~proposal in the ~~Procurement File~~Solicitation file.

(3) Negotiations.

(a) Bids. The District shall not negotiate with any ~~Bidder~~bidder. After ~~Award~~award of the Contract, the District and Contractor may only modify the Contract in accordance with PPS 47-0800.

(b) Requests for Proposals. The District may only conduct discussions or negotiate with Proposers in accordance with ORS 279B.060(6)(b) and PPS 47-0261. After ~~Award~~award of the Contract, the District and Contractor may only modify the Contract in accordance with PPS 47-0800.

(4) ~~Award~~award.

(a) General. If ~~Awarded~~awarded, the District ~~must Award~~shall award the Contract to the Responsible ~~Bidder~~bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the most ~~advantageous~~Advantageous Responsive ~~Proposal~~proposal. The District may ~~Award~~award by item, groups of items, or the entire Offer, provided such ~~Award~~award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for ~~Proposals~~proposal may call for pricing of multiple items of similar or related type with ~~the Award~~award based on individual line item, group total of certain items, a "market basket" of items representative of the District's expected purchases, or grand total of all items.

(c) Multiple ~~Awards~~awards—Bids.

(A) Notwithstanding ~~Section~~subsection (4)(a) of this ~~Rule~~rule, the District may ~~Award~~award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. ~~A multiple Award may be made if the Award to two or more Bidders is beneficial for~~Multiple awards shall not be made if a single award will meet the District's needs, including but not limited to adequate availability, delivery, service, ~~competition, pricing, product capabilities, or other factors deemed significant by the District. Multiple Awards may not be allowed~~or product compatibility and skills. A multiple award may be made if award to two or more bidders of similar goods or services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple awards may not be made for purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective ~~Bidders~~bidders that multiple Contracts may be ~~Awarded~~awarded for any Invitation to Bid shall not preclude the District from ~~Awarding~~awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the ~~Award~~award of multiple Contracts, the District ~~must~~shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing ~~Goods~~goods or ~~Services~~services.

(d) Multiple ~~Awards~~awards—Proposals.

(A) Notwithstanding ~~Section~~subsection (4)(a) of this ~~Rule~~rule, the District may ~~Award~~award multiple Contracts under a Request for ~~Proposals~~proposal in accordance with the criteria set forth in the Request for ~~Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for~~proposal. Multiple awards shall not be made if a single award will meet the District's needs, including but not limited to adequate availability, delivery, service, ~~competition, pricing, product capabilities, or other factors deemed significant by the District. Multiple Awards may not be allowed~~or product compatibility. A multiple award may be made if award to two or more Proposers of similar goods or services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple awards may not be made for purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to ~~utility or economy.~~obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be ~~Awarded~~awarded for any Request for ~~Proposals must~~proposal shall not preclude the District from ~~Awarding~~awarding a single Contract for such Request for ~~Proposals~~proposal.

(B) If a Request for ~~Proposals~~proposal permits the ~~Award~~award of multiple Contracts, the District ~~must~~shall specify in the Request for ~~Proposals~~proposal the criteria it will use to choose from the multiple Contracts when purchasing ~~Goods~~goods or ~~Services~~services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial ~~Awards~~awards. If after evaluation of Offers the District determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The District may ~~Award~~award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The District may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions, and ~~Specifications~~specifications.

(f) ~~All-or-None~~All or None Offers. The District may ~~Award all-or-none~~award all or none Offers if the evaluation shows an all-or-none ~~Award~~award to be the lowest cost for Bids or the most ~~advantageous~~Advantageous for Proposals of those submitted.

PPS 47-0610 Notice of Intent to Award

(1) Notice of Intent to ~~Award~~award. The District ~~must provide Written notice to all Offerors of its Intent to Award~~shall provide written notice of its intent to award to all bidders and Proposers pursuant to ORS 279B.135 at least seven ~~Days~~(7) days before the ~~Award~~award of a Contract, unless the District determines that circumstances justify prompt execution of the Contract, in which case the District may provide a shorter notice period. The District ~~must~~shall document the specific reasons for the shorter notice period in the ~~Procurement File. This section does not apply to a Contract Awarded as a Small Procurement, an Intermediate Procurement, a sole-source Procurement, an Emergency Procurement, or a Special Procurement~~Solicitation file.

(2) Finality. The District's ~~Award will~~award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to PPS 47-0740; or

(b) The District provides ~~Written~~written responses to all ~~timely filed~~timely-filed protests denying the protests and affirming the ~~Award~~award.

PPS 47-0620 Documentation of Award

(1) Basis of ~~Award~~award. After ~~Award~~award, the District ~~must~~shall make a record showing the basis for determining the successful Offeror as part of the District's ~~Procurement File~~Solicitation file.

(2) Contents of ~~Award~~award Record. The District's record ~~must~~shall include:

(a) For Bids.

(A) Bids;

(B) Completed ~~Bid~~bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals.

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher-scoring Proposals; and

(D) If the District engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and PPS 47-0261, ~~Written~~written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the District used to select a Proposer to which the District ~~Awarded~~awarded a Contract.

PPS 47-0630 Availability of Award Decisions

(1) Contract Documents. To the extent required by the Solicitation Document, the District ~~must~~shall deliver to the successful Offeror a Contract, a ~~Signed Purchase Order~~signed purchase order, Price Agreement, or other Contract ~~Documents~~documents as applicable.

(2) Availability of Award Decisions. A Person may obtain tabulations of ~~Awarded~~awarded Bids or evaluation summaries of Proposals for a minimal charge in person or by submitting to the District a ~~Written~~written request accompanied by payment. The requesting Person ~~must~~shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.

(3) Availability of ~~Procurement~~Solicitation Files. After notice of ~~Intent~~intent to ~~Award~~award, the District ~~must~~shall make ~~Procurement Files~~Solicitation files available in accordance with applicable law.

PPS 47-0640 Rejection of an Offer

(1) Rejection.

(a) Any solicitation or ~~Procurement~~procurement described in a solicitation may be canceled, or any or all Bids or Proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the District as determined by the District. The reasons for the cancellation or rejection ~~must~~shall be made part of the ~~Procurement File~~Solicitation file. The District is not liable to any ~~Bidder~~bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, ~~Bid, Proposal~~bid, proposal, or ~~Award~~award. ORS 279B.100.

(b) The District ~~must~~shall reject an Offer upon the District's ~~Finding~~finding that the Offer:

(A) Is contingent on the District's acceptance of terms and conditions (including ~~Specifications~~specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including ~~Specifications~~specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers ~~Goods and Services~~goods or services that fail to meet the ~~Specifications~~specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public ~~Procurement~~procurement procedures.

(c) The District ~~must~~shall reject an Offer upon the District's ~~Finding~~finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the District required mandatory prequalification;

(B) Has been ~~debarred~~Debarred or has been disqualified under PPS 46-0210(4) (Disqualification);

(C) Has not met the requirements of ORS 279A.105 (emerging small business), if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or ~~Proposal~~proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is ~~Non-Responsible~~non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before ~~Awarding~~awarding a Contract, the District ~~must~~shall have information that indicates that the Offeror meets the applicable standards of ~~responsibility~~Responsibility. To be a Responsible Offeror, the District ~~must~~shall determine under ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources, and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the ~~Procurement~~procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or ~~has~~ recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the District should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and ~~Public Contracts~~public contracts in determining the Offeror's record of contract performance. The District ~~must~~shall make its basis for determining an Offeror non-Responsible under this section part of the ~~Procurement File~~Solicitation file as required by ORS 279B.110(2)(b).

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if the District determines ~~that~~ the Offeror demonstrates a lack of business ethics, such as violation of

state environmental laws or false certifications made to the District. The District may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the ~~contract~~Contract or a parent company, predecessor, or successor person). The standards for ~~debarment~~Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The District may find an Offeror ~~non-Responsible~~non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract, or in connection with the Offeror's performance of a contract or subcontract. The District ~~must~~shall make its basis for determining that an Offeror is non-Responsible under this section part of the ~~Procurement File~~Solicitation file as required by ORS 279B.110(2)(c);

(iv) Is legally qualified to contract with the District;

(v) Has attested in ~~Writing~~writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state; and

(vi) Has supplied all necessary information in connection with the inquiry concerning ~~responsibility~~Responsibility. If the Offeror fails to promptly supply information requested by the District concerning ~~responsibility~~Responsibility, the District ~~must~~shall base the determination of responsibility on any available information, or may find the Offeror non-Responsible.

(2) Required Tax Certification. For the purposes of subparagraph (1)(c)(F)(v) of this rule:

(A) The period for which the Offeror ~~must~~shall attest that it complied with the applicable tax laws ~~must~~shall extend no fewer than six years into the past from the date of the Closing.

(B) Tax laws include, but are not limited to, ORS 305.620, ORS ~~Chapters~~chapters 316, 317~~,~~ and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws.

(C) ~~Contracting Agency~~The District may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is "credible and convenient" under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, a Contracting Agency may accept forms of attestation that range from a notarized statement to a less formal document that records the Offeror's attestation. However, State Contracting Agencies may not accept the certificate of compliance with tax laws required by ORS 305.385 unless that certificate embraces, in addition to the tax laws described in ORS 305.380, the tax laws of political subdivisions.

(3) Form of Business Entity. For purposes of this ~~Rule~~rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this ~~Rule~~rule or to apply the ~~debarment~~Debarment provisions of this ~~Rule~~rule.

PPS 47-0650 Rejection of All Offers

(1) Rejection. The District may reject all Offers when the rejection is in the best interest of the District as determined by the District. The reasons for the rejection ~~must~~shall be made part of the ~~Procurement File~~Solicitation file. The District is not liable to any ~~Bidder~~bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, ~~Bid, Proposal~~bid, proposal, or

~~Award~~award. ORS 279B.100. The District ~~must~~shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The District may reject all Offers based on the following criteria:

(a) The content of or an error in the Solicitation Document or the ~~Procurement~~procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality~~,~~ or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The District cancels the ~~Procurement~~procurement or solicitation in accordance with PPS 47-0660; or

(f) Any other circumstance indicating that ~~Awarding~~awarding the Contract would not be in the public interest.

PPS 47-0660 Cancellation of Procurement or Solicitation

(1) Cancellation in the District Interest. The District may cancel a ~~Procurement~~procurement or solicitation when the cancelation is in the best interest of the District as determined by the District. The reasons for the cancellation ~~must~~shall be made part of the ~~Procurement File~~Solicitation file. The District is not liable to any ~~Bidder~~bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, ~~Bid, Proposal~~bid, proposal, or ~~Award~~award.

(2) Notice of Cancellation Before Opening. If the District cancels a ~~Procurement~~procurement or solicitation prior to Opening, the District ~~must~~shall provide ~~Written~~written notice of cancellation in the same manner that the District initially provided notice of the ~~solicitation~~Solicitation. Such notice of cancellation ~~must~~shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

(3) Notice of Cancellation After Opening. If the District cancels a ~~Procurement~~procurement or solicitation after Opening, the District ~~must~~shall provide ~~Written~~written notice of cancellation to all Offerors who submitted Offers.

PPS 47-0670 Disposition of Offers if Procurement or Solicitation ~~Cancelled~~Canceled

(1) Prior to Opening. If the District cancels a ~~Procurement~~procurement or solicitation prior to Opening, the District ~~must~~shall return all Offers it received to Offerors unopened, provided the ~~Offerors~~Offeror submitted ~~their Offers~~its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District ~~must~~shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the District ~~must~~shall delete the Offers from ~~ORPIN or other approved~~the Contracting Agency's Electronic ~~Procurement~~procurement System or information technology system.

(2) After Opening. If the District cancels a ~~Procurement~~procurement or solicitation after Opening, the District:

(a) May return Proposals in accordance with ORS 279B.060(6)(c); and

(b) ~~Must~~Shall keep ~~a list of all Offers received~~Bids in the ~~Procurement File~~Solicitation file.

(3) Rejection of All Offers. If the District rejects all Offers, the District ~~must~~shall keep all Proposals and Bids in the ~~Procurement File~~Solicitation file.

LEGAL REMEDIES

PPS 47-0700 Protests and Judicial Review of Special ~~Procurements~~procurements

(1) Purpose. An ~~affected~~Affected Person may protest the approval of a Special ~~Procurement~~procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special ~~Procurement, an affected~~procurement, an Affected Person ~~must~~shall file a ~~Written~~written protest with the Superintendent and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS ~~Chapter~~chapter 34 pursuant to ORS 279B.400(4)(a), an ~~affected~~Affected Person ~~must~~shall deliver a ~~Written~~written protest to the District within seven ~~Days~~(7) days after the first date of public notice of the approval of a Special ~~Procurement~~procurement by the District, unless a different protest period is provided in the public notice of the approval of a Special ~~Procurement~~procurement.

(3) Content of Protest. The ~~Written~~written protest ~~must~~shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the ~~affected~~Affected Person; and

(c) The relief requested.

(4) Contract Review Board Response. The Contract Review Board shall not consider an ~~affected~~Affected Person's protest of the approval of a Special ~~Procurement~~procurement submitted after the timeline established for submitting such protest under this ~~Rule~~rule or such different time period as may be provided in the public notice of the approval of a Special ~~Procurement~~procurement. The Contract Review Board shall issue a ~~Written~~written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special ~~Procurement~~procurement, or revoke the approval of the Special ~~Procurement~~procurement.

(5) Judicial Review. An ~~affected~~Affected Person may seek judicial review of the Superintendent's decision relating to a protest of the approval of a Special ~~Procurement~~procurement in accordance with ORS 279B.400.

PPS 47-0710 Protests and Judicial Review of Sole-Source ~~Procurements~~procurements

(1) Purpose. For sole-source ~~Procurements~~procurements requiring public notice under PPS 47-0275, an ~~affected~~Affected Person may protest the determination of the Superintendent or designee that the ~~Goods~~goods or ~~Services~~services or class of ~~Goods or Services~~goods or services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an ~~affected~~Affected Person ~~must~~shall file a ~~Written~~written protest with the Superintendent or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the sole-source ~~Procurement, an affected Person must~~procurement, an Affected Person shall deliver a ~~Written~~written protest to the Superintendent or designee within seven ~~Days~~days after the first date of public notice of the sole-source

~~Procurement~~procurement, unless a different protest period is provided in the public notice of a sole-source ~~Procurement~~procurement.

(3) Content of Protest. The ~~Written~~written protest ~~must~~shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the ~~affected~~Affected Person; and

(c) The relief requested.

(4) Response. The Superintendent or designee shall not consider an ~~affected~~Affected Person's sole-source ~~Procurement~~procurement protest submitted after the timeline established for submitting such protest under this ~~Rule~~rule, or such different time period as may be provided in the public notice of the sole-source ~~Procurement~~procurement. The Superintendent or designee shall issue a ~~Written~~written disposition of the protest in a timely manner. If the Superintendent or designee upholds the protest, in whole or in part, the Superintendent shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Superintendent's or designee's disposition of a sole-source ~~Procurement~~procurement protest shall be in accordance with ORS 279B.420.

PPS 47-0720 Protests and Judicial Review of Multi-Tiered and ~~Multi-Step~~Multistep Solicitations

(1) Purpose. An ~~affected~~Affected Offeror may protest exclusion from the ~~Competitive~~competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an ~~affected~~Affected Offeror ~~must~~shall file a ~~Written~~written protest with the District and exhaust all administrative remedies.

(2) Basis for Protest. An ~~affected~~Affected Offeror may only protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and, but for the District's mistake in evaluating the Offerors or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier~~,~~ or step~~, or phase~~ of competition. For example, the protesting Offeror ~~must~~shall claim it is eligible for inclusion in the ~~Competitive~~competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the ~~Competitive~~competitive Range because their Proposals were not Responsive, or the District committed a substantial violation of a provision in the Solicitation Document or of an applicable ~~Procurement~~procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the ~~Competitive~~competitive Range.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an ~~affected~~Affected Offeror ~~must~~shall deliver a ~~Written~~written protest to the District within ~~five Days~~seven (7) days after issuance of the notice of the ~~Competitive~~competitive Range or notice of subsequent tiers~~,~~ or steps~~, or phases~~.

(4) Content of Protest. The ~~affected~~Affected Offeror's protest ~~must~~shall be in ~~Writing~~writing and ~~must~~shall specify the grounds ~~on~~upon which the protest is based.

(5) District Response. The District ~~must~~shall not consider an ~~affected~~Affected Offeror's ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this ~~Rule~~rule, or such different time period as may be provided in the Solicitation Document. The District ~~must~~shall issue a ~~Written~~written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum under PPS 47-0430 reflecting its disposition or cancel the ~~Procurement~~procurement or solicitation under PPS 47-0660.

(6) Judicial Review. Judicial review of the District's decision relating to a ~~Multi-Tiered or Multi-Step~~multi-tiered or multistep solicitation protest ~~must~~shall be in accordance with ORS 279B.420.

PPS 47-0730 Protests and Judicial Review of Solicitations

(1) ~~Protests~~Purpose. A prospective Offeror may protest the ~~Procurement~~procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060, and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror ~~must~~shall file a ~~Written~~written protest with the District and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror ~~must~~shall deliver a ~~Written~~written protest to the District not less than ~~five Days~~ten (10) days prior to Closing.

(3) Content of Protest. The prospective Offeror's ~~Written~~written protest ~~must~~shall include:

(a) Sufficient information to identify the ~~solicitation~~Solicitation that is the subject of the protest;

(b) The grounds that demonstrate how the ~~Procurement~~procurement process is contrary to law or how the Solicitation Document is unnecessarily restrictive, is legally flawed, or improperly specifies a Brand Name;

(c) Evidence or supporting documentation that supports the grounds on which the protest is based; and

(d) A statement of the desired changes to the ~~Procurement~~procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) District Response. The District ~~will~~shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this ~~Rule~~rule, or such different time period as may be provided in the Solicitation Document. The District ~~must~~shall consider the protest if it is timely filed and meets the conditions set forth in ~~Section~~section (3) of this ~~Rule~~rule. The District ~~will~~shall issue a ~~Written~~written disposition of the protest no fewer than three business ~~Days~~days before Offers are due. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum reflecting its disposition under PPS 47-0430 or cancel the ~~Procurement~~procurement or solicitation under PPS 47-0660.

(5) Extension of Closing. If the District receives a protest from a prospective Offeror in accordance with this ~~Rule~~rule, the District may extend Closing if the District determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in ~~Writing~~writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the District's decision relating to a solicitation protest ~~must~~shall be in accordance with ORS 279B.405.

(8) F~~ailure to Protest or Request a Clarification Precludes Protest of ~~Award~~award on Such Issue. An Offeror cannot protest an ~~Award~~award based on any issue that could have, but was not, raised as a Request for Clarification or Protest of solicitation pursuant to this section.

PPS 47-0740 Protests and Judicial Review of Contract ~~Award~~award

(1) Purpose. An Offeror may protest the ~~Award~~award of a Contract, or the ~~Intent~~intent to ~~Award~~award a Contract, whichever occurs first, if:

(a) The ~~Bidder~~bidder or Proposer is adversely affected because the ~~Bidder~~bidder or Proposer would be eligible to be ~~Awarded~~awarded the Public Contract in the event that the protest were successful; and

(b) The reason for the protest is that:

(A) All lower Bids or ~~higher ranked~~higher ranked Proposals are non-Responsive;

(B) The District has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the ~~solicitation~~Solicitation materials;

(C) The District has abused its discretion in rejecting the protestor's ~~Bid~~bid or ~~Proposal~~proposal as non-Responsive; or

(D) The District's evaluation of Bids or Proposals or the District's subsequent determination of ~~Award~~award is otherwise in violation of these ~~Rules~~rules or the Public Contracting Code.

(2) Delivery. An Offeror ~~must~~shall file a ~~Written~~written protest with the District and exhaust all administrative remedies before seeking judicial review of the District's Contract ~~Award~~award decision. Unless otherwise specified in the Solicitation Document, an Offeror ~~must~~shall deliver a ~~Written~~written protest to the District within seven ~~Days~~(7) days after the ~~Award~~award of a Contract, or issuance of the notice of intent to ~~Award~~award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's ~~Written~~written protest shall specify the grounds for the protest to be considered by the District pursuant to ~~Section~~section (1) of this ~~Rule~~rule.

(4) District Response. The District shall not consider an Offeror's Contract ~~Award~~award protest submitted after the timeline established for submitting such protest under this ~~Rule~~rule, or such different time period as may be provided in the Solicitation Document. The District shall issue a ~~Written~~written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either ~~Award~~award the Contract to the successful protestor or cancel the ~~Procurement~~procurement or solicitation.

(5) Judicial Review. Judicial review of the District's decision relating to a Contract ~~Award~~award protest shall be in accordance with ORS 279B.415.

PPS 47-0745 Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the District's decision to exclude the prospective Offeror's goods from the District's qualified products list under ORS 279B.115. A prospective Offeror shall file a written protest and exhaust all administrative remedies before seeking judicial review of the District's qualified products list decision.

(2) Delivery. Unless otherwise stated in the District's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror shall deliver a written protest to the District within seven (7) days after issuance of the District's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in writing and shall specify the grounds upon which the protest is based.

(4) District Response. The District shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the District's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The District shall issue a written disposition of the protest in a timely manner. If the District upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the District's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

PPS 47-0750 Judicial Review of Other Violations

Any violation of ORS 279A or 279B by the District, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

PPS 47-0760 Review of Prequalification and Debarment Decisions

(1) Upon receipt of a notice from the District of a prequalification decision under ORS 279B.125 or of a decision to ~~debar~~Debar under ORS 279B.130, a prospective ~~Bidder~~bidder or Proposer that wishes to appeal the decision shall, within three ~~Days~~days after receipt of the notice, notify the District that the prospective ~~Bidder~~bidder or Proposer appeals the decision as provided in this section.

(2) Immediately upon receipt of the prospective ~~Bidder's~~bidder's or Proposer's notice of appeal, the District shall notify the appropriate Local Contract Review Board.

(3) Upon the receipt of notice from the District under ~~Section~~section (2) of this ~~Rule~~rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 ~~Days~~days after receiving the notice from the District. The Contract Review Board shall set forth in ~~Writing~~writing the reasons for the hearing decision.

(4) At the hearing, the Contract Review Board shall consider de novo the notice of denial, revocation, or revision of a prequalification or the notice of ~~debarment~~Debarment, the standards of responsibility listed in ORS 279B.110(2) on which the District based the denial, revocation or revision of the prequalification or the reasons listed in ORS 279B.130(2) on which the District based the ~~debarment~~Debarment, and any evidence provided by the parties. Hearings before the Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(5) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

- **(a)** If the decision to deny, revoke, or revise a prequalification of a Person as a ~~Bidder~~bidder or the decision to ~~debar~~Debar a Person is upheld, the costs shall be paid by the Person appealing the decision.
- **(b)** If the decision to deny, revoke, or revise a prequalification of a Person as a ~~Bidder~~bidder or the decision to ~~debar~~Debar a Person is reversed, the costs shall be paid by the District.

(6) Judicial review of the District's prequalification and ~~debarment~~Debarment decisions ~~must~~shall be as set forth in ORS 279B.425.

PPS 47-0800 Amendments to Goods or Services Contracts and Price Agreements

(1) **Generally**. The District may ~~Amend~~amend a Contract for ~~Goods or Services~~goods or services without additional competition in any of the following circumstances:

- **(a)** The amendment is within the scope of the ~~Procurement~~procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the ~~sole-source~~sole source notice or the approved Special ~~Procurement, or the Contract~~procurement, if any. An amendment is not within the scope of the ~~Procurement~~procurement if the District determines that if it had described in the ~~Procurement~~procurement the changes to be made by the amendment, it would likely have increased competition or affected ~~Award~~award of the Contract.
- **(b)** These ~~Rules~~rules otherwise permit the District to ~~Award~~award a Contract without competition for the ~~Goods~~goods or ~~Services~~services to be procured under the amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is ~~advantageous~~Advantageous to the District, subject to all of the following conditions:

(A) The ~~Goods~~goods or ~~Services~~services to be provided under the ~~Amended~~amended Contract are the same as the ~~Goods~~goods or ~~Services~~services to be provided under the unamended Contract.

(B) The District determines that, with all things considered, the ~~Amended~~amended Contract is at least as favorable to the District as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the ~~sole source~~sole source notice or the approved Special ~~Procurement~~procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two– to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract awarded as a small or intermediate procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed $125% of the maximum threshold for small procurements or for intermediate procurements.

(3) ~~(2)~~ Price Agreements. The District may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist, as follows:

(A) The District fails to receive funding or appropriations to sustain purchases at the levels contemplated at the time of contracting; or

(B) The applicable program is terminated or the law changes so that purchases under the Price Agreement are no longer authorized or appropriate for the District's use; or

(c) As permitted by applicable law.

(4) ~~(3)~~ Amendments That Would Cause a Contract to Exceed the Superintendent's Authority. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 ~~must~~shall be approved by the School Board except as provided in PPS 45-0200.

(4) Reporting Requirement for Amendments/Change Orders That Exceed 125% of Original Contract Price.

(a) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than one hundred twenty five percent (125%) of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(A) The Original Contract Price does not exceed $500,000.

(B) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than one hundred and fifty percent (150%) of the original Contract Price.

(c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION 47

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING OR LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

PPS 48-0100 Application

These ~~Division~~division 48 ~~Rules~~rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related ~~Services~~services under Contracts ~~as~~, and set forth ~~in~~ the following procedures:

(1) Procedures through which the District selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying ~~Services~~services, or Related ~~Services~~services; and

(2) Two-tiered procedures for selection of Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related ~~Services~~services for certain public improvements owned and maintained by the District.

PPS 48-0110 Definitions

In addition to the definitions set forth in PPS 46-0110, the following definitions apply to these ~~Division~~division 48 ~~Rules~~rules:

(1) "Architect" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 through 671.220, and includes, without limitation, the terms "Architect," "licensed Architect," and "registered Architect."

(2) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100 and means professional ~~Services~~services that are required to be performed by an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor.

(3) "Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or provider of Related ~~Services~~services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, or providers of Related ~~Services,~~services, or any combination of the foregoing. Provided, however, when the District is entering into a direct Contract under PPS 48-0200(1)(c) or (d), the "Consultant" ~~must~~shall be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

(4) "Engineer" means an individual who is registered and holds a valid certificate in the practice of land engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(5) "Estimated Fee" means The District's reasonably projected fee to be paid for a Consultant's ~~Services~~services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

(6) "Land Surveyor" means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(7) "Photogrammetric Mapping" means an evaluating and measuring of land that is limited to the determination of the topography, area, contours, and location of planimetric features, by using

photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process.

(8) "Photogrammetrist" means an individual who is registered and holds a valid certificate to practice photogrammetric mapping in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(9) "Price Agreement" for purposes of this ~~Division~~division 48 is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for ~~Project-specific Services~~project-specific services, and which may include Consultant compensation information, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial work order, task order, or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services in which the District does not guarantee a minimum or maximum additional purchase.

(10) "Project" means all components of the District's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services, under a Contract.

(11) "Related Services" means Personal ~~Services~~services, other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying ~~Services~~services that are related to planning, designing, engineering, or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost-estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services, or land-use planning services.

(12) "Transportation Planning Services" means Transportation Planning ~~Services for Projects~~services for projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Transportation Planning ~~Services~~services include only ~~Project-specific~~project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements, and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning ~~Services~~services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans, and other transportation plans not directly associated with an individual ~~Project~~project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning ~~Services~~services also do not include transportation planning for ~~Projects~~projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

PPS 48-0120 List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services may annually submit a statement describing their qualifications and related performance information to the District's office addresses. The District shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) The District may compile and maintain a record of each Consultant's performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit

interview. Upon request and in accordance with the Oregon Public Records Law (ORS ~~192.410~~192.311 through ~~192.505~~192.478), the District may make available copies of the records.

~~**(3)** The District shall keep a record of all Contracts with Consultants and shall make these records available to the public, consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). The District shall include the following information in the record:~~

~~**(a)** Locations throughout the state where the Contracts are performed;~~

~~**(b)** Consultants' principal office address and all office addresses in the State of Oregon;~~

~~**(c)** Consultants' direct expenses on each Contract, whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' Services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the Services being performed. The record must include all personnel travel expenses as a separate and identifiable expense on the Contract; and~~

~~**(d)** The total number of Contracts Awarded to each Consultant over the immediately preceding ten-year period from the date of the record.~~

PPS 48-0130 Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) Selection of Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors. When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services, the District shall follow the applicable selection procedure under either PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), or PPS 488-0220 (Formal Selection Procedure). The District may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the ~~Services~~services required, expenses, hourly rates~~,~~ and overhead, ~~to determine a Consultant's compensation only after the District has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing Proposals or other pricing information does not apply to~~in any of the District's selection procedures ~~used by the Contracting Agency~~ to select ~~a Consultant when the~~Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services for the Project do not exceed $100,000 or in an Emergency~~services, pursuant to the requirements of ORS 279C.110(~~8) and (9). In following the Direct Appointment Procedure under PPS 48-0200, the District may base its initial selection of a Consultant on any information available to the District prior to beginning the Direct Appointment Procedure for the Project involved.~~5)

(2) Selection of Consultants to Perform Related Services. ~~When selecting~~The District shall select a Consultant to perform Related ~~Services, the District shall follow~~services using one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, the District shall follow the applicable selection procedure under either PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), or PPS 48-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, the District shall follow the applicable provisions under PPS 48-0200 (Direct Appointment Procedure), the applicable provisions of PPS 48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of PPS 48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price ~~proposals~~Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, the District shall follow the applicable provisions under PPS 48-0200 (Direct Appointment Procedure), the applicable provisions of PPS 48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications ~~proposals~~Proposals, or the applicable provisions of PPS 48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the ~~Informal Selection~~informal selection procedure of PPS 48-0210, the District may use abbreviated ~~Requests for Proposals~~requests for proposals that nevertheless meet the requirements of PPS 48-0210, when the District determines, in its sole discretion, that the characteristics of the ~~Project~~project and the Related ~~Services~~services required by the District would be adequately addressed by a more abbreviated Request for ~~Proposals~~proposal document generally comparable to the ~~Intermediate Procurement~~intermediate procurement procedures and related documentation under ORS 279B.070 and PPS 47-0270. The District may request and consider a Proposer's pricing policies and pricing ~~proposals~~Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, submitted with a proposal.

~~(3)~~ **Sections (1) and (2) Do Not Apply to Price Agreements**. The District is not required to follow the procedures in ~~Section~~section (1) or ~~Section~~section (2) of this ~~Rule~~rule when the District has established Price Agreements pursuant to PPS 48-0270 with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services under an individual work order or task order. Provided, however, the criteria and procedures the District uses to select a single Consultant, when the District has established Price Agreements with more than one Consultant, shall meet the requirements of OAR PPS 48-0270 (Price Agreements).

(3) ~~(4)~~ **Electronic Selection**. The District may use electronic methods to screen and select a Consultant in accordance with the procedures described in ~~Sections~~sections (1) and (2) of this ~~Rule~~rule. If The District uses electronic methods to screen and select a Consultant, the District shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with PPS 47-0330 (Electronic ~~Procurement~~procurement).

(4) ~~(5)~~ **Contracts for "Mixed" Services**. For purposes of these ~~Division~~division 48 ~~Rules~~rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services, and also provide Related ~~Services~~services, other ~~Services~~services or other related ~~Goods~~goods under the Contract. The District's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. The District ~~will~~shall determine the predominant purpose of the Contract by determining which of the ~~Services~~services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services, the District shall comply with the requirements of ~~Section~~section (1) of this ~~Rule~~rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related ~~Services~~services, the District shall comply with the requirements of ~~Section~~section (2) of this ~~Rule~~rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other ~~Services~~services or ~~Goods~~goods under the Public Contracting Code, the District shall comply with the applicable provisions of PPS ~~Divisions~~divisions 46, 47 and 49 of these ~~Rules~~rules that match the predominant purpose of the Contract.

(5) ~~(6)~~ **Compliance With Board Policy**. In applying these ~~Rules~~rules, the District shall support Board Policies relating to District Contracts.

(6) ~~(7)~~ **Disclosure Requirements for Proposals Under Division 48**. The following provisions apply to proposals received by the District for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services:

(a) "Competitive Proposals" Means all Proposals Solicited under Division 48. The term "~~Competitive Proposal~~competitive proposal" includes Proposals under PPS 48-0200 (Direct Appointment Procedure), PPS 48-0210 (Informal Selection Procedure), PPS 48-0220 (Formal Selection Procedure) or PPS 48-0130(2)(c) (Selection Based on Price and Qualifications), and any proposals submitted in response to a selection process for a work order or task order under PPS 48-0270 (Price Agreements) or PPS 48-0280 (FSCP).

(b) Direct Appointments. For purposes of Proposals received by the District under PPS 48-0200 (Direct Appointment Procedure), a formal notice of ~~Intent~~intent to ~~Award~~award is not required. As a result, while the District may make Proposals under PPS 48-0200 (Direct Appointment Procedure) open for public inspection following the District's decision to begin Contract negotiations with the selected Consultant, Proposals are not required to be open for public inspection until after the District has executed a Contract with the selected Consultant.

(c) Closely Competitive Proposals. ~~Where~~In the limited circumstances permitted by ORS 279C.110, 279C.115, and 279C.120, here the District is conducting discussions or negotiations with Proposers who submit Proposals that the District has determined to be closely competitive or to have a reasonable chance of being selected for ~~Award~~award, the District may open Proposals so as to avoid disclosure of ~~Proposal~~proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the District may open Proposals in such a way as to avoid disclosure of the contents until after the District executes a Contract with the selected Consultant. If the District determines that it is in the best interest of the District to do so, the District may make Proposals available for public inspection following the District's issuance of a notice of ~~Intent~~intent to ~~Award~~award a Contract to a Consultant~~.~~; and

(d) ORS 297C.107 Requirements. Disclosure of Proposals and ~~Proposal~~proposal information is otherwise governed by ORS 279C.107 as follows:

(A) The District may open Proposals so as to avoid disclosing contents to competing Proposers during, where applicable, the process of negotiation.

(B) The District need not open Proposals for public inspection until after the District executes a Contract.

(C) Regardless of when Proposals are opened for public inspection, the District shall withhold from disclosure trade secrets as defined in ORS 192.501, and information submitted to the District in confidence as described in ORS 192.502.

(D) Opening a ~~Proposal~~proposal at a public meeting of the Board or other body subject to the Public Meetings Law does not make the contents of the ~~Proposal~~proposal subject to disclosure regardless of whether an executive session has been called.

(E) If a request for Proposals is cancelled after Proposals are received, the District shall, subject to ORS 192.501 and 192.502, return a ~~Proposal~~proposal and all copies of the ~~Proposal~~proposal to the Proposer. The District shall keep a list of returned Proposals in the ~~Procurement File~~Solicitation file.

(7) ~~(8)~~ Independent and Objective Oversight Required. Pursuant to ORS 279C.307(1), when procuring Personal ~~Services~~services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Contract subject to PPS ~~Divisions~~divisions 48 or 49 ("ORS 279C.307 Services"), the District may not:

(a) Procure the Personal services identified in ORS 279C.307~~Services~~ from a Contractor or Consultant or an affiliate of a Contractor or Consultant who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the ~~ORS 279C.307 Services contract~~Personal services; or

(b) Procure the Personal services identified in ORS 279C.~~307 Services through~~307through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of ~~the ORS 279C.307 Services Contract.~~Personal services.

(8) ~~(9)~~ Application of Section ~~(8)~~. ~~Section.~~ The requirements of ORS 279C.307(1) and section 8 of this ~~Rule applies~~rule apply in the following circumstances, except as provided in ~~Section~~section (9) and (10) of this ~~Rule~~rule:

(a) The District requires the ~~Procurement~~procurement of Personal ~~Services~~services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS ~~Chapter~~chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services, a Public Contract for Related ~~Services~~services, or a Public Contract for construction services under ORS ~~Chapter~~chapter 279C.

(b) The ~~Procurement~~procurement of Personal ~~Services~~services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) ~~Procurements~~procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services that involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS ~~Chapter~~chapter 279C;

(B) ~~Procurements~~procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS ~~Chapter~~chapter 279C;

(C) ~~Procurements~~procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services, construction services subject to ORS ~~Chapter~~chapter 279C, commissioning services, or other Related ~~Services~~services for a ~~Project~~project;

(D) ~~Procurements~~procurements for special inspections and testing services, which involve inspecting, testing, or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS ~~Chapter~~chapter 279C; and

(E) ~~Procurements~~procurements for other Related ~~Services~~services or Personal ~~Services~~services, which involve administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the Public Contracts described in ~~Section~~section (10)(a) of this ~~Rule~~rule.

(9) ~~(10)~~ Design-Build and CM/GC Contract Solicitations. The ~~restrictions~~ requirements of ORS 279C.307 ~~set forth in Section 9~~ do not apply in the following circumstances, except as further specified below:

(a) To the District's ~~Procurement~~procurement of both design services and construction services through a single "Design-Build" ~~Procurement~~procurement, as that term is defined in PPS 49-0610. Such a Design-Build ~~Procurement~~procurement includes a ~~Procurement~~procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ~~Sections 9 and 10~~ORS 279C.307 do apply to the District's ~~Procurement~~procurement of Personal ~~Services~~services for the purpose of administering,

managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build ~~Procurement~~procurement; and

(b) To the District's ~~Procurement~~procurement of both pre-construction services and construction services through a single ~~Procurement~~procurement of Construction Manager/General Contractor ~~Services~~services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ~~Sections 9 and 10~~ORS 279C.307 do apply to the District's ~~Procurement~~procurement of Personal ~~Services~~services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Construction Manager/General Contractor ~~Services~~services Contract or performance under such a Contract resulting from a ~~Procurement~~procurement of Construction Manager/General Contractor ~~Services~~services.

(10) Application for Exception. As permitted by ORS 279C.307(3), the District may apply for an exception to the requirements of ORS 279C.307(1) in the situation when the District anticipates that it must procure Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C, and the District desires to accept a Bid or other Proposal from a Contractor or Consultant that would otherwise be prohibited from bidding or proposing to provide the required Personal Services. In order for the District to obtain such an exception to the requirements of ORS 279C.307(1), the District must apply for and obtain an approved exception from the Appropriate Authority for the District before awarding a contract to the Contractor or Consultant under a Procurement for the required Personal Services, or before entering into an amendment of an existing Public Contract with the Contractor or Consultant to obtain the Personal Services.

(a) Application Requirements. The District's application to the Appropriate Authority for an exception under ORS 279C.307(3) must include the following Findings and Justifications:

(A) The District requires ~~the~~ Personal Services described in ORS 279C.307(1);

(B) Accepting a Bid or ~~Proposal~~ from a Contractor or Consultant that would be subject to the prohibition described in ORS 279C.307(1) is in the best interest of the District;

(C) Approving the ~~exception~~ is unlikely to encourage favoritism in awarding Public Contracts or to substantially diminish competition for Public Contracts; and

(D) Approving the exception:

(i) Is reasonably expected to result in substantial cost savings to the District or the public; or

(ii) (ii) Otherwise will substantially promote the public interest in a manner that could not be practicably realized by complying with the prohibition described in ORS 279C.307(1).

(b) Consultation with Legal Counsel. The District shall consult with the District's legal counsel during the exception process provided for in ORS 279C.307(3) as follows:

(A) During the process of preparing an application for the exception to ensure compliance with the requirements of ORS 279C.307 and with the other applicable provisions of ORS Chapter 279C;

(B) Pursuant to the requirements of an ORS 279C.307(3) exception approved by the District's Appropriate Authority; and

(C) The District's consultation with its legal counsel should include discussion and evaluation of mitigation measures that the District can include in the Procurement and in any resulting

Public Contract for the Personal Services, in order to reduce any competitive advantage that the Contractor or Consultant may have or may be perceived to have, and to increase the objectivity and independence of the Contractor or Consultant during its performance of the Personal Services.

(c) Definitions. The following definitions apply to section (11) of this rule:

(i) "Appropriate Authority" means the District's local contract review board; and

(ii) "Findings and Justifications" means the determinations, findings and justifications for a conclusion that the District, in seeking an exception from the objectivity and independence requirements of ORS 279C.307(1), reaches based on the considerations set forth in ORS 279C.307(3)(d) and based on sufficient supporting facts.

SELECTION PROCEDURES

PPS 48-0200 Direct Appointment Procedure

(1) The District may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these ~~Rules in the following circumstances~~rules if:

(a) Emergency. The District finds that an ~~emergency~~Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $100,000; or

(c) FSCP. The Consultant is a member of an FSCP that has been established for the class of ~~Work~~work for which a Contract is required; or

(d) Continuation of Project with an Intermediate Estimated Fee ~~of $250,000 or Less. The Contract meets~~. Where a District project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be performed under the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services that have been substantially described, planned, or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same ~~Project~~project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed $250,000; and

(C) The District used either the formal selection procedure under PPS 48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or

(e) Continuation of Project With an Extensive Estimated Fee ~~Greater Than $250,000. The Contract meets~~. When a District project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be performed under the Contract shall meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services that have been substantially described, planned, or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same ~~Project~~project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services rendered under the earlier Contract;

(B) The District used either the formal selection procedure under PPS 48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; and

(C) The District makes ~~Written Findings~~written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(iii) Promote efficient use of public funds and resources and result in substantial cost savings to the District; and

(iv) Protect the integrity of the Public Contracting process and the competitive nature of the ~~Procurement~~procurement by not encouraging favoritism or substantially diminishing competition in the ~~Award~~award of the Contract~~.~~; or

(f) The Contract Review Board Grants Approval for a Direct Appointment or Alternative ~~Procurement~~procurement Process.

(A) The Superintendent may seek approval from the Local Contract Review Board for direct appointment or an alternative procurement process for Consultant services.

(B) The Superintendent ~~must~~shall submit a written request to the Board demonstrating that:

(i) Approval by the Board is unlikely to encourage favoritism in the award of public contracts or substantially diminish competition for public contracts; and

(ii) Is reasonably ~~excepted~~expected to result in substantial cost savings to the District or to the public; or

(iii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the selection procedures otherwise required by these rules.

(2) The District may select a Consultant for a Contract under this ~~Rule~~rule from the following sources:

(a) District's list of Consultants that is created under PPS 48-0120~~;~~ (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under PPS 48-0120 ~~or similar local rule, with Written~~0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services that the District reasonably can identify under the circumstances.

(3) The District shall direct negotiations with ~~Consultants~~a Consultant selected under this ~~Rule toward obtaining Written agreement on~~rule toward discussing, refining, and finalizing the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant

(b) ~~**(a)**~~ The ~~Consultants'~~Consultant's performance obligations and performance schedule;

(c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services; and

(d) Any other provisions that the District believes to be in the District's best interest to negotiate.

PPS 48-0210 Informal Selection Procedure

(1) The District may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.

(2) When using the informal selection procedure on the basis of qualifications alone or, for Related services, on the basis of price and qualifications, the District shall:

(a) Create a request for Proposals ("RFP") that includes at a minimum the following:

(A) A description of the project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services described in the RFP and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon; and

(ix) If the District is selecting a Consultant to provide Related service, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and District is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these division 48 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the RFP, and select the three highest ranked Proposers.

(3) Contracting Agencies using the informal selection procedure for Related services on the basis of price Proposals and other pricing information alone shall:

(a) Create an RFP that includes at a minimum the following:

(A) A description of the project for which a Consultant's Related services are needed and a description of the Related services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Any minimum or pass-fail qualifications that the Proposers shall meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(viii) of this rule that are related to the Related services described in the RFP;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related services described in the RFP, expenses, hourly rates and overhead;

(G) A statement directing Proposers to the protest procedures set forth in these division 48 rules; and

(H) A sample form of the Contract.

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Related services; and.

(c) Review and rank all responsive Proposals received, according to the total price for the Related services described in the RFP, Consultant pricing policies and other pricing information requested in the RFP, including but not limited to the number of hours proposed for the Related services required, expenses, hourly rates and overhead, and select the three highest ranked Proposers.

(4) If the District does not cancel the RFP after it reviews the Proposals and ranks each Proposer, the District will begin negotiating a Contract with the highest ranked Proposer. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:

(a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(b) The Consultant's performance obligations and performance schedule;

(c) ~~(b)~~ Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services; and

(d) ~~(c)~~ Any other conditions or provisions that the District believes to be in the District's best interest to negotiate.

(5) The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the District and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Proposer, and if

necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the District may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(6) If the District uses the informal selection procedure for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, when the District will be using pricing policies, proposals or other pricing information as part of the District' screening and selection of prospective Consultants, pursuant to ORS 279C.110(5) [HB 2769 (Oregon Laws 2019, Chapter 55)], shall:

(a) Create an RFP that meets the requirements of ORS 279C.110(5)(a) In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, the District may provide a specific estimate of that cost, or a range of estimated costs;

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, the District shall provide the RFP to all available prospective Consultants and shall maintain a written record of the District's efforts to locate available prospective Consultants for the RFP. The District shall draw prospective Consultants from:

(A) The District's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the District reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, or any combination of the foregoing.

(c) In the initial phase of the RFP, evaluate each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, with those qualifications including the criteria set forth in subsections (2)(a)(E)(i) through (2)(a)(E)(viii) of this rule;

(d) (d) At the end of the initial phase of the RFP, announce the evaluation scores of each Consultant and rank each Consultant according to the evaluation scores. The District shall identify up to three (3) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(e) (e) In the second phase of the RFP, request a pricing proposal from the highest ranked prospective Consultants identified in the initial phase of the RFP, with that pricing proposal to meet the requirements of ORS 279C.110(5)(c)(A) and (B);

(f) (f) Complete the evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;

(g) If the District does not cancel the RFP after it reviews the qualifications of all prospective Consultants and the price proposals received from the highest ranked Consultants and ranks the highest ranked Consultants from the second phase of the RFP, begin negotiating a Contract with the highest ranked prospective Consultant. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:

(A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(B) The Consultant's performance obligations and performance schedule;

(C) The Consultant's payment methodology, rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services; and

(D) Any other conditions or provisions the District believes to be in the District's best interest to negotiate; and

(h) The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the District and the Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with section (6)(g) of this rule, until negotiations result in a Contract. If negotiations with any of the top three prospective Consultants do not result in a Contract within a reasonable amount of time, the District may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(7) When the Estimated Fee in an informal selection procedure under this rule is expected not to exceed $150,000, the Contracting Agency is only required to provide the RFP under sections (2), (3) and (6) of this rule to three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, the Contracting Agency shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agency's efforts to locate available prospective Consultants for the RFP.

(8) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under PPS 48-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

PPS 48-0220 Formal Selection Procedure

(1) Subject to OAR PPS 48-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), the District shall use the formal selection procedure described in this ~~Rule~~rule to select a Consultant if the Consultant cannot be selected under either PPS 48-0200 (Direct Appointment Procedure) or under PPS 48-0210 (Informal Selection Procedure). The formal selection procedure described in this ~~Rule~~rule may otherwise be used at the ~~District's~~District's discretion.

(2) When using the formal selection procedure, the District shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

(a) Except as provided in ~~Section~~subsection (2)(b) of this ~~Rule~~section, the District shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the ~~Project~~project is located, and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach ~~the~~ disadvantaged business enterprise ("DBE"), ~~service-disabled~~ veteran-owned business ("~~SDVB~~"VB), minority business enterprise ("MBE"), women business enterprise ("WBE"), and emerging small business enterprise ("ESB") audiences.

(A) The District shall publish the advertisement within a reasonable time before the deadline for the ~~Proposal~~proposal submission or response to the RFQ or RFP, but in any event no fewer

than fourteen (14 ~~Days~~) calendar days before the ~~Closing~~closing date set forth in the RFQ or RFP.

(B) The District shall include a brief description of the following items in the advertisement:

(i) The ~~Project~~project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services the District seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a ~~Proposal~~proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in ~~Section~~subsection (2)(a) of this ~~Rule~~rule, the District shall publish each RFP and RFQ by one or more of the electronic methods identified in PPS 46-0110(14). The District shall comply with Sections (2)(a)(A) and (2)(a)(B) of this ~~Rule~~rule when publishing advertisements by electronic methods.

(c) The District may send notice of the RFP or RFQ directly to all Consultants on the District's list of Consultants that is created and maintained under PPS 48-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. The District may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the District may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFQ.

(a) Mandatory RFQ Requirements. The District shall include the following, at a minimum, in each RFQ:

(A) A brief description of the ~~Project~~project for which the District is seeking a Consultant;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services the District seeks for the ~~Project~~project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional ~~Services~~services related to the ~~Project~~project, including, but not limited to, construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services that the District seeks;

(F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;

(G) A statement whether or not the District ~~will~~shall hold a ~~prequalification~~pre-qualification meeting for all interested Consultants to discuss the ~~Project~~project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFQ, and if a ~~prequalification~~pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A ~~statement~~Statement that Consultants responding to the RFQ do so solely at their expense, and that the District is not responsible for any Consultant expenses associated with the RFQ.

(b) Optional RFQ Requirements. The District may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFQ, including Consultants' ~~available~~ committed resources and recent, current, and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

(D) A copy of all records, if any, of Consultants' performance under ~~contracts~~Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those ~~Services~~services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the ~~Project~~project;

(H) Consultants' ~~ownership~~Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the District is selecting a Consultant to provide Related ~~Services~~services, Consultants' pricing policies and pricing Proposals, or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates, and overhead;

(J) Consultants' ability to assist the District in complying with any art acquisition requirements imposed by the District;

(K) Consultants' ability to assist the District in complying with State of Oregon energy efficient design requirements established by the District;

(L) Consultants' ability to assist the District in complying with the solar energy technology requirements ~~of~~pursuant to ORS ~~279C.527~~276.900 through 279.915; and

(M) Any other information the District deems reasonably necessary to evaluate Consultants' qualifications.

(c) Pricing Proposal Requests Not Allowed During the RFQ Process When RFQ is followed by RFP. If the District will use a Request for Qualifications followed by an RFP to procure Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services under this rule and District intends to use pricing policies, proposals or other pricing information

as part of the District's screening and selection of prospective Consultants, pursuant to ORS 279C.110(5), the District cannot request cost proposals or otherwise use pricing policies, proposals or other pricing information as part of the Request for Qualifications. The District may only request cost proposals or otherwise use pricing policies, proposals or other pricing information during the RFP process, following the establishment of a short list of qualified Consultants through the Request for Qualifications process.

(d) ~~**(c)**~~ RFQ Evaluation Committee. The District shall establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the evaluation criteria. The District may appoint to the evaluation committee District employees or employees of other public agencies with experience in ~~architecture, engineering, or land surveying~~Architecture, Engineering, or Land Surveying services, Related ~~Services,~~services, construction services, or Public Contracting. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation ~~or~~planning, land surveying, or related professions. The District shall designate one member of the evaluation committee as the evaluation committee chairperson.

(e) ~~**(d)**~~ The District may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including, but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a ~~predetermined~~pre-determined number of the ~~highest-scoring~~highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or ~~whose~~who practice ~~is~~ in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(f) ~~**(e)**~~ After the evaluation committee reviews, scores, and ranks the responding Consultants, the District shall establish a short list of at least three qualified Consultants, if feasible, provided however, ~~that~~ if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the District's minimum requirements, then:

(A) The District may establish a short list of fewer than three qualified Consultants; or

(B) The District may cancel the RFQ and issue an RFP.

(g) ~~**(f)**~~ No Consultant will be eligible for placement on the District's short list established under ~~Section~~subsection (3)(d) of this ~~Rule~~rule if the Consultant or any of Consultant's principals, partners, or associates are members of the District's RFQ evaluation committee.

(h) ~~**(g)**~~ Except when the RFQ is cancelled, the District shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for ~~Proposals~~Proposal. The District shall use the procedure described in ~~this Section~~section (4) of this ~~Rule~~rule when issuing an RFP for a Contract described in ~~Section~~section (1) of this ~~Rule~~rule.

(a) ~~Mandatory RFP Requirements. When using~~Required Contents. Except as otherwise provided in Sections (4)(b) and (4)(c) of this rule, when the District uses the formal selection procedure, the District shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the ~~Project~~project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services sought for the ~~Project~~project, the estimated ~~Project~~project cost, the estimated time period during which the ~~Project~~project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services sought will be performed.

(B) The RFP evaluation process and the criteria ~~that~~which will be used to select the most qualified Proposer, including the weights, points, or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights, or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services on comparable projects;

(iii) The amount and type of resources and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP;

(iv) The recent, current, and projected workloads of the staff and resources referenced in ~~Section~~section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in ~~Section~~section (4)(a)(B)(iii) above would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services on time and within budget, including whether or not there is a record of satisfactory performance under PPS 48-0120~~;~~ (List of Interest Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls, and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the ~~Project~~project and Architectural, Engineering, ~~Photogrammetric Mapping, Transportation Planning or~~and Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services, and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP;

(xiii) If the District is selecting a Consultant to provide Related ~~Services~~services, pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead; and

(xiv) Any other criteria that the District deems relevant to the ~~Project~~project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP, including, where the nature and budget of the ~~Project~~project so warrant, a design competition between competing Proposers. Provided, however, ~~that~~ these additional criteria cannot include pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional ~~Services~~services related to the ~~Project~~project, including, but not limited to, construction services;

(D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each ~~Proposal~~proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the District;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the District;

(I) A ~~statement~~Statement that Proposers responding to the RFP do so solely at their expense, and the District is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these ~~Division~~division 48 ~~Rules~~rules;

(K) Special Contract requirements, including~~,~~ but not limited to~~,~~ DBE, MBE, WBE, ESB, and ~~SDVB~~VB participation goals or good faith efforts with respect to DBE, MBE, WBE, ESB, and ~~SDVB~~VB participation, and federal requirements when federal funds are involved;

(A) A statement whether or not the District ~~will~~shall hold a ~~pre-Proposal~~pre-proposal meeting for all interested Consultants to discuss the ~~Project~~project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP, and if a ~~pre-Proposal~~pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(B) A request for any information the District deems reasonably necessary to permit the District to evaluate, rank, and select the most qualified Proposer to perform the Architectural,

Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP; and

(C) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. When using the formal selection procedure, the District shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related ~~Services~~services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the ~~Project~~project and the specific Related ~~Services~~services sought for the ~~Project~~project, the estimated ~~Project~~project cost, the estimated time period during which the ~~Project~~project is to be completed, and the estimated time period in which the specific Related ~~Services~~services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related ~~Services~~services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related ~~Services~~services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers ~~must~~shall meet, including but not limited to any such qualifications in the subject matter areas described in ~~Sections~~section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in ~~Sections~~section (4)(a)(C) through section(4)(a)(N) of this rule pertaining to the Related ~~Services~~services described in the RFP.

(c) RFP Contents for District Selection of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services with Pricing Policies, Proposals or Other Pricing Information. If the District will be including pricing policies, proposals or other pricing information in the District's formal selection procedure criteria for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services pursuant to ORS 279C.110(5), the District shall meet the following minimum requirements for each RFP:

(A) If the District has used the Request for Qualifications procedure in section (3) of this rule to evaluate potential Consultants and establish a short list of qualified Consultants pursuant to ORS 279C.110(5), the RFP shall meet the requirements of ORS 279C.110(5) that address the second phase of the selection process applicable to the short list of no more than three of the highest ranked prospective consultants that were identified in the initial phase of the selection process described in ORS 279C.110(5)(a) and (b).

(B) If the District has elected to not use the Request for Qualifications procedure in section (3) of this rule, and will use only an RFP in the District's use of the formal selection procedure, the District shall include at least the following in the RFP:

(i) The information set forth in ORS 279C.110(5)(a). In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, the District may provide a specific estimate of that cost, or a range of estimated costs;

(ii) (In the initial phase of the RFP, provisions describing the District's evaluation of each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, with those qualifications including the criteria set forth in subsections (4)(a)(B)(i) through (4)(a)(B)(xiii) and (4)(a)(B)(xv) of this rule;

(iii) At the end of the initial phase of the RFP, provisions describing the District's evaluation scores of each Consultant and rank of each Consultant according to the evaluation scores. The District shall identify up to three (3) of the highest ranked prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, and as being eligible to participate in the second phase of the RFP process;

(iv) In the second phase of the RFP, provisions describing the District's request of a pricing proposal from each of the highest ranked prospective Consultants identified in the initial phase of the RFP, pursuant to the requirements of ORS 279C.110(5)(c)(A) and (B);

(v) Provisions describing the District's evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;

(d) ~~**(c)**~~ RFP Evaluation Committee. The District shall establish a committee of at least three individuals to review, score, and rank Proposals according to the evaluation criteria set forth in the RFP. ~~The Director of the Department of Procurement or the Director's designee shall serve as chair of the evaluation committee, but will not participate in the scoring or ranking of Proposals.~~ If the RFP has followed an RFQ, the District may include the same members who served on the RFQ evaluation committee. The District may appoint to the evaluation committee the District employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~ or Related ~~Services~~services, construction services, or Public Contracting. At least one member of the evaluation committee ~~must~~shall be a District employee. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, land surveying, or related professions. The District shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for ~~Award~~award of the Contract under the RFP if Proposer or any of Proposer's principals, partners, or associates are members of the District's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points, or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the District the results of the scoring and ranking for each Proposer.

(e) ~~**(d)**~~ If the District does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the District ~~will~~shall begin negotiating a Contract with the ~~highest-~~

~~ranked~~highest ranked Proposer. The District shall direct Contract negotiations toward ~~obtaining Written agreement on~~discussing, refining and finalizing he following:

(A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(B) ~~(A)~~ The Consultant's performance obligations and performance schedule;

(C) ~~(B)~~ Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services; and

(D) ~~(C)~~ Any other conditions or provisions the District believes to be in the District's best interest to negotiate.

(f) ~~(e)~~ The District shall, either orally or in ~~Writing~~writing, formally terminate negotiations with the ~~highest ranked~~highest ranked Proposer if the District and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the ~~second ranked~~second ranked Proposer, and if necessary, with the ~~third ranked~~third ranked Proposer, and so on if applicable, in accordance with ~~Section~~section (4)(c) of this ~~Rule~~rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the District may end the particular formal solicitation. Nothing in this ~~Rule~~rule precludes the District from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP that failed to result in a Contract.

PPS 48-0230 Ties Among Proposers

(1) If the District is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the District may select a candidate through any process that the District believes will result in the best value for the District, taking into account the scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services. Provided, however, that the tie-breaking process established by the District under this ~~Section~~section (1) cannot be based on pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead. The process ~~must~~shall be designed to instill public confidence through ethical and fair dealing, honesty, and good faith on the part of the District and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the District and the selected Proposer shall proceed with negotiations under PPS 48-0210(3) or 48-0220(4)(c), as applicable.

(2) If the District is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the District shall follow the procedure set forth in PPS 46-0300 (Preferences for Oregon goods and services) to select the Consultant.

PPS 48-0240 Protest Procedures

(1) RFP Protest and Request for Change. Pursuant to ORS 279C.110(8), Consultants may submit a ~~Written~~written protest of anything contained in an RFP and may request a change to any provision, ~~Specification~~specification, or Contract term contained in an RFP, no later than seven ~~Days~~(7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and

request for change ~~must~~shall include the reasons for the protest or request, and any proposed changes to the RFP provisions, ~~Specifications~~specifications, or Contract terms. The District may not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection. Pursuant to ORS 279C.110(8), Consultants may submit a written protest of the District's selection of a Consultant for award of a Contract as follows:

(a) Single ~~Award~~award. In the event of an ~~Award~~award to a single Proposer, the District shall provide to all Proposers a copy of the selection notice that the District sent to the ~~highest-ranked~~highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the ~~highest-ranked~~highest ranked Proposer may submit a ~~Written~~written protest of the selection to the District no later than seven ~~Days~~days after the date of the selection notice, unless a different deadline is indicated in the RFP. A Proposer submitting a protest ~~must~~shall claim that the protesting Proposer is the ~~highest-ranked~~highest ranked Proposer because the Proposals of all ~~higher-ranked~~higher ranked Proposers failed to meet the requirements of the RFP, or because the ~~higher-ranked~~higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP.

(b) Multiple ~~Award~~award. In the event of an ~~Award~~award to more than one Proposer, the District shall provide to all Proposers copies of the selection notices that the District sent to the ~~highest-ranked~~highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the ~~highest-ranked~~highest ranked Proposers may submit a ~~Written~~written protest of the selection to the District no later than seven ~~Days~~days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest ~~must~~shall claim that the protesting Proposer is one of the ~~highest-ranked~~highest ranked Proposers because the Proposals of all ~~higher-ranked~~higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of ~~higher-ranked~~higher ranked Proposers to failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest ~~must~~shall claim that the Proposals of all ~~higher-ranked~~higher ranked Proposers, or a sufficient number of ~~higher-ranked Proposers to include the protesting Proposer in the group of highest-ranked~~higher ranked Proposers, ~~otherwise~~ are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the RFP.

(c) Effect of Protest Submission Deadline. The District may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the District shall resolve all timely submitted protests within a reasonable time following the District's receipt of the protest, and once resolved, shall promptly issue a ~~Written~~written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the District shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these ~~Rules~~rules.

PPS 48-0250 Solicitation Cancellation, Delay, or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

The District may cancel, delay, or suspend a solicitation, RFQ, or other preliminary ~~Procurement~~procurement document, whether related to a Direct Appointment Procedure (PPS 48-0200), Informal Selection Procedure (PPS 48-0210), or a Formal Selection Procedure (PPS 48-0200), or reject all Proposals, responses to RFQs, responses to other preliminary ~~Procurement~~procurement documents, or any combination of the foregoing, if the District believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension, or rejection, the District is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension, or rejection. Consultants responding to either

solicitations, RFQs, or other preliminary ~~Procurement~~procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs, or responses to other preliminary ~~Procurement~~procurement documents.

PPS 48-0260 Two-Tiered Selection Procedure for District Public Improvement Projects

(1) If the District requires an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for a public improvement that is owned and maintained by the District and a State Agency will serve as the lead, the District ~~will~~shall enter into Contracts with Architects, ~~Engineers,~~ Photogrammetrists, Transportation Planners, Engineers, or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for that ~~Public Improvement~~public improvement, and the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) Tier One. State that the District shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in PPS 48-0210 (Informal Selection Procedures) and 48-0220 (Formal Selection Procedures), or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under PPS 48-0200 (Direct Appointment Procedure), and shall notify the District of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) Tier Two. In accordance with the qualifications-based selection requirements of ORS 279C.110, the District shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for the District's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for the District's Public Improvement through an alternative process adopted by the District consistent with the provisions of the applicable RFP, if any, and these ~~Division~~division 48 ~~Rules~~rules. The District's alternative process ~~must~~shall be described in the applicable RFP, may be structured to take into account the unique circumstances of ~~the particular procurement of~~ the District, and may include provisions to allow the District to perform its tier-two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The District's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general ~~Written~~written direction from the District to the State Contracting Agency, prior to the advertisement of a ~~Procurement~~procurement or series of ~~Procurements~~procurements, or during the course of the ~~Procurement~~procurement or series of ~~Procurements~~procurements, that the District's tier two selection shall be the ~~highest ranked~~highest ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the District is required. However, the District may provide ~~Written~~written notice to the State Contracting Agency that the District's general ~~Written~~written direction is not to be applied for a particular ~~Procurement~~procurement and describe the process that the District ~~will~~shall utilize for the particular ~~Procurement~~procurement. In order for a ~~Written~~written direction from the District consistent with this section to be effective for a particular ~~Procurement~~procurement, it ~~must~~shall be received by the Contracting Agency with adequate time for the State

Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the ~~Procurement~~procurement. In the event of a multiple ~~Award~~award under the terms of the applicable ~~Procurement~~procurement, the ~~Written~~written direction from the District may apply to the ~~highest ranked~~highest ranked Proposers that are selected under the terms of the ~~Procurement~~procurement document.

(B) An intergovernmental agreement between the District and the Contracting Agency outlining the alternative process that the District has adopted for a ~~Procurement~~procurement or series of ~~Procurements~~procurements.

(C) Where multiple Local Government Contracting Agencies are involved in a two-tiered selection procedure, the Local Government Contracting Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Contracting Agencies, whether the Local Government Contracting Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services under the tier two selection process. In the event of a multiple ~~Award~~award under the terms of the applicable ~~Procurement~~procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the District to select the ~~highest ranked~~highest ranked firms that are required under the terms of the ~~Procurement~~procurement document, as part of the tier two selection process.

(4) In the event the State Contracting Agency has made a multiple award of Price Agreements pursuant to OAR 137-048-0270, with that multiple award of Price Agreements meeting the tier-one requirements of ORS 279C.125 and this rule, the District shall make its tier-two selection of an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor for a project-specific work order or task order from the Consultants who have executed Price Agreements with the State Contracting Agency, in accordance with the work order or task order assignment procedures established by the State Contracting Agency in the Price Agreements. If the District elects to select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for District's public improvement through an alternative process adopted by the District, the requirements of that alternative process ~~must~~shall be specified in the RFP, if any, in the executed Price Agreements, or in the project-specific work order or task order assignment procedures provided to the Consultants who have executed Price Agreements, at the time the selection of a Consultant is made for the project-specific work order or task order.

(5) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in PPS 48-0200 (Direct Appointment Procedure), 48-0210 (Informal Selection Procedure, or 48-0220 (Formal Selection Procedure) as applicable.

(6) Nothing in these ~~Division~~division 48 ~~Rules~~rules should be construed to deny or limit the District's ability to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4) through a selection process established by the District.

PPS 48-0270 Price Agreements

(1) The District may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services when the District cannot determine the precise quantities of those ~~Services that~~services which the District ~~will~~shall require over a specified time period.

(2) When establishing Price Agreements under this ~~Rule~~rule, the District shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with PPS 48-0130(1) or 48-0130(2), as applicable. The District may select a single Consultant when a Price Agreement is ~~Awarded~~awarded to obtain ~~Services~~services for a specific ~~Project~~project or a closely-related group of ~~Projects~~projects.

(3) In addition to any other applicable solicitation requirements set forth in these ~~Division~~division 48 ~~Rules~~rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services must~~services shall:

(a) Include a scope of ~~Services~~services, menu of ~~Services~~services, a specification for ~~Services~~services or a similar description of the nature, general scope, complexity, and purpose of the procurement that will reasonably enable a prospective ~~Bidder~~bidder or Proposer to decide whether to submit a ~~Bid~~bid or ~~Proposal~~proposal;

(b) Specify whether the District intends to ~~Award~~award a Price Agreement to one Consultant or to multiple Consultants. If the District ~~will Award~~shall award a Price Agreement to more than one Consultant, the Solicitation Document and Price Agreement shall describe the criteria and procedures the District ~~will~~shall use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the District's sole discretion; provided, however, in circumstances where a direct ~~Contract~~contract is not permitted under PPS 48-0200 and a state agency is conducting the solicitation, the selection criteria cannot be based on pricing policies, pricing ~~Proposals~~proposals, or other pricing information, including the number of hours proposed for the ~~Services~~services required, expenses, hourly rates, and overhead. In accordance with PPS 48-0130(2) applicable to Related ~~Services~~services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information for the District's solicitation of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services, or any Contracting Agency's solicitation of Related services, may include the number of hours proposed for the Related ~~Services~~services required, expenses, hourly rates, the number of hours, overhead, and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of PPS 48-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services under the Price Agreement.

(4) When the ~~solicitation~~Solicitation materials and terms and conditions for a Price Agreement involve a two-tiered selection process pursuant to ORS 279C.125 and OAR 137-048-0260(1), the ~~solicitation~~Solicitation materials and terms and conditions for a Price Agreement ~~must~~shall meet the requirements of subsection (3) of this rule, except as provided in this subsection (4). In the event of a planned multiple award of Price Agreements under a ~~Procurement, the solicitation~~procurement, the Solicitation materials and terms and conditions for the Price Agreements ~~must~~shall include assignment procedures for project-specific work orders or task orders that will allow the District to select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor for a work order or task order from the Consultants who have executed Price Agreements with the State Contracting Agency. If the District decides to use an alternative process adopted by the District for its tier-two selection process, however, the District's alternative process ~~must~~shall be described in the ~~solicitation~~Solicitation materials and terms and

conditions supporting the initial award of Price Agreements, in the executed Price Agreements, or in the project-specific assignment procedures for a work order or task order that are provided to the firms who have executed Price Agreements, at the time of selection for the project-specific work order or task order. The District's alternative process may be structured to take into account the unique circumstances of the District and may include provisions to allow the District to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies, including, but not limited to, the methods specified in PPS 48-0260(3)(b).

(5) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services assigned under a Price Agreement require a ~~Written~~written work order or task order issued by the District. Any work orders or task orders assigned under a Price Agreement ~~must~~shall include, at a minimum, the following:

(a) (a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;

(b) ~~**(a)**~~ The Consultant's performance obligations and performance schedule;

(c) ~~**(b)**~~ The payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services required under the work order or task order that is fair and reasonable to the District, as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services;

(d) ~~**(c)**~~ Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and

(e) ~~**(d)**~~ Any other provisions the District believes to be in the District's best interest.

PPS 48-0280 FSCP

The Superintendent may establish an FSCP for a particular class of Architectural, Engineering, Land Surveying or Related ~~Services~~services where the need for such ~~Services~~services is ongoing in nature, where it is difficult to anticipate the ~~Service~~service need, time, amount, or availability of Contractors, or where ~~Service~~service needs arise so quickly it is not practical or cost-effective to conduct individual solicitations under these ~~Rules~~rules. An FSCP shall comply with the following requirements:

(1) Solicitation to Create an FSCP. An FSCP can be established pursuant to an RFQ, an RFP, ~~Competitive Quotes~~competitive quotes, or such other method of competitive ~~Procurement~~procurement as the Superintendent deems to be appropriate given the ~~Services~~services to be procured.

(a) The Superintendent shall document the reasons for establishing an FSCP consistent with this ~~Rule~~rule in the ~~Procurement File~~Solicitation file. This documentation ~~must~~shall be reviewed and approved by the Director of ~~Procurement~~procurement as demonstrating that the procurement qualifies for use of an FSCP under these ~~Rules~~rules.

(b) The solicitation shall describe the class of Contracts that can be ~~Awarded~~awarded to Contractors in the FSCP. The District may not ~~Award~~award Contracts outside of the designated class of Contracts to the FSCP.

(c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(d) The solicitation may request a binding Price ~~Quote~~quote or rate that will become part of a subsequent Contract or may establish the pool based on qualifications alone.

(e) The solicitation may set or limit the value of the ~~Work~~work to be performed by the FSCP.

(2) Contracting for Work From an FSCP.

(a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual ~~Projects~~projects within the established scope of the ~~Work~~work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual ~~Projects~~projects will be offered, negotiated, and ~~Awarded~~awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The ~~Project~~project is for Work that is a continuation of, addition to, or is connected with Work previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to ~~Award~~award the Contract to the Contractor that performed the prior Work.

(D) The nature of the ~~Project~~project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal ~~Procurement~~procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in ~~Writing~~writing in the ~~Procurement File~~Solicitation file.

(b) An FSCP established under this section will expire after three years from the date of Closing of the ~~solicitation~~Solicitation, unless reestablished as provided in this ~~Rule~~rule.

(c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of ~~Work~~work or any Work at all.

(d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of ~~Work~~work from other Contractors through any other ~~Procurement~~procurement method authorized under these ~~Rules~~rules.

(e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of ~~Work~~work.

POST-SELECTION CONSIDERATIONS

PPS 48-0300 Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the project construction costs or total project costs.

(2) ~~(1)~~ Except as otherwise allowed by law, the District shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the ~~Project~~project, and reimbursable expenses incurred during the performance of ~~Work~~work on the ~~Project~~project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services required under the Contract.

(3) ~~(2)~~ Except in cases of Emergency or in the particular instances noted in the ~~sections~~subsections below, the District shall not purchase any building materials, supplies, or equipment for any building, structure, or facility constructed by or for the District from any Consultant under a Contract with the District to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services for the building, structure, or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services under a Contract with the District to perform Design-Build ~~Services or ESPC Services~~services or Energy Savings Performance Contract services (see PPS 49-0670 and 49-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies, or equipment was ~~Awarded~~awarded to Consultant pursuant to applicable law governing the ~~Award~~award of such a Contract.

PPS 48-0310 Expired or Terminated Contracts; Reinstatement

(1) If the District enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services and that Contract subsequently expires or is terminated, the District may proceed as follows, subject to the requirements of ~~Section~~section (2) of this ~~Rule~~rule:

(a) Expired Contracts. If the Contract has expired as the result of ~~Project~~project delay caused by the District or caused by any other occurrence outside the reasonable control of the District or the Consultant, and if no more than one year has passed since the Contract expiration date, the District may ~~Amend~~amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services required under the Contract to reflect any material alteration of the ~~Project~~project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the ~~Amendment~~amendment, the District and the Consultant shall continue performance under the Contract as ~~Amended~~amended; or

(b) Terminated Contracts. If the District or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the District may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering~~, Photogrammetric Mapping, Transportation Planning or~~ and Land Surveying ~~Services~~services or Related ~~Services~~services not completed under the ~~Original~~original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services not completed under the Contract as adjusted to reflect a material alteration of the ~~Project~~project.

(2) The District may proceed under either ~~Sections~~subsection (1)(a) or subsection (1)(b) of this ~~Rule~~rule only after making ~~Written Findings that Amending~~written findings that amending the existing Contract or entering into a new Contract with the Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to the District;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the ~~Procurement~~procurement process by not encouraging favoritism or substantially diminishing competition in the ~~Award~~award of Contracts; and

(c) Result in a Contract that is still within the scope of the final form of the original ~~Procurement~~procurement document.

PPS 48-0320 Contract Amendments

(1) The District may amend any Contract if the District, in its sole discretion, determines that the ~~Amendment~~amendment is within the scope of the Solicitation Document and that the ~~Amendment~~amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying ~~Services~~services or Related ~~Services~~services described in the final form of the original ~~Procurement~~procurement document. In making this determination, the District shall consider potential alternative methods of procuring the ~~Services~~services contemplated under the proposed ~~Amendment~~amendment. An ~~Amendment~~amendment would not materially impact the field of competition for the ~~Services~~services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the ~~Procurement~~procurement document were re-issued to include the additional ~~Services~~services.

(2) The District may ~~Amend~~amend any Contract if the additional ~~Services~~services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.

(3) All ~~Amendments~~amendments to Contracts ~~must be in Writing, must be Signed~~shall be in writing, shall be signed by an authorized representative of the Consultant and the District, and ~~must~~shall receive all required approvals before the ~~Amendments~~amendments will be binding on the District.

(4) Amendments That Would Cause a Contract to Exceed the Superintendent's Authority. An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed the Superintendent's delegated authority to approve contracts under PPS 45-0200 ~~must~~shall be approved by the School Board except as provided in PPS 45-0200.

(5) Reporting Requirement for Amendments/Change Orders That Exceed 125% of Original Contract Price.

(a) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than one hundred twenty five percent (125%) of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(A) The Original Contract Price does not exceed $500,000.

(B) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than one hundred and fifty percent (150%) of the original Contract Price.

(c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION 48

PPS DIVISION 49

DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS

PPS 49-0100 Application

~~These Division 49 Rules are intended to implement the requirements of ORS 279C in regard to Public Improvements, Public Works, and construction services.~~

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. The rules that apply specifically to Public Improvement Contracts are so identified. These division 49 rules apply to Contracts for Construction Manager/General Contractor services, whether the initial Contract between the parties includes both pre-construction services and construction services, or only contains pre-construction services, since the underlying procurement for Construction Manager/General Contractor services authorizes the District to enter into Contracts for both pre-construction and construction services.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related services, all of which are addressed in division 48 of the rules).

PPS 49-0110 Policies

In addition to the general Code policies ~~of the Code as~~ set forth in ORS 279A.015, the ~~ORS~~ 279C.300 policy on competition and the ~~ORS~~ 279C.305 policy on least-cost for Public Improvements apply to these ~~Division~~division 49 ~~Rules~~rules.

PPS 49-0120 Definitions

(3) ~~**(1) "**~~**Conduct Disqualification**~~**"** means a disqualification~~ means a Disqualification under ORS 279C.440 in accordance with PPS 49-0370.

(4) ~~**(2) "**~~**Disqualification**~~**"** means the preclusion of a Person from contracting with the District for a period of time in accordance with PPS 49-0370.

(5) ~~**(3) "**~~**Foreign Contractor**~~**"** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See PPS 49-0490.

(6) ~~**(4) "**~~**Notice**~~**"** means any of the alternative forms of Public announcement of ~~Procurements~~procurements, as described in PPS 49-0210.

(7) ~~**(5) "**~~**Work**~~**"** means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

PPS 49-0130 Competitive Bidding Requirement

The District ~~must~~shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on ~~Competitive Bidding~~competitive bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see PPS 49-0600 through 49-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

PPS 49-0140 Contracts for Construction Other Than Public Improvements~~; Emergency Construction Contracts~~

(1) ~~Procurement~~procurement Under ORS Chapter 279B. Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and ~~Amended~~amended as general trade ~~Services~~services under the provisions of ORS 279B rather than under the provisions of ORS 279C and these ~~Division~~division 49 ~~Rules~~rules.

(2) Emergency Construction Contracts. Emergency Contracts for construction services are not Public Improvement Contracts and are regulated under ORS 279B.080. See PPS 49-0150.

(3) Application of ORS Chapter 279C. Non-procurement provisions of ORS Chapter 279C and these ~~Division~~division 49 ~~Rules~~rules may still be applicable to the resulting Contracts. See, for example, particular statutes on ~~disqualification (ORS~~ Disqualification (279C.440, 445, ~~and~~ 450); Legal Actions (~~ORS~~ 279C.460 and 465); Required Contract Conditions ~~(ORS~~ 279C.505, 515, 520, and 530); Hours of Labor (~~ORS~~ 279C.540 and 545); Retainage (~~ORS~~ 279C.550, 560, ~~and~~ 565 and 570); Subcontracts (~~ORS~~ 279C.580); Action on Payment Bonds (~~ORS~~ 279C.600, 605, 610, 615, 620, ~~and~~ 625); Termination (ORS 279C.650, 655, 660, ~~and~~ 670); and all of the Prevailing ~~Rate of~~ Wage Rates requirements (~~ORS~~ 279C.800 through ~~279C~~.870) for Public Works Contracts.

PPS 49-0146 Class Exemptions; Public Improvement Contracts

The Local Contract Review Board declares the following Contracts listed in this section as classes of Public Improvement Contracts exempt from ~~Competitive Bidding~~competitive bidding.

(1) Donated Public Improvements. The Superintendent may authorize a Person to construct a Public Improvement without ~~Competitive~~competitive Bidding or other ~~Competitive~~competitive process and regardless of dollar amount, if:

(a) The Person has agreed to donate all or a significant portion of the materials or ~~Services~~services necessary to construct the Public Improvement or perform the ~~Service~~service; and

(b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular ~~Project~~project and any requirements that the District deems necessary or beneficial to protect the District.

(2) Benson House Program Contracts. The Superintendent may directly negotiate a Public Improvement Contract without complying with the ~~Competitive Procurement~~competitive procurement requirements of these ~~Rules~~rules where the Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.

(3) Purchases Under Contracts Solicited by Nonprofit ~~Procurement~~procurement Organizations of Which the District Is a Member. The Superintendent may purchase Public Improvements under a Contract or ~~Procurement~~procurement solicited by a Nonprofit ~~Procurement~~procurement Organization of which it is a member. For the purposes of this Special ~~Procurement~~procurement, such a Nonprofit ~~Procurement~~procurement Organization will be considered a "Contracting Purchasing Group" under PPS 46-0400 through 46-0480, and a ~~Procurement must~~procurement shall comply with the requirements for Joint Cooperative ~~Procurements~~procurements pursuant to PPS 46-0420.

(4) FSCP. The Superintendent may establish an FSCP for a particular class of Public Improvements where the need for such Work is ongoing in nature, where it is difficult to anticipate the ~~Service~~service need, time, amount, or availability of Contractors, or where ~~Service~~service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these ~~Rules~~rules. An FSCP shall comply with the following requirements:

(a) Solicitation to Create an FSCP. An FSCP for Public Improvements shall be solicited based on the total cost of the ~~Work~~work estimated to be ~~Awarded~~awarded through the FSCP during its life. If the total amount of the ~~Work~~work is estimated to be over $100,000, the Superintendent shall use a formal RFQ process pursuant to PPS 49-0645 or an RFP process pursuant to PPS 49-0650. If the total amount of the ~~Work~~work is $100,000 or less, the FSCP may be solicited pursuant to the ~~Intermediate Procurement~~intermediate procurement process set forth in PPS 49-0160.

(A) The Superintendent shall document the reasons for establishing an FSCP consistent with this ~~Rule~~rule in the ~~Procurement File~~Solicitation file. This documentation ~~must~~shall be reviewed and approved by the Director of ~~Procurement~~procurement as demonstrating that the ~~Procurement~~procurement qualifies for use of an FSCP under these ~~Rules~~rules.

(B) The solicitation shall describe the class of Contracts that can be ~~Awarded~~awarded to Contractors in the FSCP. The District may not ~~Award~~award Contracts outside of the designated class of Contracts to the FSCP.

(C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

(D) The solicitation may request a binding Price ~~Quote~~quote or time and materials rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.

(E) The solicitation may set or limit the value of the work performed by the FSCP.

(b) Contracting for Work from an FSCP. Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform specific Work within the established scope of the ~~Work~~work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Work will be Offered, negotiated, and ~~Awarded~~awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered a Contract to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may offer a Contract to Contractors out of sequence in the following circumstances:

(A) The Contractor that is next on the list declines or is unavailable during the time period needed.

(B) Contract negotiations with the next-listed Contractor are not successful.

(C) The ~~Project~~project is for a Public Improvement that is a continuation of, an addition to, or connected with a Public Improvement previously constructed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to ~~Award~~award the Contract to the Contractor that performed the prior Work or provided the prior ~~Goods~~goods.

(D) The nature of the ~~Project~~project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an ~~Intermediate Procurement~~intermediate procurement pursuant to PPS 49-0160 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in ~~Writing~~writing in the ~~Procurement File~~Solicitation file.

(c) An FSCP established under this section will expire after three years from the date of Closing of the ~~solicitation~~Solicitation, unless reestablished as provided in this ~~Rule~~rule.

(d) Appointment to an FSCP does not guarantee that a contractor will receive a particular amount of work or orders or any work or orders at all.

(e) The establishment of an FSCP does not preclude the Superintendent from procuring public improvements that would otherwise fall within the FSCP from other contractors through any other ~~Procurement~~procurement method authorized under these ~~Rules~~rules.

(f) At any time during the term of an FSCP, the Superintendent may request confirmation from a contractor or contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory or other capability needed to perform the class of work or provide the required goods.

(g) If an FSCP for public improvements is reasonably estimated to include ~~Projects~~projects that will total over $50,000 during the life of the FSCP, public improvement contracts ~~Awarded~~awarded to Contractors on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(5) Price Agreements.

(a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase Public Improvements for an anticipated need at a predetermined price, but the Contract ~~must~~shall be solicited by a ~~Competitive Procurement~~competitive procurement process pursuant to the requirements of these ~~Rules~~rules based on the total Contract Price.

(b) The Superintendent may purchase Public Improvements from a Contractor ~~Awarded~~awarded a Price Agreement without first undertaking additional competitive solicitation up to the amount set forth in the Price Agreement.

(c) The Superintendent may use the Price Agreement entered into by another Oregon Public Agency when the Original Contract was let pursuant to PPS 46-0420.

(d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

(e) If a Price Agreement for Public Improvements will exceed $50,000 over the term of the Agreement, the Contract shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

(6) Expedited Contracting Process in Order to Access State, Federal, or Grant Funding. The Superintendent may waive any or all of the ~~solicitation~~Solicitation procedures under this ~~Division~~division 49 in the following circumstances:

(a) The state or federal government or granting entity has adopted a funding program or made funding available to assist the District in constructing Public Improvements and has attached a time deadline to have a Contract in place, a ~~Project~~project underway, or a ~~Project~~project completed in order for the District to access or be eligible for those funds. Such programs include, without limitation, the American Recovery and Reinvestment Act of 2009 ("ARRA") and similar programs.

(b) The Superintendent determines that compliance with the ~~solicitation~~Solicitation procedures in this ~~Division~~division 49 could jeopardize the District's ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.

(c) The Superintendent provides for an alternative contracting process.

(d) The reasons for and extent of the waiver are documented in the ~~Procurement File~~Solicitation file.

(e) Notwithstanding PPS 45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract is over the Superintendent's delegated authority as set forth in PPS 45-0200(4)(b)(A).

PPS 49-0150 Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. The Superintendent may declare that ~~emergency~~Emergency circumstances exist that require prompt execution of a Public Contract for ~~emergency~~Emergency construction or repair Work. The declaration shall be by a ~~Written~~written declaration that describes the circumstances creating the ~~emergency~~Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency ~~Declaration~~declaration shall be kept on file as a public record.

(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an Emergency ~~Procurement~~procurement of construction services, the District shall ensure competition that is reasonable and appropriate under the ~~emergency~~Emergency circumstances, and may include ~~Written Requests~~written requests for Offers, oral ~~Requests~~requests for Offers, or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Superintendent considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract ~~must~~shall be limited to Work that is necessary and appropriate to remedy the conditions creating the ~~emergency~~Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by ~~Change Order or Amendment~~change order or amendment to address the conditions described in the original declaration or an ~~Amended~~amended declaration that further describes additional Work necessary and appropriate for related ~~emergency~~Emergency circumstances. Emergency contract modifications are not subject to the requirements or limitations of PPS 47-0800 or PPS 49-0910.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this ~~Rule~~rule, the Emergency ~~Declaration~~declaration may also state that the District waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency ~~Declaration~~declaration, those bonding requirements are excused for the ~~Procurement~~procurement, but this Emergency ~~Declaration~~declaration does not affect the separate Public Works bond requirement for the benefit of BOLI in enforcing prevailing wage rate and overtime payment requirements. See PPS 49-0815 and BOLI rules at OAR 839-025-0015.

PPS 49-155 Small Procurements. A public improvement contract with a value less than $25,000 may be solicited by any method that the Superintendent deems in the best interests of the District, including direct negotiation.

PPS 49-0160 ~~Intermediate Procurements~~intermediate procurements; Competitive ~~Quotes~~quotes and Amendments

(1) General. Public Improvement Contracts estimated by the District not to exceed $100,000 may be ~~Awarded~~awarded in accordance with ~~Intermediate-level Procurement~~intermediate level procurement procedures for ~~Competitive Quotes~~competitive quotes established by this ~~Rule~~rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, ~~Project~~project understanding, ~~Contractor~~contractor capacity, responsibility, and similar factors.

(3) Request for ~~Quotes~~quotes. The District ~~must~~shall utilize ~~Written Requests for Quotes~~written requests for quotes whenever reasonably practicable. Written ~~Requests for Quotes must~~requests for quotes

shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting ~~Quotes~~quotations orally, prior to requesting the ~~Price Quote~~price quote the District shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral ~~quotes~~quotations may ~~only~~ be utilized only in the event that ~~Written~~written copies ~~of or references to~~ the prevailing wage rates are not required by BOLI (e.g., if the total project cost is $50,000 or less or is not otherwise subject to payment of prevailing wages).

(4) Number of ~~Quotes~~quotes; Record Required. The District ~~must~~shall seek at least three ~~Competitive Quotes~~competitive quotes and keep a ~~Written~~written record of the sources and amounts of the ~~Quotes~~quotes received. If three ~~Quotes~~quotes are not reasonably available, the District ~~must~~shall make a ~~Written~~written record of the effort made to obtain those ~~Quotes~~quotes.

(5) ~~Award~~award. If ~~Awarded~~awarded, the District ~~must Award~~shall award the Contract to the prospective Contractor whose ~~Quote~~quote will best serve the interests of the District, taking into account the announced selection criteria. If ~~Award~~award is not made to the Offeror offering the lowest price, the District ~~must~~shall make a ~~Written~~written record of the basis for ~~Award~~award.

(6) Amendments. Amendments of Intermediate-level Public Improvement Contracts that exceed the thresholds stated in ~~Section~~section (1) of this ~~Rule~~rule are specifically authorized by the Code when made in accordance with PPS 49-0910. Accordingly, such ~~Amendments~~amendments are not considered new ~~Procurements~~procurements and do not require an exemption from ~~Competitive Bidding~~competitive bidding.

FORMAL PROCUREMENT RULES

PPS 49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this ~~Rule~~rule, the Solicitation Document ~~must~~shall include the following:

(a) General Information.

(A) Identification of the Public Improvement ~~Project~~project, including the character of the ~~Work~~work, and applicable plans, specifications, and other Contract ~~Documents~~documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date, and location of any pre-Offer conference; ~~and~~

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the District's representatives at the conference are not binding on the District unless confirmed by ~~Written~~written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of ~~Work~~work for which Offerors ~~must~~shall be prequalified if prequalification is a requirement;

(D) The name and title of the District ~~Person~~official designated for receipt of Offers and ~~the~~ contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers ~~must~~shall be delivered, any ~~Bid or Proposal~~bid or proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See PPS 49-0300 regarding ~~Facsimile~~facsimile Bids or Proposals and PPS 49-0310 regarding ~~Electronic Procurement~~electronic procurement);

(F) The time, date, and place of Opening;

(G) The time and date of Closing after which the District ~~will~~shall not accept Offers, which time ~~must~~shall be not less than five ~~Days~~days after the date of the last publication of the advertisement. Although a minimum of five ~~Days~~days is prescribed, the District is encouraged to use at least a 14-~~Day~~day solicitation period when feasible. If the District is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the District ~~must~~shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and PPS 49-0360. For timing issues relating to Addenda, see PPS 49-0250;

(H) The office where the ~~Specifications~~specifications for the ~~Work~~work may be reviewed;

(I) A statement that each ~~Bidder~~bidder to an ITB ~~must~~shall identify whether the ~~Bidder~~bidder is a "resident ~~Bidder~~bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 ~~through~~to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the District unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840, or 40 U.S.C. 3141 to 3148";

(K) A statement that the District ~~will~~shall not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board or is licensed by the State Landscape Contractors Board as specified in PPS 49-0230;

(L) Whether a Contractor or a subcontractor under the Contract ~~must~~shall be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) (see PPS 49-0440(3));

(N) How the District ~~will~~shall notify Offerors of Addenda and how the District ~~will~~shall make Addenda available (see PPS 49-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in PPS 49-0360.

(b) Evaluation Process.

(A) A statement that the District may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the ~~Bidder's~~bidder's responsibility under ORS 279C.375(3)(b), and may reject for ~~good cause~~Good Cause all Offers after finding that doing so is in the public interest.

(B) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the District ~~will~~shall use to determine the Responsible ~~Bidder~~bidder with the lowest Responsive Bid (where ~~Award~~award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive ~~Proposal~~proposal or Proposals (where use of ~~Competitive~~competitive Proposals is authorized under ORS 279C.335 and PPS 49-0620), along with the process the District ~~will~~shall use to determine acceptability of the ~~Work~~work;

(D) If the Solicitation Document is an Invitation to Bid, the District ~~must~~shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-

in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or ~~Life Cycle~~life cycle Cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but to the extent possible, such evaluation factors ~~must~~shall be objective, reasonable estimates based on information the District has available concerning future use; and

(E) If the Solicitation Document is a Request for ~~Proposals~~proposal, the District ~~must~~shall refer to the additional requirements of PPS 49-0650; and

(c) Contract Provisions. The District ~~must~~shall include all Contract terms and conditions, including warranties, insurance, and bonding requirements, that the District considers appropriate for the Public Improvement ~~Project~~project. The District ~~must~~shall also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material, contributions to Industrial Accident Fund, and liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1);

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon ~~must~~shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor ~~must~~shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays, and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 through 279C.870);

(O) BOLI Public Works ~~Bond~~bond (ORS 279C.830(2)

(P) Retainage (ORS 279C.550 through 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 through 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor ~~must~~shall not assign, sell, dispose of or transfer rights, ~~nor~~or delegate duties under the Contract, either in whole or in part, without the District's prior ~~Written~~written consent. Unless otherwise agreed by the District in ~~Writing~~writing, such consent ~~must~~shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee ~~must~~shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the District consents in ~~Writing~~writing to an assignment, sale, disposal, or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, ~~must~~shall remain liable to the District for complete performance of the Contract as if no such assignment, sale, disposal, transfer, or delegation had occurred unless the District otherwise agrees in ~~Writing~~writing.

PPS 49-0210 Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. The District shall furnish ~~Notice~~notice as set forth below in ~~Sections (1)~~subsections (a) through ~~(1)~~(c) to a number of Persons sufficient for the purpose of fostering and promoting competition. The ~~Notice~~notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement ~~Project~~project or Work. The ~~Notice~~notice may contain any other appropriate information. The District may charge a fee or require a deposit for the Solicitation Document. The District may furnish ~~Notice~~notice using any method determined to foster and promote competition, including:

(a) Mailing ~~Notice~~notice of the availability of Solicitation Documents to Persons that have expressed an interest in the District's ~~Procurements~~procurements;

(b) Placing ~~Notice~~notice on the District's ~~Electronic Procurement~~electronic procurement System; or

(c) Placing ~~Notice~~notice on the District's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this ~~Rule~~rule, the District shall advertise every solicitation for ~~Competitive Bids or Competitive~~competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Board has exempted the ~~solicitation~~Solicitation from the advertisement requirement as part of a ~~Competitive Bidding~~competitive bidding exemption under ORS 279C.335.

(a) Unless the District publishes by Electronic Advertisement as permitted under ~~Section (~~subsection 2~~)~~(b) of this ~~Rule~~rule, the District shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the District may determine to be necessary or desirable to foster and promote competition.

(b) The District may publish by Electronic Advertisement if the Contract Review Board determines that Electronic Advertisement is likely to be ~~cost-effective and, by Rule or order, authorizes Electronic Advertisement~~cost effective.

(c) In addition to the District's publication required under ~~Sections (~~subsections 2~~)~~(a) or ~~(2)~~ (b), the District shall also publish an advertisement for Offers in at least one trade newspaper of general

statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement ~~Project~~project;

(B) The office where Contract terms, conditions, and ~~Specifications~~specifications may be reviewed;

(C) The date that Persons ~~must~~shall file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of ~~Work~~work for which Persons ~~must~~shall be prequalified;

(D) The scheduled Closing, which shall not be less than five ~~Days~~days after the date of the last publication of the advertisement;

(E) The name, title, and address of the District ~~Person~~official authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 ~~through~~to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

PPS 49-0220 Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this ~~Rule~~rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. The District may require mandatory prequalification of Offerors. The District ~~must~~shall indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the District conditions a Person's submission of an Offer on the Person's prequalification. The District ~~must~~shall not consider an Offer from a Person that is not prequalified if the District required prequalification.

(b) Permissive Prequalification. The District may prequalify a Person for the District's solicitation list, but in permissive prequalification the District ~~must~~shall not limit distribution of a solicitation to that list.

(c) Prequalification Procedure. When prequalification is required or allowed, a Person shall submit a prequalification application to the District on the form prescribed by the District. The District shall determine if the applicant is qualified within 30 ~~Days~~days of the date of application, or sooner if practicable and so requested by the applicant to enable the applicant to participate in Bidding on an advertised Contract. If the District finds that the applicant is qualified, the District ~~will~~shall provide ~~Notice~~notice to the applicant of the nature and type of Contracts the applicant is qualified to ~~Bid~~bid on and the period of time for which the qualification is valid.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative ~~Services~~services to perform Contracts, the Offeror ~~must~~shall be rebuttably presumed qualified to perform similar Work for the District. ~~When qualifying for the same kind of Work for the District, the Person may submit proof of the prequalification in lieu of a prequalification application under Section (1) of this Rule.~~

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the District's satisfaction ~~that~~:

(a) The Person's financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the District. (See PPS 49-0390(2) regarding standards of responsibility.)

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the District ~~must~~shall notify the Person ~~and,~~ specify the reasons under ~~Section~~section (3) of this ~~Rule~~rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in ~~Section~~section (6) of this ~~Rule~~rule.

(5) Revocation of Prequalification. If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified Person and that the Person is no longer qualified or is less qualified, the District may revoke or revise and reissue the prequalification after reasonable ~~Notice~~notice to the prequalified Person. The ~~Notice~~notice shall specify the reasons under ~~Section~~section (3) of this ~~Rule~~rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in ~~Section~~section (6) of this ~~Rule~~rule.

(6) Appeal of Denial or Revocation of, or Revision to Prequalification.

(a) Any Person who wishes to appeal the District decision under Sections (4) or (5) of this ~~Rule~~rule shall, within three business ~~Days~~days after receipt of the ~~Notice~~notice of disqualification, file ~~Written Notice~~written notice with the District that Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.

(b) Immediately upon receipt of the prospective ~~Bidder's~~bidder's or Proposer's ~~Notice~~notice of appeal, the District shall notify the local Contract Review Board.

(c) Upon the receipt of ~~Notice~~notice from the District under ~~Section~~section (2) of this ~~Rule~~rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 ~~Days~~days after receiving the ~~Notice~~notice from the District. The Contract Review Board shall set forth in ~~Writing~~writing the reasons for the hearing decision.

(d) At the hearing the Contract Review Board shall consider de novo the ~~Notice~~notice of denial, revocation or revision of a prequalification, the standards listed in ~~Section~~section (3) of this ~~Rule~~rule on which the District based the decision, and any evidence provided by the parties. Hearings before a Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

(A) If the decision to deny, revoke, or revise a prequalification of a Person as a ~~Bidder~~bidder is upheld, the cost shall be paid by the Person appealing the decision.

(B) If the decision to deny, revoke, or revise a prequalification of a Person as a ~~Bidder~~bidder is reversed, the costs shall be paid by the District.

(f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

PPS 49-0230 Eligibility to Bid or Propose; Registration or License

(1) Construction Contracts. The District ~~must~~shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) Landscape Contracts. The District ~~must~~shall not consider a Person's Offer to do Work as a landscape ~~Contractor~~contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape ~~Contractors~~contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the ~~Offer~~offer is made.

(3) Non-Complying Entities. The District ~~must~~shall deem an Offer received from a Person that fails to comply with this ~~Rule~~rule Non-Responsive and ~~must~~shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding or the District.

PPS 49-0240 Pre-Offer Conferences

(1) Purpose. The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the ~~Procurement~~procurement requirements, obtain information, or conduct site inspections.

(2) Required Attendance. The District may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of the Offering firm is present.

(3) Scheduled Time. If the District holds a pre-Offer conference, it ~~must~~shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a ~~Written~~written Addendum to the Solicitation Document.

(5) District Announcement. The District ~~must~~shall set forth ~~Notice~~notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 49-0200(1)(a)(B).

PPS 49-0250 Addenda to Solicitation Documents

(1) Issuance; Receipt. The District may change a Solicitation Document only by ~~Written~~written Addenda. An Offeror ~~must~~shall provide ~~Written~~written acknowledgement of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda or in the Solicitation Document.

(2) Notice and Distribution. The District ~~must~~shall notify prospective Offerors of Addenda consistent with the standards of ~~Notice~~notice set forth in PPS 49-0210(1). The Solicitation Document ~~must~~shall specify how the District ~~will~~shall provide ~~Notice~~notice of Addenda and how the District ~~will~~shall make the Addenda available (see PPS 49-0200(1)(a)(N). For example, "The District ~~will~~shall not mail ~~Notice~~notice of Addenda, but will publish ~~Notice~~notice of any Addenda on the District's Web site. Addenda may be downloaded off the District's Web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing, and at least once daily during the week of the Closing."

(3) Timelines; Extensions. The District ~~must~~shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the District ~~must~~shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a ~~Written~~written request for change or protest to the Addendum, as provided in PPS 49-0260, by the close of the District's next business ~~Day~~day after issuance of the Addendum, or up to the last ~~Day~~day allowed to submit a request for change or protest under PPS 49-0260, whichever date is later. The District ~~must~~shall consider only an Offeror's request for change or protest to the Addendum; the District ~~must~~shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in PPS 49-0260(2) and (3).

PPS 49-0260 Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a ~~Written~~written request for change or protest, an Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in ~~Writing~~writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

(2) Request for Change.

(a) Delivery. An Offeror may request in ~~Writing~~writing a change to the ~~Specifications~~specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror ~~must~~shall deliver the ~~Written~~written request for change to the District not less than ~~five Days~~ten (10) days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's ~~Written~~written request for change ~~must~~shall include a statement of the requested change(s) to the Contract terms and conditions, including any ~~Specifications~~specifications, together with the reason for the requested change.

(B) An Offeror ~~must~~shall mark its request for change as follows:

(i) "Contract Provision Request for change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest ~~Specifications~~specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror ~~must~~shall deliver a ~~Written~~written protest on those matters to the District not less than ~~five Days~~ten (10) days prior to Closing.

(b) Content of Protest.

(A) An Offeror's ~~Written~~written protest ~~must~~shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any ~~Specifications~~specifications.

(B) An Offeror ~~must~~shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) The Response. The District is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The District ~~must~~shall provide ~~Notice~~notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District ~~must~~shall either issue an Addendum reflecting its determination under PPS 49-0260 or cancel the ~~solicitation~~Solicitation under PPS 49-0270.

(5) Extension of Closing. If the District receives a ~~Written~~written request for change or protest from an Offeror in accordance with this ~~Rule~~rule, the District may extend Closing if the District determines ~~that~~ an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

(6) Failure to Protest or Request a Change Precludes Protest of ~~Award~~award on Such Issue. An Offeror cannot protest an ~~Award~~award based on any issue that could have, but was not, raised as a Request for Change or Protest of solicitation.

PPS 49-0270 Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. The District may cancel a solicitation for ~~good cause~~Good Cause if the District finds that cancellation is in the public interest. The District's reasons for cancellation ~~must~~shall be made part of the ~~Procurement File~~solicitation file.

(2) Notice of Cancellation. If the District cancels a solicitation prior to Opening, the District ~~must~~shall provide ~~Notice~~notice of cancellation in accordance with PPS 49-0210(1). Such ~~Notice~~notice of cancellation ~~must~~shall:

- **(a)** Identify the ~~solicitation~~Solicitation;
- **(b)** Briefly explain the reason for cancellation; and
- **(c)** If appropriate, explain that an opportunity will be given to compete on any ~~re-solicitation~~resolicitation.

(3) Disposition of Offers.

- **(a)** Prior to Offer Opening. If the District cancels a solicitation prior to Offer Opening, the District ~~will~~shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District ~~will~~shall open the Offer to determine the source and then return it to the Offeror.
- **(b)** After Offer Opening. If the District rejects all Offers, the District ~~will~~shall retain all such Offers as part of the District's ~~Procurement File~~Solicitation file.

PPS 49-0280 Offer Submissions

(1) Offer and Acceptance. The ~~Bid~~bid or ~~Proposal~~proposal is the ~~Bidder's~~bidder's or Proposer's Offer to enter into a Contract.

- **(a)** In ~~Competitive Bidding and Competitive~~competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer ~~must~~shall be held open by the Offeror for the District's acceptance for the period specified in PPS 49-0410. The District may elect to accept the Offer at any time during the specified period, and the District's ~~Award~~award of the Contract to a ~~Bidder~~bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.
- **(b)** Notwithstanding the fact that a ~~Competitive Proposal~~competitive proposal is a ~~"~~Firm Offer~~"~~ for the period specified in PPS 49-0410, the District may elect to discuss or negotiate certain Contractual provisions, as identified in these ~~Rules~~rules or in the Solicitation Document, with the Proposer. See PPS 49-0650 on Requests for Proposals and PPS 49-0290 on ~~Bid or Proposal~~bid or

proposal Security. Where negotiation is permitted by the ~~Rules~~rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the ~~Rules~~rules or the Solicitation Document has reserved for negotiation. In ~~Competitive~~competitive Proposals, the Solicitation Document ~~must~~shall describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of ~~Competitive~~competitive Bidding, or whether Offers are subject to discussion, negotiation, or otherwise are not to be considered as final Offers. See PPS 49-0650 on Requests for Proposals and PPS 49-0290 on ~~Bid or Proposal~~bid or proposal Security.

(2) Responsive Offer. The District may ~~Award~~award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to ~~Propose~~propose certain terms and conditions pursuant to PPS 49-0650, an Offeror ~~must~~shall not make an Offer contingent upon the District's acceptance of any terms or conditions (including ~~Specifications~~specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges that ~~they have~~it has read and ~~understand~~understands the terms and conditions contained in the Solicitation Document and that ~~they accept~~it accepts and ~~agree~~agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for ~~Proposals~~proposal permits ~~Proposal~~proposal of alternative terms under PPS 49-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any ~~Proposed~~proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in ~~Writing~~writing.

(5) Instructions. An Offeror ~~must~~shall submit and ~~Sign~~sign the Offer in accordance with the Solicitation Document. An Offeror ~~must~~shall initial and submit any corrections or erasures to their Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. An Offeror ~~must~~shall submit the Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) Documents. An Offeror ~~must~~shall provide the District with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the District permits ~~Facsimile or Electronic~~facsimile or electronic Offers in the Solicitation Document, the Offeror may submit ~~Facsimile~~facsimile or Electronic Offers in accordance with the Solicitation Document. The District ~~will~~shall not consider ~~Facsimile~~facsimile or Electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. The District may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features, or characteristics of the offered items. The District ~~will~~shall dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers.

- **(a)** To ensure proper identification and handling, Offers ~~must~~shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable.
- **(b)** The District is not responsible for Offers submitted in any manner or format, or to any delivery point, other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offeror is responsible for ensuring that the District receives the Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

PPS 49-0290 Bid or Proposal Security

(1) Security Amount. If the District requires ~~Bid or Proposal~~bid or proposal security, it ~~must~~shall be not more than 10 ~~percent~~% or less than 5 ~~percent~~% of the Offeror's ~~Bid~~bid or ~~Proposal~~proposal, consisting of the base ~~Bid or Proposal~~bid or proposal together with all additive alternates. The District ~~must not use Bid or Proposal~~shall not use bid or proposal security to discourage competition. The District ~~must~~shall clearly state any ~~Bid or Proposal~~bid or proposal security requirements in its Solicitation Document. The Offeror ~~must~~shall forfeit ~~Bid or Proposal~~bid or proposal security after ~~Award~~award if the Offeror fails to execute the Contract and promptly return it with any required ~~Performance Bond and Payment Bond~~performance bond and payment bond and, in the case of ~~Proposal~~proposal security, with any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless the District has otherwise exempted a solicitation or class of solicitations from ~~Bid~~bid security pursuant to ORS 279C.390, the District ~~must~~shall require ~~Bid~~bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(6). The District may require ~~Bid~~bid security even if it has exempted a class of solicitations from ~~Bid~~bid security. The District may require ~~Proposal~~proposal security in RFPs. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. The District may accept only the following forms of ~~Bid or Proposal~~bid or proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. The District ~~must~~shall return or release the ~~Bid or Proposal~~bid or proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The District may return the ~~Bid or Proposal~~bid or proposal security of unsuccessful Offerors prior to ~~Award~~award if the return does not prejudice Contract ~~Award~~award and the security of at least the ~~Bidders~~bidders with the three lowest Bids, or the Proposers with the three ~~highest scoring~~highest scoring Proposals, is retained pending execution of a Contract.

PPS 49-0300 Facsimile Bids and Proposals

(1) District Authorization. The District may authorize Offerors to submit ~~Facsimile~~facsimile Offers. If the District determines that ~~Bid or Proposal~~bid or proposal security is or will be required, the District ~~must~~shall not authorize ~~Facsimile~~facsimile Offers unless the District has established a method for receipt of such security. Prior to authorizing the submission of ~~Facsimile~~facsimile Offers, the District ~~must~~shall determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District ~~must~~shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard ~~Facsimile~~facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as ~~Sealed~~sealed.

(2) Provisions to Be Included in Solicitation Document. In addition to all other requirements, if the District authorizes a ~~Facsimile~~facsimile Offer for Bids or Proposals, the District ~~must~~shall include in the Solicitation Document (other than in ~~an RFQ~~a Request for Quotes) the following:

(a) A provision substantially in the form of the following: "A '~~Facsimile~~facsimile Offer' as used in this Solicitation Document means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit ~~Facsimile~~facsimile Offers in response to this Solicitation Document. The entire response ~~must~~shall arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to ~~Sign~~sign their ~~Facsimile~~facsimile Offers;

(d) A provision substantially in the form of the following: "The District reserves the right to ~~Award~~award the Contract solely on the basis of the ~~Facsimile~~facsimile Offer." However, upon the District's request, the apparent successful Offeror ~~must~~shall promptly submit its complete original ~~Signed~~signed Offer; and

(e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the District is not responsible for any failure attributable to the transmission or receipt of the ~~Facsimile~~facsimile Offer including, but not limited to, the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

PPS 49-0310 Electronic ~~Procurement~~procurement

(1) General. The District may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 ~~must~~shall also be published in a trade newspaper of general statewide circulation, and may post ~~Notices~~notices of intent to ~~Award~~award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that the District desires to ~~allow Electronic~~direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, the District ~~will~~shall comply with PPS 47-0330 (~~Electronic Procurement~~electronic procurement under ORS 279B), taking into account ORS 279C requirements for ~~Written~~written Bids, opening Bids publicly, ~~Bid~~bid security, first-tier subcontractor disclosure, and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this ~~Rule must~~rule shall be construed as prohibiting the District from making ~~Procurement~~procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

PPS 49-0320 Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in ~~Writing~~writing prior to the Closing. An Offeror ~~must~~shall prepare and submit any modification to its Offer to the District in accordance with PPS 49-0280,

unless otherwise specified in the Solicitation Document. Any modification ~~must~~shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror ~~must~~shall mark the submitted modification as follows:

(a) Bid (or ~~Proposal) modification~~proposal) Modification; and

(b) Solicitation ~~number~~Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by ~~Written Notice~~written notice submitted on the Offeror's letterhead, ~~Signed~~signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

(b) The District may release an unopened Offer withdrawn under ~~Section~~section (2)(a) of this ~~Rule~~rule to the Offeror or its authorized representative after voiding any date and ~~time stamp~~time stamp mark;

(c) The Offeror ~~must~~shall mark the ~~Written~~written request to withdraw an Offer as follows:

(A) Bid (or ~~Proposal) withdrawal~~proposal) Withdrawal; and

(B) Solicitation number (or other identification as specified in the Solicitation Document).

(3) Documentation. The District ~~must~~shall include all documents relating to the modification or withdrawal of Offers in the appropriate ~~Procurement File~~Solicitation file.

PPS 49-0330 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. The District ~~must~~shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District ~~must~~shall not open the Offer or modification upon receipt, but ~~must~~shall maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District ~~must~~shall return the Offer or modification to its secure and confidential state until Opening. The District ~~must~~shall document the resealing for the ~~Procurement File~~Solicitation file (e.g., "The District inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. The District ~~must~~shall publicly open Offers, including any modifications made to the Offer, pursuant to PPS 49-0320. In the case of Invitations to Bid, to the extent practicable, the District ~~must~~shall read aloud the name of each ~~Bidder~~bidder, the ~~Bid~~bid price(s), and such other information as the District considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District ~~will~~shall not read Offers aloud.

(3) Availability. After Opening, the District ~~must~~shall make Bids available for public inspection, but pursuant to ORS 279C.410, Proposals are not required to be available for public inspection until after the ~~Notice~~notice of ~~Intent~~intent to ~~Award~~award is issued. In any event, the District may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 through 646.475. To the extent that the District determines such designation is not in accordance with applicable law, the District ~~must~~shall make those portions available for public inspection. The Offeror ~~must~~shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, models, or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and ~~must~~shall be publicly available regardless of an Offeror's designation to the contrary.

PPS 49-0340 Late Bids, Late Withdrawals, and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District ~~will~~shall not consider late Offers, withdrawals, or modifications except as permitted in PPS 49-0350 or 49-0390.

PPS 49-0350 Mistakes

(1) Generally. To protect the integrity of the ~~Competitive Procurement~~competitive procurement process and to ~~ensure~~assure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) District Treatment of Mistakes. The District ~~must~~shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before ~~Award~~award of the Contract, the District may take the following action:

(a) The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of ~~Signed~~signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a ~~Signature~~signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) The District may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the District's correction in ~~Writing~~writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this section or an error in judgment;

(C) That the error cannot be corrected or waived under ~~Section (2)~~subsection (b) of this ~~Rule~~rule;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;

(G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and

(H) That the Offeror promptly gave ~~Notice~~notice of the claimed error to the District.

(d) The criteria in ~~Section~~section (2)(c) of this ~~Rule must~~rule shall determine whether the District ~~will~~shall permit an Offeror to withdraw its Offer after Closing. These criteria also ~~must~~shall apply to the question of whether the District ~~will~~shall permit an Offeror to withdraw its Offer without forfeiture of its ~~Bid~~bid bond (or other ~~Bid or Proposal~~bid or proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually ~~Awarded~~awarded by the District, whether by ~~Award~~award to the next lowest Responsive and Responsible ~~Bidder~~bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The District ~~will~~shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes After ~~Award~~award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following ~~Award~~award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this ~~Division~~division 49 only to the extent permitted by applicable law.

PPS 49-0360 First-Tier Subcontractors; Disclosure and Substitution; ITB

(1) Required Disclosure. Within two working hours after the ~~Bid~~bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the District to exceed $100,000, all ~~Bidders must~~bidders shall submit to the District a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if ~~Awarded~~awarded, whose subcontract value would be equal to or greater than:

(a) 5 percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline, and Bid Opening. For each ITB to which this ~~Rule~~rule applies, the District ~~must~~shall:

(a) Set the ~~Bid~~bid Closing on a Tuesday, Wednesday, or Thursday, and at a time between 2:00 p.m. and 5:00 p.m., except that these ~~Bid~~bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges, or other transportation facilities, and provided that the two-hour disclosure deadline described by this ~~Rule~~rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the ~~Bid~~bid Closing; and

(c) Consider for Contract ~~Award~~award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the District.

(3) Bidder Instructions and Disclosure Form. For the purposes of this ~~Rule~~rule, the District in its solicitation ~~must~~shall:

(a) Prescribe the disclosure form that ~~must~~shall be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a ~~Notice~~notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure:

Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5 percent

of the ~~Project Bid~~project bid, but at least $15,000, or (ii) $350,000 regardless of the percentage, the ~~Bidder must~~bidder shall disclose the following information about that subcontract either in its ~~Bid~~bid submission, or within two hours after ~~Bid~~bid Closing:

(A) The subcontractor's name,

(B) The category of ~~Work~~work that the subcontractor would be performing, and

(C) The dollar value of the subcontract.

If the ~~Bidder~~bidder will not be using any subcontractors that are subject to the above disclosure requirements, the ~~Bidder~~bidder is required to indicate "NONE" on the accompanying form.

THE DISTRICT ~~MUST~~SHALL REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see PPS 49-0360)."

(4) Submission. A ~~Bidder must~~bidder shall submit the disclosure form required by this ~~Rule~~rule either in its ~~Bid~~bid submission or within two working hours after ~~Bid~~bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this ~~Rule~~rule is a matter of Responsiveness. Bids that are submitted by ~~Bid~~bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and will not be considered for Contract ~~Award~~award.

(6) District Role. The District ~~must~~shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this ~~Rule~~rule. The District ~~must~~shall also provide copies of disclosure forms to BOLI as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Pursuant to ORS 279C.585, a Contractor whose ~~Bid~~bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 and this ~~Rule~~rule by submitting the name of the new subcontractor and the reason for the substitution in ~~Writing~~writing to the District. A Contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(a) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a ~~Written~~written Contract after having had a reasonable opportunity to do so after the ~~Written~~written Contract, which ~~must~~shall be reasonably based on the general terms, conditions, plans, and ~~Specifications~~specifications for the Public Improvement ~~Project~~project or the terms of the subcontractor's ~~Written Bid~~written bid, is presented to the subcontractor by the Contractor.

(b) When the disclosed subcontractor becomes bankrupt or insolvent.

(c) When the disclosed subcontractor fails or refuses to perform the subcontract.

(d) When the disclosed subcontractor fails or refuses to meet the bond requirements of the Contractor that had been identified prior to the ~~Bid~~bid submittal.

(e) When the Contractor demonstrates to the District that the subcontractor was disclosed as the result of an inadvertent clerical error.

(f) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the Construction Contractors Board.

(g) When the Contractor determines that the ~~Work~~work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and

~~Specifications~~specifications or that the subcontractor is substantially delaying or disrupting the progress of the ~~Work~~work.

(h) When the disclosed subcontractor is ineligible to work on a Public Improvement Contract under applicable statutory provisions.

(i) When the substitution is for ~~good cause~~Good Cause. The Construction Contractors Board shall define "~~good cause~~Good Cause" by rule. "Good cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "~~good cause" must~~Good Cause" shall reflect the least-cost policy for Public Improvement Contracts established in ORS 279C.305.

(j) When the substitution is reasonably based on the Contract alternates chosen by the District.

The District ~~must~~shall accept ~~Written~~written submissions filed under this ~~Section~~section (7) as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the District does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

PPS 49-0370 Disqualification of Persons

(1) Authority. The District may disqualify a Person from consideration of ~~Award~~award of the District's Contracts after providing the Person with ~~Notice~~notice and a reasonable opportunity to be heard in accordance with ~~Sections~~sections (2) and (4) of this ~~Rule~~rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, the District may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private ~~Contract~~contract or subcontract or in the performance of such Contract or subcontract.

(B) Conviction 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 Person's responsibility as a ~~Contractor~~contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a Contract provision that is regarded by the District to be so serious as to justify disqualification. A violation under this ~~Section~~section (1)(a)(D) may include, but is not limited to, material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for disqualification.

(E) Failure to carry workers' compensation or unemployment insurance as required by statute.

(b) Standards for Disqualification. As provided in ORS 200.065, 200.075, or 279A.110, the District may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

(A) For a Disqualification under ORS 200.065, the District may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women

owned business, emerging small business enterprise, or a veteran-owned business ~~that a service-disabled veteran owns~~; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another district under ORS 200.065.

(B) For a Disqualification under ORS 200.075, the District may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a veteran-owned business ~~that a service-disabled veteran owns~~, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform ~~Services~~services under a Contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

(iv) If a Person is Disqualified for a Disqualification under ORS 200.075, the affected District ~~must~~shall not permit that Person to participate in that District's Contracts.

(C) For a Disqualification under ORS 279A.110, the District may disqualify a Person if the District finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a veteran-owned business ~~that a service-disabled veteran owns~~, Contract with that District.

(2) Notice of Intent to Disqualify. The District ~~must~~shall notify the Person in ~~Writing~~writing of a proposed ~~disqualification~~Disqualification personally or by registered or certified mail, return receipt requested. This ~~Notice must~~notice shall:

(a) State that the District intends to disqualify the Person;

(b) Set forth the reasons for the ~~disqualification~~Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in ~~Writing~~writing within a time period established by the District and that if the District does not receive the Person's ~~Written~~written request for a hearing within the time stated, the Person ~~must~~shall have waived its right to a hearing;

(d) Include a statement of the authority under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and ~~Rules~~rules involved;

(f) State the proposed disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) Hearing. The Superintendent will schedule a hearing upon the District's receipt of a timely hearing request. Within a reasonable time prior to the hearing, the Superintendent will notify the Person of the time

and place of the hearing and provide information on hearing procedures, right to representation and other matters relating to the conduct of the hearing. Following the hearing, the Superintendent will make a decision on whether to disqualify the Person.

(4) Notice of Disqualification. The District ~~will~~shall notify the Person in ~~Writing~~writing of its ~~disqualification~~Disqualification, personally or by registered or certified mail, return receipt requested. The ~~Notice must~~notice shall contain:

(a) The effective date and period of ~~disqualification~~Disqualification;

(b) The grounds for ~~disqualification~~Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines as provided in ~~Section~~section (5) of this ~~Rule~~rule.

(5) Appeal of Disqualification.

(a) Any Person who wishes to appeal a decision by the Superintendent to disqualify the Person under this section shall, within three business ~~Days~~days after receipt of the ~~Notice~~notice of ~~Intent~~intent to Disqualify under ~~Section~~section (4) of this ~~Rule~~rule, file ~~Written Notice~~written notice with the District that the Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.

(b) Immediately upon receipt of the prospective ~~Bidder's~~bidder's or Proposer's ~~Notice~~notice of appeal, the District shall notify the appropriate Local Contract Review Board.

(c) Upon the receipt of ~~Notice~~notice from the District under ~~Section~~section (2) of this ~~Rule~~rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 ~~Days~~days after receiving the ~~Notice~~notice from the District. The Contract Review Board shall set forth in ~~Writing~~writing the reasons for the hearing decision.

(d) At the hearing the Contract Review Board shall consider de novo the ~~Notice~~notice of disqualification, the reasons for disqualification set forth in ~~Section~~section (1) of this ~~Rule~~rule on which the District based the disqualification, and any evidence provided by the parties. Hearings before a Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

(e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:

(A) If the decision to disqualify the Person is upheld, the costs shall be paid by the Person appealing the decision.

(B) If the decision to disqualify a Person is reversed, the costs shall be paid by the District.

(f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

PPS 49-0380 Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if ~~Awarded, must be Awarded~~awarded, shall be awarded to the Responsible ~~Bidder~~bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive ~~Proposal~~proposal. See PPS 49-0390 and ~~Rules~~rules for Alternative Contracting Methods at PPS 49-0600 to 49-0690.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum ~~Bid~~bid without additive or deductive alternates, or if the District elects not to ~~Award~~award additive or deductive alternates, Bids ~~must~~shall be compared on the basis of lump-sum prices, or lump-sum ~~base Bid~~base-bid prices, as applicable. If the ITB calls for a lump-sum base ~~Bid~~bid, plus additive or deductive alternates, the total ~~Bid~~bid price ~~must~~shall be calculated by adding to or deducting from the base ~~Bid~~bid those alternates selected by the District for the purpose of comparing Bids.

(b) Unit Price. If the ~~Bid~~bid includes unit pricing for estimated quantities, the total ~~Bid~~bid price ~~must~~shall be calculated by multiplying the estimated quantities by the unit prices submitted by the ~~Bidder~~bidder, and adjusting for any additive or deductive alternates selected by the District for the purpose of comparing Bids. The District ~~must~~shall specify within the Solicitation Document the estimated quantity of the ~~Procurement~~procurement to be used for determination of the low ~~Bidder~~bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the ~~Bidder~~bidder, the unit price governs. See PPS 49-0350(2)(b).

(3) Proposal Evaluation Criteria. If the District has exempted the ~~Procurement~~procurement of a Public Improvement from the ~~Competitive~~competitive Bidding requirements of ORS 279C.335(1) and has directed the District to use an Alternative Contracting Method under ORS 279C.335(4), the District shall set forth the evaluation criteria in the Solicitation Documents. See PPS 49-0640, 49-0650, 49-0670, 049-0690, ORS 279C.335 and 279C.405.

PPS 49-0390 Offer Evaluation and Award; Determination of Responsibility

(1) General. If ~~Awarded~~awarded, the District ~~must Award~~shall award the Contract to the Responsible ~~Bidder~~bidder submitting the lowest Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive ~~Proposal~~proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (See ORS 279C.375(3)(a)) or is ineligible for ~~Award~~award as a nonresident education service district (ORS 279C.325). The District may ~~Award~~award by item, groups of items, or the entire Offer provided such ~~Award~~award is consistent with the Solicitation Document and in the public interest. Where ~~Award~~award is based on ~~Competitive~~competitive Bids, ORS 279C.375(5) permits multiple Contract ~~Awards~~awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before ~~Awarding~~awarding a Contract, the District ~~must~~shall have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the District ~~must~~shall determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all Contractual responsibilities;

(b) Holds current licenses that businesses or service professionals operating in this state ~~must~~shall hold in order to undertake or perform the ~~Work~~work specified in the Contract;

(c) Is covered by liability insurance and other insurance in amounts the District requires in the Solicitation Documents;

(d) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407, or has elected coverage under ORS 656.128;

(e) Has made the disclosure required under ORS 279C.370.

(f) Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent

that the costs associated with and time available to perform a previous contract remained within the ~~Bidder's~~bidder's control, the ~~Bidder~~bidder stayed within the time and budget allotted for the procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The District shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(g) Has a satisfactory record of integrity. ~~In evaluating the Bidder's record of integrity, the District may consider, among other things, whether the Bidder has previous criminal convictions for~~An Offeror may lack integrity if the District determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under PPS 49-0370 may be used to determine an Offeror's integrity. The District may find an Offeror non-responsible based on previous conviction id offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the ~~Bidder's~~Offeror's performance of a contract or subcontract. The District shall ~~document the Bidder's record of integrity in the Procurement File if the District finds under this subparagraph that the Bidder is not responsible;~~make its basis for determining that an Offeror is non responsible under this paragraph in the solicitation file;

(h) Is legally qualified to contract with the District; and

(a) ~~Supplied~~Has supplied all necessary information in connection with the inquiry concerning responsibility. If ~~a Bidder~~an Offeror fails to promptly supply information requested by the District concerning responsibility ~~that the District requests~~, the District shall determine the ~~Bidder's~~Offeror's responsibility based on any available information, or may find that the ~~Bidder~~Offeror is not responsible.

(3) Documenting Agency Determinations. The District ~~must~~shall document its compliance with ORS 279C.375(3) and the above sections of this ~~Rule~~rule on a Responsibility Determination Form substantially as set forth in ~~ORS~~ 279.375(3)(c), and file that form with the Construction Contractors Board within 30 ~~Days~~days after Contract ~~Award~~award.

(4) District Evaluation. The District ~~must~~shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The District ~~must~~shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The District may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material, and may also require any of the following prior to ~~Award~~award:

(A) Demonstration, inspection, or testing of a product for characteristics such as compatibility, quality, or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to ~~Specifications~~specifications.

(b) The District ~~must~~shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The District ~~must~~shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The District's rejection of an Offer because it offers nonconforming Work or materials is not ~~disqualification~~Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The District ~~must~~shall use only objective criteria to evaluate Bids as set forth in the ITB. The District ~~must~~shall evaluate Bids to determine which Responsible Offeror Offers the lowest Responsive Bid.

(a) Nonresident ~~Bidders~~bidders. In determining the lowest Responsive Bid, the District ~~must~~shall add a percentage increase to the Bid of a nonresident ~~Bidder~~bidder equal to the percentage, if any, of the preference given to that ~~Bidder~~bidder in the state in which the ~~Bidder~~bidder resides.

(b) Clarifications. In evaluating Bids, the District may seek information from a ~~Bidder~~bidder only to clarify the ~~Bidder's~~bidder's Bid. Such clarification ~~must~~shall not vary, contradict, or supplement the Bid. A ~~Bidder must submit Written and Signed~~bidder shall submit written and signed clarifications and such clarifications ~~must~~shall become part of the ~~Bidder's~~bidder's Bid.

(c) Negotiation Prohibited. The District ~~must~~shall not negotiate scope of ~~Work~~work or other terms or conditions under an Invitation to Bid process prior to ~~Award~~award.

(7) Evaluation of Proposals. See PPS 49-0650 regarding ~~Rules~~rules applicable to Requests for Proposals.

PPS 49-0395 Notice of Intent to ~~Award~~award

(1) Notice. At least seven ~~Days~~days before the ~~Award~~award of a Public Improvement Contract, the District shall issue to each ~~Bidder~~bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a ~~Notice~~notice of the District's ~~Intent~~intent to ~~Award~~award the Contract. This requirement does not apply to ~~Award~~award of a Small ~~(under $5,000)~~ or Intermediate (informal ~~Competitive Quotes~~competitive quotes) Public Improvement Contract ~~Awarded~~awarded under ORS 279C.335(1)(c) or (d).

(2) Form and Manner of Posting. The form and manner of posting ~~Notice~~notice shall conform to customary practices within the District's ~~Procurement~~procurement system, and may be made electronically.

(3) Finalizing ~~Award~~award. The District's ~~Award~~award shall not be final until the later of the following:

(a) Seven ~~Days~~days after the date of the ~~Notice~~notice, unless the Solicitation Document provided a different period for protest; or

(b) The District provides a ~~Written~~written response to all timely filed protests that denies each protest and affirms the ~~Award~~award.

(4) Prior Notice Impractical. Posting of ~~Notice~~notice of ~~Intent~~intent to ~~Award~~award shall not be required when the District determines that it is impractical due to unusual time constraints in making prompt ~~Award~~award for its immediate ~~Procurement~~procurement needs, documents the ~~Procurement File~~solicitation file as to the reasons for that determination, and posts ~~Notice~~notice of that action as soon as reasonably practical.

PPS 49-0400 Documentation of ~~Award~~award; Availability of ~~Award~~award Decisions

(1) Basis of Award. After ~~Award~~award, the District ~~must~~shall make a record showing the basis for determining the successful Offeror part of the District's ~~Procurement File~~Solicitation file.

(2) Contents of Award Record for Bids. The District's record ~~must~~shall include:

(a) All submitted Bids.

(b) Completed ~~Bid~~bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in PPS 49-0650, the District's record ~~must~~shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher-scoring Proposals or for failing to meet mandatory requirements of the Request for ~~Proposal~~proposal; and

(d) If the District permitted negotiations in accordance with PPS 49-0650, the District's completed evaluation of the initial Proposals and the District's completed evaluation of final Proposals.

(4) Contract Document. The District ~~must~~shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person, the District ~~must~~shall provide tabulations of ~~Awarded~~awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests ~~must~~shall contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The District may also provide tabulations of Bids and Proposals ~~Awarded~~awarded on designated Web ~~sites~~site or the District's Electronic procurement System.

(6) Availability of ~~Procurement~~Solicitation Files. The District ~~must~~shall make completed ~~Procurement Files~~solicitation files available for public review at the District.

(7) Copies from ~~Procurement~~Solicitation Files. Any Person may obtain copies of material from ~~Procurement Files~~Solicitation files upon payment of a reasonable copying charge.

PPS 49-0410 Time for District Acceptance; Extension

(1) Time for Offer Acceptance. An Offeror's ~~Bid~~bid, or ~~Proposal~~proposal submitted as a Firm Offer (see PPS 49-0280), is irrevocable, valid, and binding on the Offeror for not less than 60 ~~Days~~days from Closing unless otherwise specified in the Solicitation Document.

(2) Extension of Acceptance Time. The District may request, orally or in ~~Writing~~writing, that Offerors extend, in ~~Writing~~writing, the time during which the District may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer ~~must~~shall continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

PPS 49-0420 Negotiation With Bidders Prohibited

(1) Bids. Except as permitted by ORS 279C.340 and PPS 49-0430 when all ~~Bids~~bids exceed the ~~Cost Estimate~~cost estimate, the District ~~must~~shall not negotiate with any ~~Bidder~~bidder prior to Contract ~~Award~~award. After ~~Award~~award of the Contract, the District and the Contractor may only modify the resulting Contract by ~~Change Order or Amendment~~change order or amendment to the Contract in accordance with PPS ~~49-0860~~49-0910.

(2) Requests for Proposals. The District may only conduct discussions or negotiations with Proposers in accordance with the requirements of PPS 49-0650.

PPS 49-0430 Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible ~~Bidders~~bidders on a competitively ~~Bid Project~~bid project exceed the District's Cost Estimate, prior to Contract ~~Award~~award the District may negotiate Value Engineering and Other Options with the Responsible ~~Bidder~~bidder submitting the lowest Responsive ~~Bid~~bid in an attempt to bring the ~~Project~~project within the

District's Cost Estimate. The subcontractor disclosure and substitution requirements of PPS 49-0360 do not apply to negotiations under this ~~Rule~~rule.

(2) Definitions. The following definitions apply to this ~~Rule~~rule:

(a) "Cost Estimate" means the District's most recent ~~pre-Bid, good-faith~~pre-bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an ~~Architect, Engineer~~architect, engineer, or other qualified professional, or confidential cost calculation ~~worksheets~~work sheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in PPS 49-0650, but excluding any material requirements previously announced in the ~~solicitation~~Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials, or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, ~~Specifications~~specifications, or other Contract requirements that may be made, consistent with industry practice, under the ~~Original~~original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from ~~Life-Cycle~~life cycle Costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible ~~Bidders~~bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from ~~Bidders~~bidders who have been formally disqualified by the District, ~~must~~shall be excluded from consideration.

(4) Scope of Negotiations. The District ~~must~~shall not proceed with Contract ~~Award~~award if the scope of the ~~Project~~project is significantly changed from the original ~~Bid.~~bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other ~~Bidders~~bidders would have been expected by the District to participate in the Bidding process had the change been made during the ~~solicitation~~Solicitation process rather than during negotiation. This ~~Rule must~~rule shall not be construed to prohibit ~~solicitation~~re-solicitation of trade subcontracts.

(5) Discontinuing Negotiations. The District may discontinue negotiations at any time, and ~~must~~shall do so if it appears to the District that the apparent low ~~Bidder~~bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to ~~re-Bid~~rebid any portion of the ~~Project~~project, or to obtain subcontractor pricing information upon request, ~~must~~shall be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible ~~Bidder~~bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with ~~Bidders~~bidders next in line for Contract ~~Award~~award.

(7) Public Records. To the extent that a ~~Bidder's~~bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been ~~Awarded~~awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS ~~192.410~~192.311 through ~~192.505~~192.478.

PPS 49-0440 Rejection of Offers

(1) Rejection of an Offer.

(a) The District may reject any Offer upon finding that to accept the Offer may impair the integrity of the ~~Procurement~~procurement process or that rejecting the Offer is in the public interest.

(b) The District ~~will~~shall reject an Offer upon the District's finding that the Offer:

(A) Is contingent on the District's acceptance of terms and conditions (including ~~Specifications~~specifications) that differ from the Solicitation Document, ~~or~~

(B) Takes exception to terms and conditions (including ~~Specifications~~specifications), ~~or~~

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; ~~or~~

(D) Offers Work that fails to meet the ~~Specifications~~specifications of the Solicitation ~~Document; or~~Documents;

(E) Is late; or

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The District ~~will~~shall reject an Offer upon the District's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification; ~~or~~

(B) Has been ~~disqualified~~Disqualified; ~~or~~

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of ~~BOLI~~the Bureau of Labor and Industries and the Contract is for a Public Work; ~~or~~

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; ~~or~~

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; ~~or~~

(F) Has not submitted properly executed ~~Bid or Proposal~~bid or proposal security as required by the Solicitation Document; ~~or~~

(G) Has failed to provide the certification required under ~~Section~~section (3) of this ~~Rule~~rule; or

(H) Is not Responsible. See PPS 49-0390(2) regarding District determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this ~~Rule~~rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this ~~Rule~~rule or to apply the ~~disqualification~~Disqualification provisions of ORS 279C.440 ~~through~~to 279C.450 and PPS 49-0370.

(3) Certification of Non-Discrimination. The Offeror ~~must~~shall certify and deliver to the District ~~Written~~written certification, as part of the Offer, that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business ~~enterprises~~, or a veteran-owned business ~~that a service-disabled veteran owns~~, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) Contract and Subcontract Conditions. If the District awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8)5 and 200.045(3),6 or awards a Contract under ORS 279A.100:7

(a) The District ~~must~~shall provide, as a material condition of the Contract:

(A) That the Contractor ~~must~~shall maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor ~~must~~shall promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor ~~must~~shall include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the District may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to ~~Section~~section (4) of this rule, the District ~~must~~shall verify the Contractor's and any subcontractor's compliance with Subsection (4)(a) of this rule.

(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This ~~Section~~section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

(5) Rejection of all Offers. The District may reject all Offers for ~~good cause~~Good Cause upon the District's ~~Written Finding~~written finding that it is in the public interest to do so. The District ~~must~~shall notify all Offerors of the rejection of all Offers, along with the good-cause justification and ~~Finding~~finding.

(6) Criteria for Rejection of All Offers. The District may reject all Offers upon a ~~Written Finding~~written finding that:

(a) The content of or an error in the Solicitation Document or the ~~solicitation~~Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality, or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

[5] A bidder or proposer that the Governor's Policy Advisor for Economic and Business Equity determines has undertaken both a policy and a practice of actively pursuing participation by minority-owned businesses, women-owned businesses, businesses that ~~service-disabled~~ veterans own or emerging small businesses in all of the bidder's or proposer's bids or proposals, both public and private.

[6] A bidder or proposer has made good faith efforts to encourage required participants to participate by taking all of the actions list in ORS 200.045(3).

[7] An affirmative action program adopted under ORS 279A.100 for goods and services contracts or any other contract under $50,000.

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the ~~Competitive~~competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the ~~Competitive Procurement~~competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The District cancels the ~~solicitation~~Solicitation in accordance with PPS 49-0270; or

(f) Any other circumstance indicating that ~~Awarding~~awarding the Contract would not be in the public interest.

PPS 49-0450 Protest of Contractor Selection, Contract ~~Award~~award

(1) Purpose. An adversely affected or aggrieved Offeror ~~must~~shall exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract ~~Award~~award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, when the ~~Competitive Proposal~~competitive proposal process is authorized under PPS 49-0650, the District ~~must~~shall provide ~~Written Notice~~written notice to all Proposers of the District's determination of the Proposers included in the ~~Competitive~~competitive Range. The District's ~~Notice~~notice of the Proposers included in the ~~Competitive~~competitive Range ~~must~~shall not be final until the later of the following:

(a) ~~Ten Days~~10 days after the date of the ~~Notice~~notice, unless otherwise provided therein; or

(b) Until the District provides a ~~Written~~written response to all timely filed protests that denies the protest and affirms the ~~Notice~~notice of the Proposers included in the ~~Competitive~~competitive Range.

(3) Notice of Intent to ~~Award~~award. Unless otherwise provided in the Solicitation Document, the District ~~must~~shall provide ~~Written Notice~~written notice to all Offerors of the District's ~~Intent~~intent to ~~Award~~award the Contract as provided in PPS 49-0395.

(4) Right to Protest ~~Award~~award.

(a) An adversely affected or aggrieved Offeror may submit to the District a ~~Written~~written protest of the District's ~~Intent to Award~~intent to award within seven ~~Days~~days after issuance of the ~~Notice~~notice of ~~Intent~~intent to ~~Award~~award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest ~~must~~shall be in ~~Writing~~writing and ~~must~~shall specify the grounds on which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for ~~Award~~award of the Contract as the Responsible ~~Bidder~~bidder submitting the lowest Responsive ~~Bid~~bid or the Responsible Proposer submitting the best Responsive ~~Proposal~~proposal and is next in line for ~~Award~~award, i.e., the protesting Offeror ~~must~~shall claim that all lower ~~Bidders~~bidders or higher-scored Proposers are ineligible for ~~Award~~award:

(A) Because their Offers were ~~Non-Responsive~~nonresponsive; or

(B) The District committed a substantial violation of a provision in the Solicitation Document or of an applicable ~~Procurement~~procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible ~~Bidder~~bidder offering the lowest ~~Bid~~bid or the Responsible Proposer offering the ~~highest-ranked Proposal~~highest ranked proposal.

(d) The District ~~will~~shall not consider a protest submitted after the time period established in this ~~Rule~~rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the ~~Competitive~~competitive Range above the size of the ~~Competitive~~competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the District a ~~Written~~written protest of the District's decision to exclude the Proposer from the ~~Competitive~~competitive Range within seven ~~Days~~days after issuance of the ~~Notice~~notice of the ~~Competitive~~competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at PPS 49-0650.)

(b) The Proposer's protest ~~must~~shall be in ~~Writing~~writing and ~~must~~shall specify the grounds on which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive ~~Proposal~~proposal and is eligible for inclusion in the ~~Competitive~~competitive Range, i.e., the protesting Proposer ~~must~~shall claim it is eligible for inclusion in the ~~Competitive~~competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the ~~Competitive~~competitive Range because:

(A) Their Proposals were not Responsive; or

(B) The District committed a substantial violation of a provision in the RFP or of an applicable ~~Procurement~~procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the ~~Competitive~~competitive Range.

(d) The District ~~must~~shall not consider a protest submitted after the time period established in this ~~Rule~~rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the ~~Competitive~~competitive Range above the size of the ~~Competitive~~competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The Superintendent may settle or resolve a ~~Written~~written protest submitted in accordance with the requirements of this ~~Rule~~rule.

(7) Decision. If a protest is not settled, the Superintendent, or such Person's designee, ~~must~~shall promptly issue a ~~Written~~written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Award. The successful Offeror ~~must~~shall promptly execute the Contract after the ~~Award~~award is final. The District ~~must~~shall execute the Contract only after it has obtained all applicable required documents and approvals.

PPS 49-0460 Performance and Payment Security; Waiver

(1) Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a) or this ~~Rule~~rule, excused in cases of emergency under ORS 279C.380(4), or unless the District exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor ~~must~~shall execute and deliver to the District a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the District, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See 279C.380(5). Also see OAR 137-049-0815 and BOLI rules at 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) Other Construction Contracts. The District may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements ~~must~~shall be expressly set forth in the Solicitation Document.

(3) Requirement for Surety Bond. The District ~~must~~shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the District may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond ~~must~~shall be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) Time for Submission. The apparent successful Offeror ~~must~~shall promptly furnish the required performance security at the District's request. If the Offeror fails to furnish the performance security as requested, the District may reject the Offer and ~~Award~~award the Contract to the Responsible ~~Bidder~~bidder with the next lowest Responsive ~~Bid~~bid or the Responsible Proposer with the next highest-scoring Responsive ~~Proposal~~proposal, and, at the District's discretion, the Offeror ~~must~~shall forfeit its ~~Bid or Proposal~~bid or proposal security.

~~**(5) Public Improvement Contracts Under $100,000**. The Superintendent may, in his or her discretion, waive the Bid security requirements and performance and payment bond requirements of ORS 279C.380 if the amount of the Contract for the Public Improvement is $100,000 or less.~~

PPS 49-0470 Substitute Contractor

If the Contractor provided a performance bond, the District may afford the Contractor's surety the opportunity to provide a substitute ~~Contractor~~contractor to complete performance of the Contract. A substitute ~~Contractor must~~contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the ~~Award~~award of a new Contract and ~~must~~shall not be subject to the ~~Competitive Procurement~~competitive procurement provisions of ORS 279C.

PPS 49-0490 Foreign Contractor

If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, the Contractor ~~must~~shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration, and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report ~~must~~shall be forwarded to the District. The District ~~Awarding the Contract must~~shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

ALTERNATIVE CONTRACTING METHODS

PPS 49-0600 Alternative Contracting Methods; Purpose

These PPS 49-0600 to PPS 49-0690 ~~Rules~~rules are intended to provide guidance to the District regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the Contract Review Board under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to, the following forms of contracting: Design-Build, Energy Savings Performance, and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in ORS 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by the District in whole, in part or not at all, within the discretion of the District. As to ESPC contracting, these PPS 49-0600 through PPS 49-0690 ~~Rules~~rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by the entire District to govern the procedures for entering into ESPCs. As to contracting for Construction Manager General Contractor ~~Services~~services, requiring an exemption from competitive bidding under ORS 279C.335(2), PPS 49-0600 to 49-0690 include mandatory and optional provisions

pertaining to the procurement of Construction Manager/General Contractor ~~Services~~services, pursuant to the requirements of ORS 279C.337.

PPS 49-0610 Definitions for Alternative Contracting Methods

The following definitions ~~must~~shall apply to ~~Rules~~rules PPS 49-0600 to 49-0690, unless the context requires otherwise:

(1) **~~"~~Affiliate~~"~~** has the meaning set forth in ORS 279C.332(1).

(2) **~~"~~Alternative Contracting Methods~~"~~** mean innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with ~~Award~~award of a Public Improvement Contract based solely on price, in which a final design is issued with formal ~~Bid Documents~~bid documents, construction services are obtained by sealed ~~Bid~~bid awarded to the Responsible ~~Bidder~~bidder submitting the lowest Responsive ~~Bid~~bid, and the project is built in accordance with those ~~Documents~~documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting, and ESPCs, which are specifically addressed in these PPS 49-0600 to 49-0690 ~~Rules~~rules. These methods also include other developing techniques which include but are not limited to general "performance contracting," "cost-plus-time " contracting, (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these PPS 49-0600 to 49-0690 rules when the District uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(3) **~~"~~Construction Manager/General Contractor~~"~~** (or **"CM/GC"**) has the meaning set forth in ORS 279C.332(2).

(4) **~~"~~Construction Manager/General Contractor Method~~"~~** (or **"CM/GC Method"**) means the Alternative Contracting Method which involves a District's selection of a CM/GC to perform CM/GC ~~Services~~services for a project or projects.

(5) **~~"~~Construction Manager/General Contractor Services~~"~~** (or **"CM/GC Services"**) has the meaning set forth in ORS 279C.332(3).

(6) **~~"~~Design-Build~~"~~** means a form of ~~Procurement~~procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the ~~Project~~project team with the District, and manages both design and construction. In this form of Contract, a single Person provides the District with all of the Personal ~~Services~~services and construction Work necessary to both design and construct the ~~Project~~project.

(7) **~~"~~Early Work~~"~~** means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

(8) **~~"~~Energy Conservation Measures~~"~~ (or "ECMs")** (also known as **"~~Energy Efficiency Measures~~energy efficiency measures"**) means, as used in ESPC ~~Procurement~~procurement, any equipment, fixture, or furnishing to be added to or used in an existing building or structure, and any repair, alteration, or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future ~~Contract-labor~~contract-labor costs and materials costs associated with maintenance of the building

or structure. For purposes of these PPS 49-0600 to 49-0690 ~~Rules~~rules, use of either or both of the terms "building" or "structure" ~~must~~shall be deemed to include existing energy, water, and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the ~~Project~~project, either as part of the ~~Project~~project together with the building or structure, or when such system(s) are the focus of the ~~Project~~project. Maintenance services are not Energy Conservation Measures for purposes of these PPS 49-0600 to 49-0690 ~~Rules~~rules.

(9) ~~"~~"Energy Savings Guarantee"~~"~~ means the energy savings and performance guarantee provided by the ESCO under an ESPC ~~Procurement~~procurement, which guarantees to the District that certain energy savings and performance will be achieved for the ~~Project~~project covered by the RFP through the installation and implementation of the agreed-upon ECMs for the ~~Project~~project. The Energy Savings Guarantee ~~must~~shall include, but ~~must~~shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the District in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the District after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(10) ~~"~~"Energy Savings Performance Contract"~~"~~ (or "ESPC") means a Public Improvement Contract between the District and a Qualified Energy ~~Service~~service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(11) ~~"~~"General Conditions Work"~~"~~ (or "GC Work") means a general grouping of project Work required to support construction operations on the project that is not ~~separately invoiced or subcontracted by the Contractor or~~ included within the Contractor's overhead or fee.

(12) ~~"~~"Guaranteed Maximum Price"~~"~~ (or "GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC ~~Services~~services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the District by the Contractor, and accepted by the District, that includes all reimbursable costs of and fees for completion of the Contract Work, and any particularly identified contingency amounts as defined by the Public Improvement Contract.

(13) ~~"~~"Measurement and Verification"~~"~~ (or "M & V") means, as used in ESPC ~~Procurement~~procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(14) ~~"~~"Project Development Plan"~~"~~ means a secondary phase of ~~Services~~Personal services and Work performed by an ESCO in an ESPC ~~Procurement~~procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the ~~Project~~project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the ~~Work~~work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the ~~Work~~work. The term "~~Project Development Plan~~project development plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the ~~Work~~work.

(15) ~~"~~"Qualified Energy Service Company"~~"~~ (or "ESCO") means, as used in ESPC ~~Procurement~~procurement, a company, firm, or other legal Person with the following characteristics: demonstrated technical, operational, financial, and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing

buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the ~~Project~~project under consideration by the District; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the ~~Project~~project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that ~~Project~~project.

(16) ~~"~~Savings~~"~~ has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC ~~Services~~services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the District under the terms of the Contract, including costs for which the District reimburses a Contractor and fees, profits or other payments the Contractor earns.

(17) ~~"~~Technical Energy Audit,~~"~~ means, as used in ESPC ~~Procurement means~~procurement, the initial phase of ~~Services~~services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the District of the ESCO's ~~Findings~~findings during this initial phase of the ~~Work~~work. The term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the ~~Work~~work.

PPS 49-0620 Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS 279C requires a ~~Competitive Bidding~~competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process in accordance with ~~ORS~~ 279C.335 and any applicable District ~~Rules~~rules. Use of Alternative Contracting Methods may be directed by the District if that use is within the competitive bidding process if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods ~~must~~shall be directed through the District's Local Contract Review Board, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of ORS 279C.335. In any of these circumstances, use of Alternative Contracting Methods ~~must~~shall be justified in accordance with any applicable Code and District requirements and, if require, these PPS 049-0600 to 049-0690 ~~Rules~~rules. See PPS 49-0630 regarding required ~~Findings~~findings and restrictions on exemptions from the competitive bidding requirements under ORS 279C.335.

(2) Energy Savings Performance Contracts. ESPCs are excepted from the ~~Competitive~~competitive Bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f) if the District complies with the procedures set forth in these PPS 49-0600 through 49-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the ~~solicitation, Rules~~Solicitation, rules related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the District prepare a formal ~~post-Project~~post-project evaluation of Public Improvement ~~Projects~~projects in excess of $100,000 when the District does not use the competitive bidding process required by ORS 279C.335. The purpose of this evaluation is to determine whether it was actually in the District's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation ~~must~~shall be delivered to the Contract Review Board of the District as applicable within 30 ~~Days~~days of the date the District "accepts" the Public Improvement ~~Project~~project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the ~~Project~~project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of ~~Cost Estimates~~cost estimates, any GMP changes, and actual costs;

(b) A narrative description of successes and failures during design, engineering, and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption ~~Findings~~findings.

PPS 49-0630 Findings, Notice, and Hearing

(1) Cost Savings and Other Substantial Benefits Factors. When ~~Findings~~findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the ~~Competitive~~competitive Bidding requirements, the "substantial cost savings" ~~criterion~~ and "other substantial benefits "criteria at ORS 279C.335(2)(b) require consideration of the type, cost, the amount of the Contract and, to the extent applicable, the other factors set forth in ~~the statute~~279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the District Local Contract Review Board does not need to consider that factor, and the District is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

(2) Required Information. The statutory definition of "~~Findings~~findings" at ORS 279C.330(2) which applies to exemptions from competitive bidding means the justification for the District's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both ORS 279C.335(2)(a) and 279C.335(2)(c)..

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified ~~Findings~~findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional ~~Findings~~findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355, and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such ~~Findings must~~findings shall relate back to the specific characteristics of the ~~Project~~project or ~~Projects~~projects at issue in the exemption request; and

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the District may make a ~~Finding~~finding that identifies the ~~Project~~project as a "pilot ~~Project~~project" under ORS 279C.335(2)(c). Nevertheless, the District ~~must~~shall still make the findings required in ORS 279C.335(2)(a).

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that the exemption "is ~~likely~~unlikely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the ~~Procurement~~procurement will be formally advertised with public ~~Notice~~notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, ~~Award~~award will be made based ~~on~~upon identified selection criteria, and an opportunity will be given to protest that ~~Award~~award.

(5) Descriptions. ~~Findings~~findings supporting a competitive bidding exemption ~~must~~shall describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not

limited to, whether a one-step (Request for ~~Proposals~~proposal), two-step (beginning with a Request for Qualification, followed by a Request for ~~Proposals~~proposal) or other solicitation process will be utilized. The ~~Findings~~findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the ~~Procurement~~procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting ~~Findings~~findings are not binding upon the District. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) Class Exemptions. In making the ~~Findings~~findings supporting a class exemption, the District ~~must~~shall clearly identify the ~~"~~class~~"~~ with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class ~~must~~shall meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and

(b) The class ~~must~~shall include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and ~~must~~shall reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that:

(A) involve renovations for a common purpose;

(B) require completion on a related schedule in order to avoid unnecessary disruption of District operations;

(C) share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;

(D) otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) otherwise meet the requirements of the Director of the District Local Contract Review Board.

(7) Public Hearing. Before final adoption of ~~Findings~~findings exempting a Public Improvement Contract from the requirement of ~~Competitive~~competitive Bidding, the District shall give ~~Notice and hold~~notice and provide interested with the opportunity to request a public hearing as required by ORS 279C.335(5). The notice must state that, in response to a written request, the District will hold a public hearing for the purpose of taking comments on the draft Findings for an exemption from the competitive bidding requirement. If the District does not receive a written request from an interested party to hold a public hearing, the District may hold a public hearing, but is not required to hold a public hearing. ~~The~~If a hearing is requested, the District will ~~be~~hold a public hearing for the purpose of receiving public comment on the District's draft ~~Findings.~~findings.

PPS 49-0640 Competitive Proposals; Procedure

The District may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both ~~Proposal~~proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, ORS 279C.400 through 279C.410 and PPS 49-0600 through 49-0690, unless other applicable statutes control the District's use of ~~Competitive~~competitive Proposals for Public Improvement Contracts.

Also see the ~~Section~~section of ~~Rules~~rules in this ~~Division~~division entitled Formal ~~Procurement Rules~~procurement rules, PPS 49-0200 through 49-0450, and RFP-related ~~Rules~~rules under the Alternative Contracting Methods ~~Section~~section at PPS 49-0640 through 49-0660. For ESPCs, the following RFP process as further specified in PPS 049-0645, 049-0650, 049-0660 and 049-0680 shall be utilized if the District desires the ~~Procurement~~procurement process to be exempt from the ~~Competitive~~competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in PPS 49-0600 through 49-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. ~~Proposal~~proposal evaluation ~~must~~shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors ~~must~~shall:

(a) Be reasonable estimates based on information available to the District;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the District. See ORS 279C.305.

For ESPC ~~Proposal~~proposal evaluations, the District may provide in the RFP that qualifications-based evaluation factors will outweigh the District's consideration of price-related factors, due to the fact that prices for the major components of the ~~Work~~work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of ~~Proposal~~proposal evaluation. For CM/GC ~~Services Proposal~~services proposal evaluations, the District ~~must~~shall comply with ORS 279C.337.

(2) Evaluation Factors.

(a) In basic negotiated construction contracting where the only reason for an RFP is to consider factors other than price, those factors may consist of 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 could affect the cost or quality of the ~~Work~~work.

(b) In CM/GC contracting, in addition to ~~Section (2)~~subsection (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the ~~Project~~project, analyze and propose solutions or approaches to complex ~~Project~~project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the ~~Work~~work.

(c) In Design-Build contracting, in addition to ~~Sections (2)~~subsections (a) and ~~(2)~~(b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that could affect cost or quality of the work.

(d) In ESPC contracting, in addition to the factors set forth in ~~Sections (2)~~subsections (a)~~-~~, (b), and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO,

the ESCO's management plan for the ~~Project~~project, information on the specific methods, techniques, and equipment that the ESCO will use in the performance of the ~~Work~~work under the ESPC, the ESCO's team members and consultants to be assigned to the ~~Project~~project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular ~~Project~~project between the District and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's ~~Project~~project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the ~~Work~~work, and the ESCO's fee structure for all phases of the ESPC ~~Project~~project.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and PPS 49-0600 through PPS 49-0690, provided that the general Work scope 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 Document. See PPS 49-0650. Terms that may be negotiated consist of details of Contract performance; methods of construction, timing, and assignment of risk in specified areas; fee; and other matters that could affect the cost or quality of the ~~Work~~work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the District has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the ~~Work~~work, the scope of ~~Services~~services to be performed by the ESCO during the ~~Project~~project Development Plan phase of the ~~Work,~~work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO, and scope of ~~Work~~work, methodologies, and compensation terms and conditions during the design and construction phase and M & V phase of the ~~Work~~work, consistent with the requirements of PPS 49-0680.

PPS 49-0645 Requests for Qualifications ("RFQ")

As provided by ORS 279C.405(1), the District may utilize a Request for Qualifications, (RFQ) to obtain information useful in the preparation or distribution of ~~an RFP~~a Request for Proposals (RFPs). When using an RFQ as the first step in a ~~two-step~~two step solicitation process in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the District ~~must~~shall first advertise and provide ~~Notice~~notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases, the District ~~must~~shall also provide within the RFQ a protest provision substantially in the form of PPS 49-0450(5) regarding protests of the ~~Competitive~~competitive Range. Thereafter, the District may distribute RFPs to the selected firms without further advertisement of the ~~solicitation~~Solicitation.

PPS 49-0650 Requests for Proposals ("RFP")

(1) Generally. The use of ~~Competitive~~competitive Proposals ~~must~~shall be specially authorized for a Public Improvement Contract under the ~~Competitive~~competitive Bidding exception and exemption requirements of ORS 279C.335, PPS 49-0130, and PPS 49-0600 through 49-0690. Also see ORS 279C.337 and ORS 279C.400 to 279C.410 for statutory requirements regarding ~~Competitive~~competitive Proposals, and PPS 49-0640 regarding ~~Competitive Proposal~~competitive proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of PPS 49-0200, this ~~Rule~~rule applies to the requirements for RFPs. RFP Solicitation Documents ~~must~~shall conform to the following standards:

(a) The District ~~must~~shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references, and warranty provisions. See PPS 49-0640 regarding proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors ~~must~~shall be reasonable estimates based on information available to the District. Subject to ~~ORS~~ 279(C).410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of ~~Proposal~~proposal evaluation prior to ~~Award~~award or prior to establishing any ~~Competitive~~competitive Range;

(b) When the District is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the District ~~must~~shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the District has identified as authorized for negotiation. The District shall describe the evaluation, discussion, and negotiation process, including how the District ~~will~~shall establish the ~~Competitive~~competitive Range, if any;

(c) The anticipated size of any ~~Competitive~~competitive Range ~~must~~shall be stated in the Solicitation Document but may be decreased if the number of Proposers that submit ~~Responsive~~responsive Proposals is less than the specified number, or may be decreased as provided in PPS 49-0650(4)(a).

(d) When the District intends to ~~Award~~award Contracts to more than one Proposer, the District shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will ~~Award~~award. The District ~~must~~shall also include the criteria it will use to determine how the District ~~will~~shall endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular Contractor to provide ~~Goods and Services~~Personal services or Work from those Contractors ~~Awarded~~awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The District ~~must~~shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The District ~~must~~shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive ~~Proposal~~proposal or Proposals.

(A) Clarifications. In evaluating Proposals, the District may seek information from a Proposer to clarify the Proposer's ~~Proposal~~proposal. A Proposer ~~must submit Written and Signed~~shall submit written and signed clarifications and such clarifications ~~must~~shall become part of the Proposer's ~~Proposal~~proposal.

(B) Limited Negotiation. If the District did not permit negotiation in its Request for ~~Proposals~~proposal, the District may, nonetheless, negotiate with the ~~highest ranked~~highest ranked Proposer, but may then only negotiate the:

(i) Statement of ~~Work~~work; and

(ii) Contract Price as it is affected by negotiating the statement of ~~Work~~work.

The process for discussions or negotiations that is outlined and explained in Sections (5)(b) and (6) of this ~~Rule~~rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the District permitted discussions or negotiations in the Request for ~~Proposals~~proposal, the District ~~must~~shall evaluate Proposals and establish the ~~Competitive~~competitive Range, and may then conduct discussions and negotiations in accordance with this ~~Rule~~rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at the District's discretion, the District may forego discussions and negotiations and evaluate all Proposals in accordance with this ~~Rule~~rule.

(B) If the District proceeds with discussions or negotiations, the District ~~must~~shall establish a negotiation team tailored for the acquisition. The District's team may include legal, technical, auditing, and negotiating personnel.

(c) Cancellation. Nothing in this ~~Rule must~~rule shall restrict or prohibit the District from canceling the ~~solicitation~~Solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the District does not cancel the ~~solicitation~~Solicitation, after the Opening the District ~~will~~shall evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the District ~~will~~shall rank the Proposers based on the District's scoring and determine the ~~Competitive~~competitive Range.

(B) The District may increase the number of Proposers in the ~~Competitive~~competitive Range if the District's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial ~~Competitive~~competitive Range are closely competitive or have a reasonable chance of being determined the best Proposer after the District's evaluation of revised Proposals submitted in accordance with the process described in this ~~Rule~~rule.

(b) Protesting Competitive Range. The District ~~must~~shall provide ~~Written Notice~~written notice to all Proposers identifying Proposers in the ~~Competitive~~competitive Range. A Proposer that is not within the ~~Competitive~~competitive Range may protest the District's evaluation and determination of the ~~Competitive~~competitive Range in accordance with PPS 49-0450.

(c) Intent to ~~Award~~award; Discuss or Negotiate. After the protest period provided in accordance with these ~~Rules~~rules expires, or after the District has provided a final response to any protest, whichever date is later, the District may either:

(A) Provide ~~Written Notice~~written notice to all Proposers in the ~~Competitive~~competitive Range of its ~~Intent~~intent to ~~Award~~award the Contract to the ~~highest-ranked~~highest ranked Proposer in the ~~Competitive~~competitive Range.

(i) An unsuccessful Proposer may protest the District's ~~Intent~~intent to ~~Award~~award in accordance with PPS 49-0450.

(ii) After the protest period provided in accordance with PPS 49-0450 expires, or after the District has provided a final response to any protest, whichever date is later, the District ~~must~~shall commence final Contract negotiations with the ~~highest-ranked~~highest ranked Proposer in the ~~Competitive~~competitive Range; or

(B) Engage in discussions with Proposers in the ~~Competitive~~competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the ~~Competitive~~competitive Range.

(5) Discussions; Revised Proposals. If the District chooses to enter into discussions with and receive revised Proposals from the Proposers in the ~~Competitive~~competitive Range, the District ~~must~~shall proceed as follows:

(a) Initiating Discussions. The District ~~must~~shall initiate oral or ~~Written~~written discussions with all of the Proposers in the ~~Competitive~~competitive Range regarding their Proposals with respect to the provisions of the RFP that the District identified in the RFP as the subject of discussions. The District may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the District would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the District to obtain the best ~~Proposal~~proposal based on the requirements and evaluation criteria set forth in the RFP.

(b) Conducting Discussions. The District may conduct discussions with each Proposer in the ~~Competitive~~competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The District may terminate discussions with any Proposer in the ~~Competitive~~competitive Range at any time. The District ~~must~~shall, however, offer all Proposers in the ~~Competitive~~competitive Range the opportunity to discuss their Proposals with the District before the District notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the District:

(i) ~~Must~~Shall treat all Proposers fairly and ~~must~~shall not favor any Proposer over another;

(ii) ~~Must~~Shall not discuss other Proposers' Proposals;

(iii) ~~Must~~Shall not suggest specific revisions that a Proposer should make to its ~~Proposal~~proposal, and ~~must~~shall not otherwise direct the Proposer to make any specific revisions to its ~~Proposal~~proposal.

(B) At any time during the time allowed for discussions, the District may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the ~~Competitive~~competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the ~~Competitive~~competitive Range and provide ~~Notice~~notice to the Proposers in the ~~Competitive~~competitive Range to submit revised Proposals.

(c) Revised Proposals. If the District does not cancel the ~~solicitation~~Solicitation at the conclusion of the District's discussions with all remaining Proposers in the ~~Competitive~~competitive Range, the District ~~must~~shall give all remaining Proposers in the ~~Competitive~~competitive Range ~~Notice~~notice of the date and time by which they ~~must~~shall submit revised Proposals. This

~~Notice~~notice constitutes the District's termination of discussions, and Proposers ~~must~~shall submit revised Proposals by the date and time set forth in the District's ~~Notice~~notice.

(A) Upon receipt of the revised Proposals, the District shall evaluate the revised Proposals based on the evaluation criteria set forth in the RFP and rank the revised Proposals based on the District's scoring.

(B) The District may conduct discussions with and accept only one revised ~~Proposal~~proposal from each Proposer in the ~~Competitive~~competitive Range unless otherwise set forth in the RFP.

(d) Intent to ~~Award~~award; Protest. The District ~~must~~shall provide ~~Written Notice~~written notice to all Proposers in the ~~Competitive~~competitive Range of the District's ~~Intent~~intent to ~~Award~~award the Contract. An unsuccessful Proposer may protest the District's ~~Intent~~intent to ~~Award~~award in accordance with PPS 49-0450. After the protest period provided in accordance with that ~~Rule~~rule expires, or after the District has provided a final response to any protest, whichever date is later, the District ~~must~~shall commence final Contract negotiations.

(6) Negotiation.

(a) Initiating Negotiations. The District may determine to commence negotiations with the ~~highest-ranked~~highest ranked Proposer in the ~~Competitive~~competitive Range following the:

(A) Initial determination of the ~~Competitive~~competitive Range; or

(B) Conclusion of discussions with all Proposers in the ~~Competitive~~competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations

(A) Scope: The District may negotiate:

(i) The statement of ~~Work~~work;

(ii) The Contract Price as it is affected by negotiating the statement of ~~Work~~work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers ~~must~~shall not submit, and the District ~~must~~shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.

(c) Continuing Negotiations. If the District terminates negotiations with a Proposer, the District may then commence negotiations with the next highest-scoring Proposer in the ~~Competitive~~competitive Range, and continue the process described in this ~~Rule~~rule until the District has:

(A) Determined to ~~Award~~award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the ~~Competitive~~competitive Range, unless the District provided for more than one round of discussions or negotiations in the Request for ~~Proposals~~proposal, in which case the District may proceed with any authorized further rounds of negotiations.

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this ~~Rule~~rule, the District may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the District reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

PPS 49-0660 RFP Pricing Mechanisms

(1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of ~~Competitive~~competitive Bidding. Alternatively, a Request for ~~Proposals~~proposal may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated District purposes related to time of completion, safety, or other Public Contracting objectives, including but not limited to total least-cost mechanisms such as ~~Life-Cycle~~life cycle Costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC ~~Services~~services Contracts where a total Contract Price is provided in the design phase in order to assist the District in determining whether the ~~Project~~project scope is within the District's budget and allowing for design changes during preliminary design rather than after final design services have been completed.

(a) If the collaborative process described above in this ~~Section~~section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the District and included within the Contract.

(b) If the collaborative process described above in this ~~Section~~section (3) is not successful and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the District ~~must~~shall terminate the Contract. The District may then proceed to negotiate a new Contract (and GMP) with the Proposer that was next-ranked in the original selection process, or employ other means for continuing the ~~Project~~project under ORS 279C.

(4) When Cost Reimbursement Contracts are utilized, regardless of whether a GMP is included, the District ~~must~~shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable, and properly allocated.

PPS 49-0670 Design-Build Contracts

(1) **General**. The Design-Build form of contracting, as defined at PPS 49-0610(3), has technical complexities that are not readily apparent. The District ~~must~~shall use this contracting method only with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to use the Design-Build process, the District ~~must~~shall be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the ~~Project~~project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening ~~Project~~project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased ~~Projects~~projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. The District ~~must~~shall utilize the Design-Build form of contracting only in accordance with the requirements of these PPS 49-0600 through 49-0690 ~~Rules~~rules. See particularly PPS 49-0620 pertaining to Alternative Contracting Methods and PPS 49-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in PPS 49-0640(2)(a), (b), and (c).

(4) QBS Inapplicable. Because the value of construction services predominates the Design-Build form of Contracting, the qualifications-based selection ("QBS") process mandated by ORS 279C.110 for the District in certain circumstances in obtaining certain Consultant services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon-licensed design professional, the District ~~must~~shall require that the Design-Build Contractor disclose in its ~~Written~~written Offer that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design ~~Services~~services. See ORS 671.030(5) regarding the offer of Architectural ~~Services~~services, and ORS 672.060(11) regarding the offer of Engineering ~~Services~~services that are appurtenant to construction services.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts, the surety's obligation on performance bonds, or the ~~Bidder's~~bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional ~~Services~~services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional ~~Services~~services and related design revisions, corrective Work, and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. The District ~~must~~shall conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design ~~Services~~services required ~~must~~shall be clearly defined within the ~~Procurement~~procurement documents and Contract, along with a description of the level or type of design ~~Services~~services previously performed for the ~~Project~~project. The ~~Services~~services to be performed ~~must~~shall be clearly delineated as either design ~~Specifications~~specifications or performance standards, and performance measurements ~~must~~shall be identified.

(b) Professional Liability. The Contract ~~must~~shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the District, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract ~~must~~shall clearly identify the extent to which the District requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations, and faulty Work claims.

(d) Warranties. The Contract ~~must~~shall clearly identify any express warranties made to the District regarding characteristics or capabilities of the completed ~~Project~~project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated ~~Project~~project performance and budget guidelines.

(e) Incentives. The Contract ~~must~~shall clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the ~~solicitation~~Solicitation process on the basis that the District is benefited from such deliverables.

PPS 49-0680 Energy Savings Performance Contracts

(1) Generally. These PPS 49-0600 through PPS 49-0690 ~~Rules~~rules include a limited, efficient method for the District to enter into ESPCs outside the ~~Competitive~~competitive Bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the District chooses not to utilize the ESPC ~~Procurement~~procurement method provided for by these PPS 49-0600 through 49-0690 ~~Rules~~rules, the District may still enter into an ESPC by complying with the ~~Competitive~~competitive Bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the ~~Procurement~~procurement requirements applicable to any district not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at PPS 49-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the District, as well as the additional technical complexities associated with a Design-Build Contract. The District ~~must~~shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the District ~~must~~shall be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated ~~Services~~Personal services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, ~~Life-Cycle~~life cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning ~~Services~~services, M & V ~~Services~~services, and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the ~~Project~~project Development Plan phase into the design and construction phase of ~~Work~~work on the ~~Project~~project;

(d) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in the construction process, through the integration of ESPC ~~Services~~Personal services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ~~ESCO-integrated~~ESCO integrated ESPC ~~Services~~ team;

(f) Integrating cost-effective ECMs into an existing building or structure so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation, and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. The District desiring to pursue an exemption from the ~~Competitive~~competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086) ~~must~~shall utilize the ESPC form of contracting only in accordance with the requirements of these PPS 49-0600 to 49-0690 ~~Rules~~rules.

(4) No Findings Required. The District is only required to comply with the ESPC contracting procedures set forth in PPS 49-0600 through 49-0690 of these ~~Rules~~rules in order for the ESPC to be exempt from the ~~Competitive~~competitive Bidding processes of ORS 279C.335. No ~~Findings~~findings are required for an ESPC to be exempt from the ~~Competitive~~competitive Bidding process for Public Improvement Contracts

pursuant to ORS 279C.335, unless the District is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these PPS 49-0600 through 49-0690 ~~Rules~~rules.

(5) Selection. ESPC selection criteria may include those factors set forth above in PPS 49-0640(2)(a), (b), (c), and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers ~~must~~shall disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) Qualifications Based Selection (QBS). Because the value of construction services predominates in the ESPC method of contracting, the QBS process mandated by ORS 279C.110 for the ~~District~~State Contracting Agencies in obtaining certain Consultant ~~Services~~services is not applicable.

(7) Licensing. If the ESCO is not an Oregon-licensed design professional, the District ~~must~~shall require that the ESCO disclose in the ESPC that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design ~~Services~~services. See ORS 671.030(5) regarding the offer of ~~Architectural Services~~architectural services, and ORS 672.060(11) regarding the offer of ~~Engineering Services~~engineering services that are appurtenant to construction ~~services~~Work.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO ~~must~~shall provide a performance bond and a payment bond, each for 100 percent of the full Contract Price, including the construction and design and related professional ~~Services~~services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional ~~Services~~services" include conventional design ~~Services~~services, commissioning ~~Services~~services, training ~~Services~~services for the District's operations and maintenance staff, and any similar professional ~~Services~~services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V ~~Services~~services, and any ~~Services~~Personal services and Work associated with the ESCO's Energy Savings Guarantee, are not included in these ORS 279C.380(1)(a) "design and related professional ~~Services~~services." Nevertheless, the District may require that the ESCO provide performance security for M & V ~~Services~~services and any ~~Services~~services associated with the ESCO's Energy Savings Guarantee, if the District so provides in the RFP.

(9) Contracting Requirements. The District ~~must~~shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase ~~Project~~project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the ~~Work~~work, the contractual terms governing the Technical Energy Audit for the ~~Project~~project, the contractual terms governing the ~~Project~~project Development Plan for the ~~Project~~project, the contractual terms governing the final design and construction of the ~~Project~~project, the contractual terms governing the performance of the M & V ~~Services~~services for the ~~Project~~project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the ~~Project~~project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the ~~Work~~work;

(ii) The ~~Project~~project Development Plan phase of the ~~Work~~work;

(iii) A third phase of the ~~Work~~work that constitutes a Design-Build Contract, during which the ESCO completes any plans and ~~Specifications~~specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration, and related ~~Services~~Personal services and Work to actually construct the ~~Project~~project; and

(iv) A final phase of the ~~Work~~work whereby the ESCO, independently or in cooperation with an independent Consultant hired by the District, performs M & V ~~Services~~services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the ~~Work~~work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the District ~~must~~shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in PPS 49-0670(7).

(c) Pricing Alternatives. The District may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the ~~Services~~Personal services and Work to be provided by the ESCO;

(B) A ~~cost-reimbursement~~cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the ~~Services~~Personal services to be performed, a ~~cost-reimbursement~~cost reimbursement pricing mechanism for the construction ~~services~~Work to be performed with a GMP, a single or annual fixed fee for M & V ~~Services~~services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the ~~Project~~project (in the event an annual M & V ~~Services~~services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the District, the ESCO's M & V ~~Services~~services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the District's future obligation to pay the M & V ~~Services~~ services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of ~~Work~~work. The scope of ~~Work~~work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will completely pay for themselves or substantially pay for themselves over the useful life of the ECMs installed. The permitted scope of ~~Work~~work for ESPCs resulting from a solicitation under these PPS 49-0600 through PPS 49-0690 ~~Rules~~rules does not include maintenance services for the ~~Project~~project facility.

PPS 49-0690 Construction Manager/General Contractor Services ("CM/GC Services")

(1) General. The CM/GC Method is a technically complex project delivery system. The District ~~must~~shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants, or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary

disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting, and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance ~~Specification~~specification. The CM/GC has defined Contract obligations, including responsibilities as part of the ~~Project~~project team along with the District and design professional, although with the CM/GC Method there is a separate contract between the District and design professional. In order to utilize the CM/GC Method, the District ~~must~~shall be able to reasonably anticipate the following types of benefits:

(a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The District may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The District may consider value engineering, building systems analysis, ~~Life Cycle~~life cycle Costing analysis, and construction planning that lead to cost savings. The District ~~must~~shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the District, design professionals, any District project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific ~~Project~~project challenges through preconstruction services. The District may consider the need for CM/GC input on issues such as operation of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling ~~Projects~~projects, and ~~Projects~~projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. The District ~~must~~shall use the CM/GC form of contracting only in accordance with the requirements of these ~~Division~~division 49 ~~Rules~~rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly PPS 49-0600 on "Purpose" and PPS 49-0620 on "Use of Alternative Contracting Methods."

(3) Selection. CM/GC selection criteria may include those factors set forth in PPS 49-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified construction manager Personal ~~Services~~services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal ~~Services~~services rendered, which together ~~must~~shall not exceed the GMP. See GMP definition at PPS 49-0610(7) and pricing mechanisms at PPS 49-0660.

(5) Contract Requirements. The District shall conform their CM/GC contracting practices to the following requirements:

(a) Nature of the Initial CM/GC Services Contract Document. A solicitation for CM/GC ~~Services~~services is a ~~Procurement~~procurement for a Public Improvement, since the scope of the ~~Procurement~~procurement includes not only pre-construction Personal ~~Services~~services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC ~~Services~~services contracting approach, the text of

the resulting CM/GC ~~Services~~services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the District and the CM/GC for the pre-construction Personal ~~Services,~~services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC ~~Services~~services contracting approach, however, also contemplates that the District ~~will~~shall only authorize the CM/GC to perform the preconstruction Personal ~~Services~~services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC ~~Services~~services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC ~~Services~~services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP ~~must~~shall define both what Personal ~~Services~~services and construction Work are included and excluded from the GMP, fixed Contract price or other maximum Contract Price. A set of project drawings and ~~Specifications must~~specifications shall be produced establishing the scope of construction Work contemplated by the GMP fixed Contract price or other maximum Contract Price.

(c) Adjustments to the GMP Fixed Contract Price or Other Maximum Contract Price. The Contract ~~must~~shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope ~~of Work that~~other warrants an increase in the GMP, fixed Contract ~~price~~Price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract ~~price~~Price or other maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the ~~Work~~work defined at the establishment of the GMP, fixed Contract ~~price~~Price or other maximum Contract ~~price~~Price or most recent ~~Amendment~~amendment to the GMP, fixed Contract ~~price~~Price or other maximum Contract Price. An increase to the scope of the ~~Work~~work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the District and other changes to the ~~Work~~work.

(d) Cost Savings. The Contract ~~must~~shall clearly identify the disposition of any Cost Savings resulting from completion of the ~~Work~~work below the GMP; fixed Contract price or other maximum Contract price, that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the District's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings ~~must~~shall accrue to the District.

(e) Cost Reimbursement. The Contract ~~must~~shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price, including any category of GC Work ~~costs (a general grouping of direct costs that are not separately invoiced, subcontracted, or included within either overhead or fee)~~, and may also incorporate a mutually agreeable cost-reimbursement standard.

(f) Audit. Cost reimbursements ~~must~~shall be made subject to final audit adjustment, and the Contract ~~must~~shall establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.

(g) Fee. Compensation for the CM/GC's Personal ~~Services~~services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the District selects the GM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, ~~must~~shall be identified during and become an element of the selection process. It ~~must~~shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing ~~preconstruction~~pre-construction services during a separate ~~preconstruction~~pre-construction phase.

(h) Incentives. The Contract ~~must~~shall clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP, fixed Contract ~~price~~Price or other maximum Contract ~~price~~Price).

(i) Controlled Insurance Programs. For ~~Projects~~projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract ~~must~~shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract ~~must~~shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions, and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.

(j) Early Work. The RFP ~~must~~shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price, or other maximum Contract Price.

(k) Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract ~~must~~shall include provisions that clearly meet the requirements of ORS 279C.337(3) and other District requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process ~~must~~shall meet the following parameters:

(A) Absent a written justification prepared by the CM/GC and approved by the District as more particularly provided for in this section, the CM/GC's Subcontractor selection process ~~must~~shall be "competitive," meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the District, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process ~~must~~shall meet the following requirements:

(i) The CM/GC ~~must~~shall prepare and submit a written justification to the District, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an

existing Subcontractor agreement that was awarded through a ~~"~~competitive process~~"~~ along with facts supporting the continuation or expansion of the Subcontractor agreement, or a ~~"~~sole source~~"~~ justification;

(ii) For a ~~"~~sole source~~"~~ selection of a subcontractor to proceed, the District ~~must~~shall evaluate the written justification provided by the CM/GC and ~~must~~shall find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The CM/GC ~~must~~shall provide an independent cost estimate for the ~~Work~~work package that will be subject to the non-competitive process, if required by the District;

(iv) The CM/GC ~~must~~shall fully respond to any questions or comments submitted to the CM/GC by the District; and

(v) The District ~~must~~shall approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;

(D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC ~~must~~shall disclose that fact in the selection process documents and announcements. The Contract ~~must~~shall also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of ~~Work~~work involved, by a representative of the District or another independent third party.

(l) Subcontractor Approvals and Protests. The Contract ~~must~~shall clearly establish whether the District ~~must~~shall approve subcontract ~~Awards~~awards, and to what extent, if any, the District ~~will~~shall resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of subcontractor and suppler protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the District ~~must~~shall retain the right to monitor the subcontracting process in order to protect the District's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract ~~must~~shall establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition

from subcontractors, the CM/GC ~~must~~shall provide, or ~~must~~shall have included in the CM/GC's RFP proposal to perform CM/GC ~~Services~~services for the project, a detailed proposal for performance of the ~~Work~~work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the District, the CM/GC's proposal to perform the construction Work ~~must~~shall be supported by at least one independent cost estimate prior to the ~~Work~~work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the ~~Work~~work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the ~~Work~~work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the District and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

(o) Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the District to be performed by the CM/GC, however, the CM/GC ~~must~~shall provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed Contract price or other maximum ~~contract price~~Contract Price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum contract price ~~must~~shall be increased, the performance bond and the payment bond ~~must~~shall each be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum contract price.

(p) Independent Review of CM/GC Performance; Conflicts of Interest. If the District requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Personal ~~Services~~services, construction Work or both pre-construction Personal ~~Services~~services and construction Work, the District ~~must~~shall obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:

(A) The CM/GC's performance of both pre-construction Personal ~~Services~~services and construction Work that are included within the definition of CM/GC ~~Services~~services, consistent with ORS 279C.307(2); or

(B) The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.

(q) Socio-Economic Programs. The Contract ~~must~~shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the District.

CONTRACT PROVISIONS

PPS 49-0800 Required Contract Clauses

Except as provided by PPS 49-0150 and 49-0160, the District ~~must~~shall include in all Solicitation Documents for Public Improvement Contracts all of the ORS 279C-required Contract clauses, as set forth in the checklist contained in PPS 49-0200(1)(c) regarding Solicitation Documents. The following series of ~~Rules~~rules provides further guidance regarding particular Public Contract provisions.

PPS 49-0810 Waiver of Delay Damages Against Public Policy

The District ~~must~~shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the District's unreasonable delay in performing the Contract. However, Contract provisions requiring ~~Notice~~notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling ~~Contract~~contract disputes, or providing for reasonable liquidated damages are permissible.

PPS 49-0815 BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the ~~Specifications~~specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor ~~must~~shall have a Public Works bond filed with the Construction Contractors Board before starting Work on the ~~Project~~project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

PPS 49-0820 Retainage

(1) Withholding of Retainage. The District ~~will~~shall not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of ~~Written~~written application containing the surety's ~~Written~~written approval, the District may, in its discretion, reduce or eliminate Retainage on any remaining progress payments. The District ~~must~~shall respond in ~~Writing~~writing to all such applications within a reasonable time. When the Contract Work is 97½ percent completed, the District may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. The District may at any time reinstate Retainage. Retainage ~~must~~shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless the District finds in ~~Writing~~writing that accepting a bond or instrument described in ~~Section~~section (2)(a) or (2)(b) of this ~~Rule~~rule poses an extraordinary risk that is not typically associated with the bond or instrument, the District, in lieu of withholding moneys from payment, shall accept from a Contractor:

(a) Bonds, securities, or other instruments that are deposited and accepted as provided in ~~Section~~section (4)(a) of this ~~Rule~~rule; or

(b) A surety bond deposited as provided in ~~Section~~section (4)(b) of this ~~Rule~~rule.

(3) Deposit in Interest-Bearing Accounts. Upon request of the Contractor, the District ~~must~~shall deposit cash Retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the District. Earnings on such account ~~must~~shall accrue to the Contractor. The District ~~must~~shall establish the account through the State Treasurer.

(4) Alternatives to Cash Retainage. In lieu of cash Retainage to be held by the District, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities, or other instruments.

(A) The Contractor may deposit bonds, securities, or other instruments with the District or in any bank or trust company to be held for the benefit of the District. If the District accepts the deposit, the District ~~must~~shall reduce the cash Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities, or other instruments deposited or acquired in lieu of cash Retainage ~~must~~shall be of a character approved by the District, including, but not limited to:

(i) Bills, certificates, notes, or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the District's determination that all requirements for the protection of the District's interests have been fulfilled, it ~~must~~shall release to the Contractor all bonds and securities deposited in lieu of Retainage.

(b) Deposit of Surety Bond. The District, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the District in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond ~~must~~shall accept surety bonds from its subcontractors and suppliers in lieu of Retainage. In such cases, Retainage ~~must~~shall be reduced by an amount equal to the value of the bond, and the excess ~~must~~shall be reimbursed.

(5) Recovery of Costs. The District may recover from the Contractor all costs incurred in the proper handling of Retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the District shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the District. The District shall pay the Contractor the amount retained under this provision within 14 ~~Days~~days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both Contractors and subcontractors to file certified statements with the District). See BOLI rule at OAR 839-025-0010.

PPS 49-0830 Contractor Progress Payments

(1) Request for Progress Payments. Each month the Contractor ~~must~~shall submit to the District their ~~Written~~written request for a progress payment based on an estimated percentage of Contract completion. At the District's discretion, this request may also include the value of material to be incorporated in the

completed Work, which has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the District ~~will~~shall make a progress payment to the Contractor, which ~~must~~shall be equal to:

(a) The value of completed Work;

(b) Less those amounts that have been previously paid;

(c) Less other amounts that may be deductible or owing and due to the District for any cause; and

(d) Less the appropriate amount of Retainage.

(2) Progress Payments Do Not Mean Acceptance of ~~Work~~work. Progress payments ~~must~~shall not be construed as an acceptance or approval of any part of the ~~Work~~work, and ~~must~~shall not relieve the Contractor of responsibility for defective workmanship or material.

PPS 49-0840 Interest

(1) Prompt Payment Policy. The District ~~must~~shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments. Late payment interest ~~must~~shall begin to accrue on payments due and owing on the earlier of 30 ~~Days~~days after receipt of invoice or 15 ~~Days~~days after District approval of payment (the "Progress Payment Due Date"). The interest rate ~~must~~shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, up to a maximum rate of 30 percent.

(3) Interest on Final Payment. Final payment on the Contract Price, including Retainage, ~~must~~shall be due and owing no later than 30 ~~Days~~days after Contract completion and acceptance of the ~~Work~~work. Late-payment interest on such final payment ~~must~~shall thereafter accrue at the rate of ~~1½~~one and one-half percent per month until paid.

(4) Settlement or Judgment Interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment ~~must~~shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, ~~must~~shall accrue from the later of the Progress Payment Due Date, or 30 ~~Days~~days after the Contractor submitted a claim for payment to the District in ~~Writing~~writing or otherwise in accordance with the Contract requirements.

PPS 49-0850 Final Inspection

(1) Notification of Completion; Inspection. The Contractor ~~must~~shall notify the District in ~~Writing~~writing when the Contractor considers the Contract Work completed. Within 15 ~~Days~~days of receiving the Contractor's ~~Notice~~notice, the District ~~will~~shall inspect the ~~Project~~project and ~~Project~~project records, and will either accept the ~~Work~~work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of Acceptance. When the District finds that all Work required under the Contract has been completed satisfactorily, the District ~~must~~shall acknowledge acceptance of the ~~Work~~work in ~~Writing~~writing.

PPS 49-0860 Public Works Contracts

(1) Generally. ORS 279C.800 ~~through~~to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see ~~BOLI rules~~the administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and ~~Rules~~rules, every Public Works Contract ~~must~~shall contain the following provisions:

(a) District authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer ~~Notice~~notice to employees of hours and ~~Days~~days that employees may be required to Work, as set forth in ORS 279C.520(2).

(d) Contractor-required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) ~~Requirement~~A requirement for payment of ~~Prevailing Rate of Wage~~prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract ~~must~~shall provide that all workers ~~must~~shall be paid the higher of the applicable state or federal ~~Prevailing Rate of Wage~~prevailing rate of wage.

(f) A requirement for filing a public works bond by the ~~Contractor~~contractor and every subcontractor, as set forth in ORS 279(C).830(~~1)(a~~2).

(3) Requirements for Specifications. The ~~Specifications~~specifications for every Public Works Contract, consisting of the ~~Procurement~~procurement package (such as the ~~Project~~project Manual, ~~Bid or Proposal~~bid or proposal booklets, Request for ~~Quotes~~quotes, or similar ~~Procurement Specifications), must~~procurement specifications), shall contain the following provisions:

(a) The ~~State Prevailing Rate of Wage~~state prevailing rate of wage, and, if applicable, the federal ~~Prevailing Rate of Wage~~prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of ~~Procurement Specifications~~procurement specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the ~~Specifications~~specifications by reference in compliance with OAR 839-025-0020; or

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the ~~Specifications~~specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the Contractor shall pay the higher of the applicable state or federal prevailing rate of way to all workers. See BOLI rules at OAR 839-025-0020 and ~~839-025-0035~~-0035.

(c) A requirement for filing a public works bond by the Contractor and every subcontractor, as set forth in ORS 279C.830(2).

PPS 49-0870 Specifications; Brand Name Products

(1) Generally. The District's Solicitation Document ~~must~~shall not expressly or implicitly require any product by ~~Brand Name~~brand name or mark, nor ~~must~~shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. The District may identify products by Brand Names as long as the following language: "approved equal," "or equal," "approved equivalent," or "equivalent," or similar language is included in the Solicitation Document. The District ~~must~~shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

(3) Product Exemption. The Superintendent is delegated the authority to exempt products from the prohibition in ~~Section~~section (1) of this ~~Rule~~rule, pursuant to ORS 279C.345(2), upon any of the following ~~Written Findings~~written findings:

(a) It is unlikely that the exemption will encourage favoritism in the ~~Awarding~~awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts;

(b) The ~~Specification~~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 District;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

PPS 49-0880 Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors ~~must~~shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors ~~must~~shall maintain all other records necessary to clearly document (i) their performance, and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors ~~must~~shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records, and all other records, hereafter referred to as "Records") accessible to the District at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. The District may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person ~~must~~shall provide cost or pricing data under a Contract, the Person ~~must~~shall maintain such Records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in ~~Writing~~writing.

(3) Records Inspection; Contract Audit. The District and its authorized representatives ~~must~~shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in ~~Section~~section (1) of this ~~Rule~~rule. The Contractor and subcontractor ~~must~~shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of three years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in ~~Writing~~writing.

PPS 49-0890 District Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the District may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or ~~Services~~services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the District chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety ~~must~~shall not be relieved from liability for unpaid claims.

(2) Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims ~~must~~shall be referred to the Contractor's surety for resolution. The District ~~must~~shall not make payments to subcontractors or suppliers for Work already paid for by the District.

PPS 49-0900 Contract Suspension; Termination Procedures

(1) Suspension of ~~Work~~work. In the event the District suspends performance of ~~Work~~work for any reason considered by the District to be in the public interest other than a labor dispute, the Contractor

~~must~~shall be entitled to a reasonable extension of Contract time and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by Mutual Agreement for Reasons Other Than Default.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The District suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the ~~Work~~work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the ~~Work~~work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this ~~Section~~section (2), the District ~~must~~shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The District ~~must~~shall also pay for all Work completed based on the Contract Price. Unless the ~~Work~~work completed is subject to unit or itemized pricing under the Contract, payment ~~must~~shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest Termination by the District. The District may include in its Contracts terms detailing the circumstances under which the Contractor ~~must~~shall be entitled to compensation as a matter of right in the event the District unilaterally terminates the Contract for any reason considered by the District to be in the public interest.

(4) Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof pursuant to this ~~Rule must~~rule shall not relieve either the Contractor or its surety of liability for claims arising out of the ~~Work~~work performed.

(5) Remedies Cumulative. The District may, at its discretion, avail itself of any or all rights or remedies set forth in these ~~Rules~~rules, in the Contract, or available at law or in equity.

CONTRACT AMENDMENTS AND CHANGE ORDERS

PPS 49-0910 Public Improvement Contract Amendments and Changes to the Work

(1) Definitions for Rule. As used in this ~~Rule~~rule with regard to Public Improvement Contracts:

(a) "Amendment" means a ~~Written~~written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the ~~Work~~work, within the general scope of the original ~~Procurement~~procurement that requires mutual agreement between the District and the Contractor.

(b) "Changes to the ~~Work~~work" means a mutually agreed-upon ~~Change Order, or a Construction Change Directive or other Written~~change order, or a construction change directive or other written order issued by the District or its authorized representatives to the Contractor requiring a Change in the ~~Work~~work within the general scope of a Public Improvement Contract and issued under its Changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or Contract time for the Changed Work.

(2) Change Orders. Changes to the ~~Work~~work are anticipated in construction and, accordingly, the District shall include Change provisions in all Public Improvement Contracts that detail the scope of the Changes clause, provide pricing mechanisms, authorize the District or its authorized representative(s) to issue Changes to the ~~Work~~work, and provide a procedure for addressing Contractor claims for additional

time or compensation. When Changes to the ~~Work~~work are agreed to or issued consistent with the Contract's Changes provisions, they are not considered to be new ~~Procurements~~procurements, and an exemption from ~~Competitive~~competitive Bidding is not required for their issuance by the District. Change orders that are approved pursuant to the terms of a construction contract are not subject to the contract ~~Amendment~~amendment procedures of these rules except as provided in Subsection 5 of this section.

(3) Change Order Authority. The District may establish internal limitations and delegations for authorizing Changes to the ~~Work~~work, including dollar limitations. Dollar limitations on Changes to the ~~Work~~work are not set by these ~~Rules~~rules, but such Changes are limited by the above definition of that term.

(4) Contract Amendments. Public Improvement Contract ~~Amendments~~amendments within the general scope of the original ~~Procurement~~procurement are not considered to be new ~~Procurements~~procurements, and an exemption from ~~Competitive~~competitive Bidding is not required in order to add components or phases of ~~Work~~work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original ~~Procurement~~procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, ~~Project~~project site, relative dollar values, differences in risk allocation, and whether the original ~~Procurement~~procurement was accomplished through ~~Competitive~~competitive Bidding, ~~Competitive~~competitive Proposals, ~~Competitive Quotes~~competitive quotes, sole-source, or Emergency Contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the ~~Findings~~findings supporting the ~~Competitive~~competitive Bidding exemption; and

(d) The ~~Amendment~~amendment is made consistent with this ~~Rule~~rule and other applicable legal requirements.

(5) Reporting Requirement for Amendments/Change Orders That Exceed 125% of Original Contract Price.

(e) A Contract Amendment or Change Order or cumulative Contract Amendments or Change Orders that increase the total Contract Price to greater than one hundred twenty five percent (125%) of the original Contract Price shall be reported to the School Board, except in any of the following circumstances:

(D) The Original Contract Price does not exceed $500,000.

(E) The Superintendent determines that the Amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original Contract, and the School Board previously approved the entire scope and/or maximum renewal terms. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or a contract that specifically allows for alternates or additional work.)

(F) Where a CM/GC or Design/Build Contract authorizes Early Work Amendments and requires execution of the GMP amendment to establish the total Contract Price, the GMP amendment shall establish the "Original Contract Price" for purposes of this Rule.

(f) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than one hundred and fifty percent (150%) of the original Contract Price.

(g) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

END OF DIVISION 49

K-12 ELA Curriculum Update

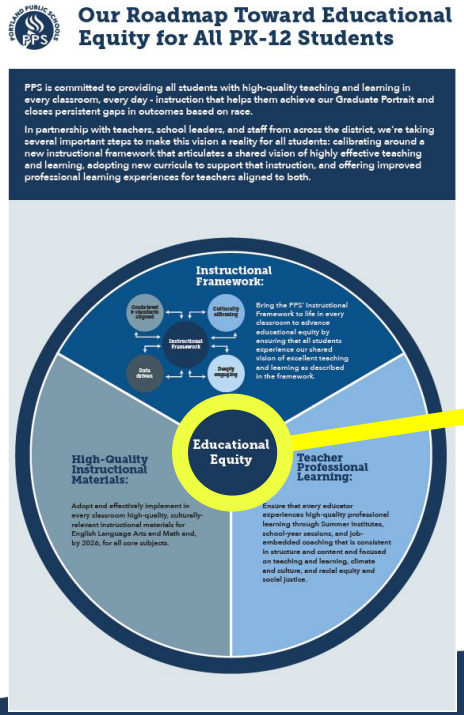
PORTLAND
Public Schools

February 6, 2023

Presentation Overview

Agenda:

- Where are we at in K-12 ELA curriculum implementation and what does our data say?
- How do we monitor and follow-up?
- How do we support students who are struggling?
- How does our curriculum support culturally affirming instruction?



Our Why: Educational Equity

K-5 English Language Arts

Curriculum

	Focus	Grades
Heggerty	Phonemic Awareness	(P)K-2
Fundations	Phonics/Spelling	K-3
GEODES	Transfer to Text	K-2
Wit & Wisdom	Comprehension	K-5
Benchmark	Spanish Comprehension	K-5

Implementation Data

- 84% of classrooms using adopted ELA core resources (Learning Walks 22-23).

Student Outcome Data

Overall: *PPS 3rd-5th ELA OSAS scores stayed steady at 57% meets/exceeds from 2022-2023.*

(%=proficient on ELA OSAS)

	2022	2023
All	57%	57%
Black	17%	17%
Latino	30%	32%
Native	27%	16%
White	68%	69%

6-8 English Language Arts

Houghton Mifflin Harcourt (HMH) Intro Literature

- Second year of implementation
- Uses texts that connect to students' lives, build confidence, and mastery of standards in support of college and career readiness
- HMH Into Literature includes Writable, a writing tool that supports daily practice, peer review and writing feedback.

Implementation Data

- 69% of Middle School Principals report consistent use of and implementation of the HMH curriculum
- 63% of K-8 Principals report consistent use of and implementation of the HMH curriculum

Implementation Walks:

- January and February in all K-8s and Middle Schools (Phase 1)
- HMH on site Professional Learning including Social Science and Writable (Phase 2)

Student Outcome Data

(%=proficient on ELA OSAS)

	2022	2023
All	**53%**	**54%**
Black	**16%**	**16%**
Latino	**28%**	**29%**
Native	**31%**	**20%**
White	**66%**	**67%**

9-12 English Language Arts

Houghton Mifflin Harcourt (HMH) Into Literature

- Second year of implementation
- Includes a range of grade-appropriate, diverse texts.
- Embedded and teacher-selected texts
- *Writable* provides critical teacher tools and student feedback
- Differentiation tools and supports for diverse learners

Implementation Data

- 40% of High School Principals report consistent use of and implementation of the HMH curriculum
- 30% of High School Principals report consistent use of the HMH assessments.

Student Outcome Data

- Course Passage Rates:

	2022	2023
All	**89%**	**87%**
Black	**80%**	**78%**
Latino	**81%**	**78%**
Native	**76%**	**75%**
White	**92%**	**91%**

- 7,400 students in advanced courses, 2,000 in dual credit

How We Monitor and Follow Up on English Language Arts

- Observation of classrooms - Senior Directors and Site Based Administrators
  - Instructional rounds - problem of practice (grade level standards aligned instruction, curriculum adoption and instructional framework)
  - Learning walks - on conjunction with Office of Teaching and Learning
  - Informal classroom observations during regular meetings
  - Expectation with building leaders-(3-5 observations with feedback per teacher)-1st year
- Work with Instructional Leadership Teams and Administrative Teams
  - Quarterly reviews with SDS, instructional coach and ILT to discuss and provide feedback on progress on instructional priorities. (1st year)
  - Review of Professional Learning Communities agendas and practices
- Data practices - Senior Directors and Site Based Administrators
  - SCIPs and SCIP showcases
  - Review of student outcomes to identify effective instructional practices during 1 on 1's, in OSP, in showcases, in quarterly reviews

Tiered Academic Supports

Translating MAP Scores to Levels of Academic Support

Average - High/Average - High
40th - 99th Percentiles

Low/Average
20th - 39th Percentiles

Low
1st - 19th Percentiles

TIER 1 Academic

Standards-based, core instruction for ALL students, using PPS-adopted resources including curriculum-embedded, formative assessments

TIER 2 Academic

Targeted reteaching and additional practice AT grade-level, based on common formative assessments and using Tier 1 tools in flexible, small groups

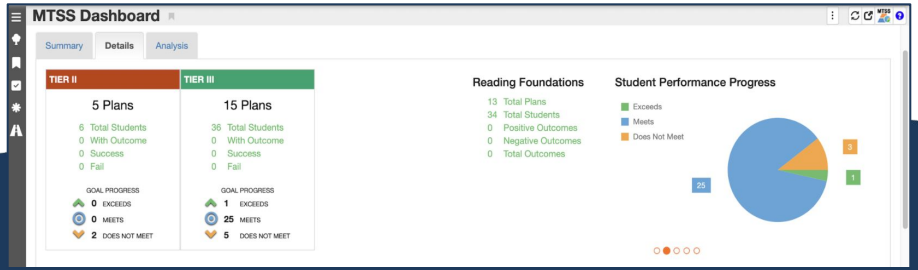
TIER 3 Academic

Explicit intervention instruction for students with intensive lagging skills using evidence-based intervention curriculum with weekly data collection monitored by SIT

Tier 3 - Intensive Intervention

Instruction	Explicit, systematic instruction in foundational reading and/or math universal skills
Curriculum	Evidence-based intervention curricula such as Wilson, Lexia, i-Ready MyPath, REWARDS
Assessment	Curriculum-embedded formative assessments within intervention tool along with district-level screening tools such as MAP Fluency and i-Ready Diagnostic
Duration	8 week (elementary) or semester-long (MS/HS) cycles
Frequency	30+ minutes, daily

School/Site Intervention Teams monitor and track Tier 3 intervention data.



Culturally Affirming Instruction

2 Culturally Affirming

Instruction affirms and honors our students and communities of color including their ethnic, racial, and linguistic identities and develops all students' abilities to recognize and critique social inequities.

Educator Indicators

2.1: Educators center students' lived experiences and identities and leverage the strengths that students' diverse backgrounds and experiences bring to individual and collective learning.

2.2: Educators develop and cultivate a learning community, including authentic partnerships with families, in which every student experiences a sense of belonging.

2.3: Educators actively engage all students by centering their voices and fostering their individual and collective agency and actively disrupt barriers to equitable learning opportunities.

2.4: Educators take a learner's stance, acknowledging and learning from feedback and multiple perspectives to re-engage students and return to classroom norms when racial or cultural harm is caused.

2.5: Educators demonstrate awareness of their own positionality, biases and identities as well as those of their students within the context of the history, assets, and issues of racial and ethnic groups in Portland, and how this impacts dynamics of power, social norms, privilege, and oppression in the classroom.

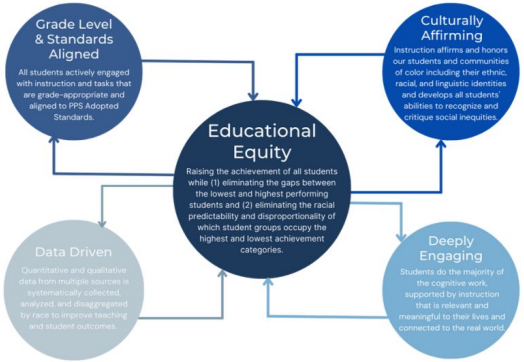
Student Indicators

2.6: Students see themselves reflected in their classroom environments and make personal and cross-cultural connections to their learning experiences.

2.7: Students establish and maintain healthy relationships with diverse peers and adults to cultivate their own social, emotional, and cultural competence.

2.8: Students seek out perspectives of peers and adults from diverse racial and cultural backgrounds in order to understand and act upon multiple truths.

2.9: Students read and think critically and ask questions about dominant narratives to critique social inequities and take action in their communities.



Lesson Unpacking Protocol

Purpose: The Lesson Unpacking Protocol is intended to help individual teachers or groups of teachers using the same curriculum effectively process and implement curricular standards-aligned grade-level lesson plans. By the end of this process teachers will have a deep understanding of how the lesson prioritizes grade-level standards aligned instruction that provides engaging, affirming, and meaningful learning experiences.

Directions: Complete the protocol independently or with grade-level colleagues. Use the Lesson Unpacking note catcher and full UnboundEd K-5 or 6-12 handouts to support your work. Gather or be sure you have access to these materials:

- Teacher Guide, Lesson text, print or digital
- Any handouts or assessments listed in the Lesson at a Glance materials section
- A method to record responses (notepad and pen or computer)

Lesson Unpacking Protocol Steps

1. Identify which cluster(s), standard(s), or part(s) thereof are targeted in this lesson. (5 minutes)
   - Annotate the standards by identifying the content, the verb, and the method if indicated in the standard.
2. Do all the student work to generate examples for ourselves and our students and help anticipate student needs. (5 minutes)
   - If math, this is all of the problems.
   - If literacy this includes reading the text (images, video, article, book, etc.) and doing the task.
3. Read the entire lesson. Write your own understanding of the Learning Objective(s) of the lesson that includes a measurable verb, that the skills are transferable to a variety of situations, and how they will demonstrate their understanding. This is aligned to the priority standard(s). Focus on: (5 minutes)
   - Knowledge and skills named in the standard
   - Newly introduced knowledge or skills
   - Knowledge & skills that show up the most
   - What students do/produce at the end of the lesson
   - Where students spend the majority of the time
4. Write a learning goal for each section that includes the specific what a student needs to do/understand and how they will demonstrate their understanding. (5 minutes)
5. Identify each section as "essential" or "assisting" for students to be able to demonstrate the objective and priority standard(s) for the lesson to help determine where the majority of time in the lesson should be spent during the length of the class period. Focus on: (5 minutes)
   - Knowledge and skills named in the standard
   - Newly introduced knowledge or skills
   - Knowledge & skills that show up the most
   - What students do/produce at the end of the lesson
   - Where students spend the majority of the time
6. Adapt the lesson to provide engaging experiences. Utilize the UnboundEd Planning for Scaffolding process to determine specific scaffolds (explanations, representations, and examples) will make the content clear and support understanding for every student (MultiLingual Learners, students with IEPs, TAG students, etc.)? What misconceptions and/or knowledge gaps can be anticipated? How might they be addressed? Focus on (10 minutes):
   - The main task of the lesson
   - Consider what methods/strategies from the prior grade level can be used to provide a scaffold
   - Develop scaffolds by adding more to certain elements while maintaining others
   - Check scaffolds by asking: Do my scaffolds preserve the grade-level requirements of the task? Are the scaffolds provided to some of my students?
   - Check modifications and accommodations for students with 504 plans, modified diplomas, and IEPs. Utilize the Curriculum Modification Ladder tool to help plan.
   - Determine what will be the exit plan for students from a scaffold.
7. Utilize the UnboundEd Planning for Productive Struggle process to plan for students spending the majority of their time engaged in productive struggle and cognitive lift of the majority of the lesson? (5 minutes)
8. What culturally affirming practices might be used to engage students and support their learning? Utilize the UnboundEd Planning with Funds of Knowledge process. (10 minutes)
   - Where have they seen it in their home contexts (family, everyday experience, community)
   - When have students used this skill or one like it in their home contexts?
   - How does the knowledge students already have relate to this new knowledge (even in contrast)?

PPS Instructional Framework

(version as of July 2023)

FORWARD TOGETHER

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Overview

The **PPS Forward Together Strategic Plan** names the development of an integrated instructional framework as a strategic outcome within the theme of Inclusive and Differentiated Learning for Every Child.

The collaboratively developed framework establishes and defines the core elements of standards-aligned instruction we commit to providing all students and guides decisions and actions at the central office, school and classroom levels.

PPS' Instructional Framework:

- Provides a consistent, district-wide vision for teaching and learning that allows all district stakeholders to align actions and resources to ensure equity of access to high-quality instruction across all schools, classrooms, and students.
- Identifies a series of components and supporting indicators that every PPS student should experience in order to achieve the Graduate Portrait.

Deputy Superintendent Message

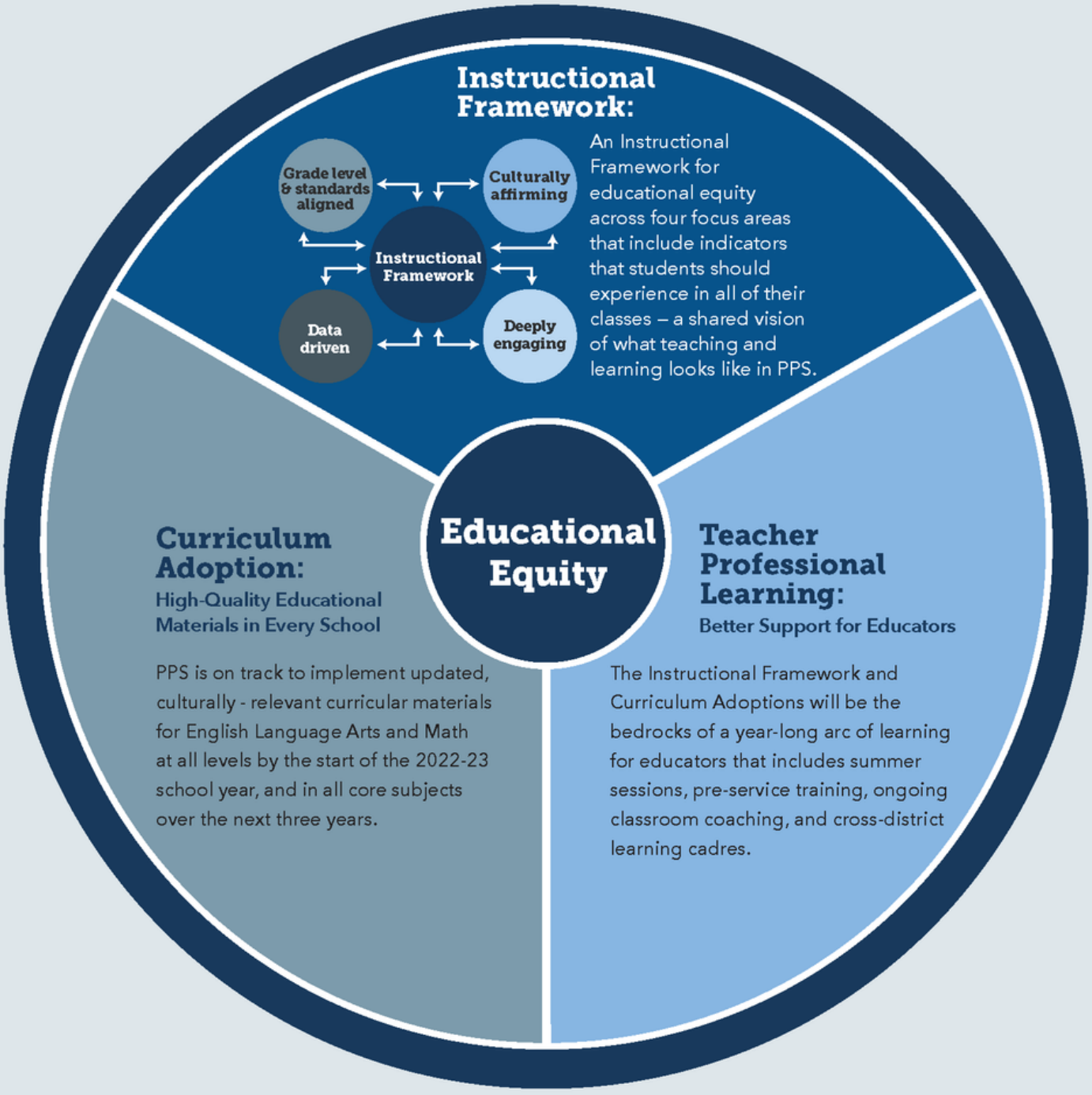
The new PPS Instructional Framework is one of our exciting Forward Together Strategic Plan academic priorities to ensure every student, especially our Black, Native American, and all other students of color realize the Vision of the Graduate Portrait. We must provide all students with a comprehensive, rigorous, equitable, and inclusive education and eliminate the significant gaps in achievement by race that exist. We are thrilled to establish a district-wide vision and common language for highly effective teaching and learning in PPS that will provide more aligned instructional coaching, improved and focused professional learning and support, increased collaboration opportunities, and more. We look forward to engaging with the entire PPS community to continue to learn and move forward together in service of our students and families.

Dr. Cheryl Proctor
Deputy Superintendent, Instruction and School Communities

Our Roadmap Toward Educational Equity for All PK-12 Students

PPS is committed to providing all students with high-quality teaching and learning in every classroom, every day - instruction that helps them achieve our Graduate Portrait and closes persistent gaps in outcomes based on race.

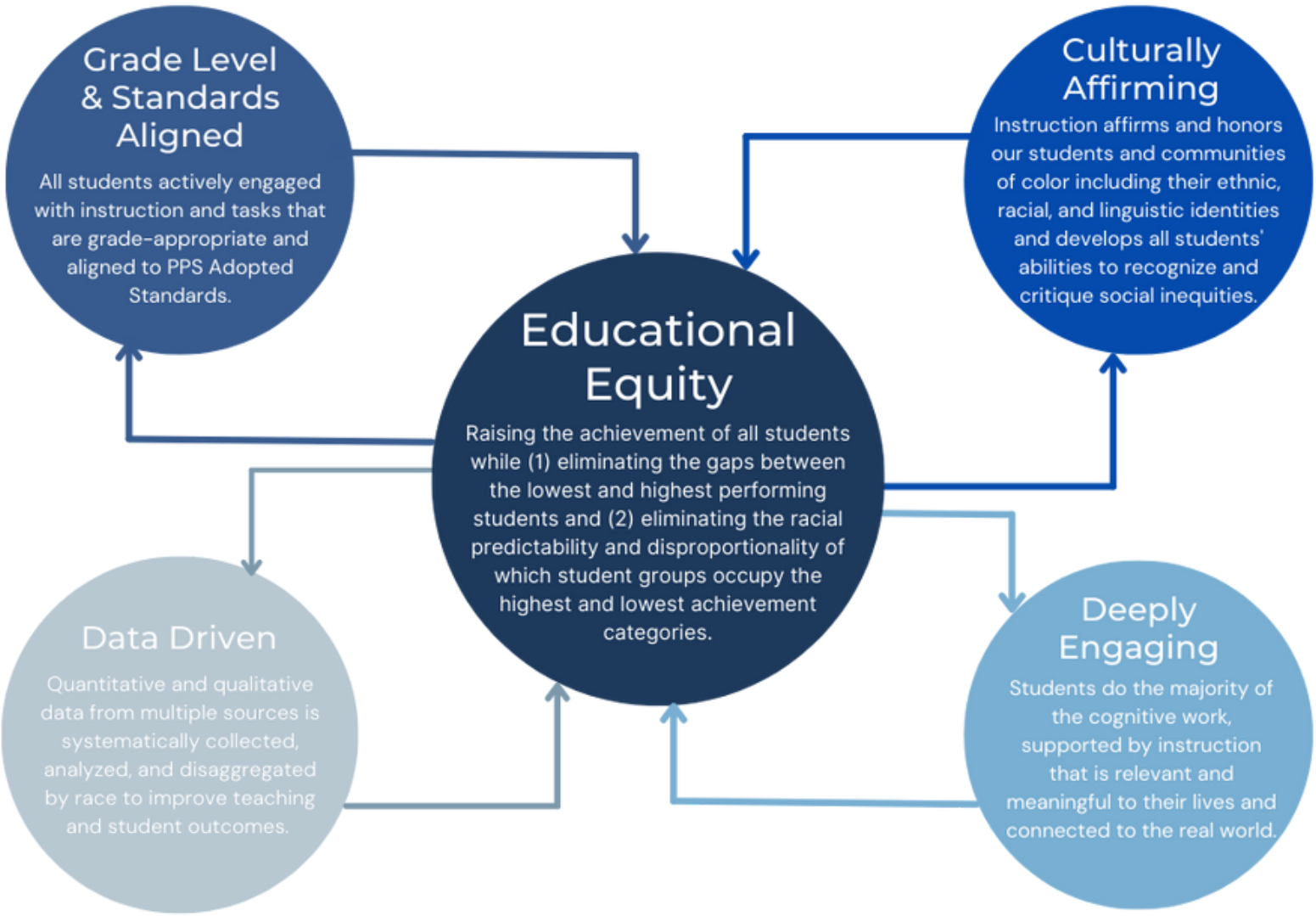
In partnership with teachers, school leaders, and staff from across the district, we're taking several important steps to make this vision a reality for all students: calibrating around a new instructional framework that articulates a shared vision of highly effective teaching and learning, adopting new curricula to support that instruction, and offering improved professional learning experiences for teachers aligned to both.



Instructional Framework

PPS Mission Statement

We provide rigorous, high quality academic learning experiences that are inclusive and joyful. We disrupt racial inequities to create vibrant environments for every student to demonstrate excellence.



Grade Level & Standards Aligned

1

All students are actively engaged with instruction and tasks that are grade-appropriate and aligned to PPS Adopted Standards.

Educator Indicators

1.1: Educators teach grade level content to all students that reflects the design and intent of the standards, including but not limited to Common Core shifts (see Appendix A for Common Core shifts in each content area), Next Generation Science Standards (NGSS), English Language Proficiency (ELP) Standards, World-Readiness Standards for Learning Languages, etc.
1.2: Educators facilitate lessons that support students in reaching the full analytic demands of the standards.
1.3: Educators strategically employ scaffolds that support all students, especially those receiving English Language supports and/or Special Education services, in accessing grade-level content.
1.4: Educators employ oral and written questions and tasks that are text-specific, aligned with grade-level standards and require evidence from the text to demonstrate understanding and support ideas.
1.5: Educators pose questions and problems that prompt students to explain their thinking about the content of the lesson.

Student Indicators

1.6: Students are engaged in grade-level and standards-aligned tasks, with scaffolds that support students' access without modifying the tasks themselves.
1.7: Students can articulate the purpose of their learning and how it connects with their lives or aspirations.
1.8: Students are responsible for doing the majority of the work of the lesson, engaging in productive struggle, and owning the complex thinking, even when provided with scaffolds from the educator.
1.9: Students persevere through challenging tasks and support one another as continuous learners.

Culturally Affirming

2

Instruction affirms and honors our students and communities of color including their ethnic, racial, and linguistic identities and develops all students' abilities to recognize and critique social inequities.

Educator Indicators

2.1: Educators center students' lived experiences and identities and leverage the strengths that students' diverse backgrounds and experiences bring to individual and collective learning.

2.2: Educators develop and cultivate a learning community, including authentic partnerships with families, in which every student experiences a sense of belonging.

2.3: Educators actively engage all students by centering their voices and fostering their individual and collective agency and actively disrupt barriers to equitable learning opportunities.

2.4: Educators take a learner's stance, acknowledging and learning from feedback and multiple perspectives to re-engage students and return to classroom norms when racial or cultural harm is caused.

2.5: Educators demonstrate awareness of their own positionality, biases and identities as well as those of their students within the context of the history, assets, and issues of racial and ethnic groups in Portland, and how this impacts dynamics of power, social norms, privilege, and oppression in the classroom.

Student Indicators

2.6: Students see themselves reflected in their classroom environments and make personal and cross-cultural connections to their learning experiences.

2.7: Students establish and maintain healthy relationships with diverse peers and adults to cultivate their own social, emotional, and cultural competence.

2.8: Students seek out perspectives of peers and adults from diverse racial and cultural backgrounds in order to understand and act upon multiple truths.

2.9: Students read and think critically and ask questions about dominant narratives to critique social inequities and take action in their communities.

Deeply Engaging

3

Students do the majority of the cognitive work, supported by instruction that is relevant and meaningful to their lives and connected to the real world.

Educator Indicators

3.1: Educators connect learning experiences to students' lived experiences and the contemporary world to make learning valuable and relevant.
3.2: Educators consistently integrate Universal Design for Learning (UDL) (see Appendix B for UDL Guidelines and Principles), differentiation, and leverage Racial Equity and Social Justice practices in their lessons.
3.3: Educators consistently integrate social-emotional competencies (see Appendix C for Transformative Social and Emotional Learning Competencies) and academic competencies in instruction.
3.4: Educators create the conditions for student conversations where students are encouraged to talk about each other's thinking.
3.5: Educators provide opportunities for students to exercise autonomy and choice as appropriate within the content and in how and with whom they work.
3.6: Educators exercise persistence in not allowing students to opt-out of learning.

Student Indicators

3.7: Students are actively engaged in the cognitive work of the lesson, through reading, writing, speaking, listening, inquiry or other modalities.
3.8: Students persist, authentically grappling with grade-level content, revising their work and thinking, even when confronted with mistakes, uncertainty, or challenge.
3.9: Students demonstrate developmentally appropriate social-emotional competencies by collaborating productively with peers and adults to navigate interpersonal conflicts that arise within the learning community.
3.10: Students dialogue with and ask questions of peers and teachers to clarify their understanding and extend their learning.
3.11: Students exercise autonomy, agency and initiative that is motivated by content and tasks that are valuable and relevant to them personally.

Data Driven

4

Quantitative and qualitative data from multiple sources is systematically collected, analyzed, and disaggregated by race to improve teaching and student outcomes.

Educator Indicators

4.1: Educators use assessment data to drive Tier 1 and Tier 2 instruction including district-level benchmarking assessments, district-identified interim assessments, and classroom-level assessments with rubrics reflecting grade-level and standards-aligned learning targets.
4.2: Educators consistently check for understanding, using a range of formative assessment types focused on all levels of rigor, including higher-order thinking.
4.3: Educators engage in feedback cycles with students based on their assessment data.
4.4: Educators explain the purpose of assessments and performance tasks and how they are used to inform their instruction and students' learning.
4.5: Educators grade student performance based solely on student mastery of standards (see Appendix D for more about Equitable Grading Practices).

Student Indicators

4.6: Students articulate the purpose of assessments, performance tasks, and rubrics and how to use them to improve their learning.
4.7: Students use data to self assess, set goals, and track their own learning growth.
4.8: Students access grade-level content through instructional scaffolds and just-in-time scaffolds identified based on individual student formative assessment data.
4.9: Students advocate for what they need as learners based on known assessment results.
4.10: Students understand which standards they have met and how this reflects in their assessment.

Glossary of Terms

Educators: Teachers, Paras, EAs, Administrators, School Counselors, School Social Workers, School Psychologists, School Nurses, School Language Pathologists, other student service providers, and Itinerant staff who support classroom instruction.

Higher-Order Thinking: Thinking on a level that is higher than memorization or recall (factual thinking). Higher order thinking requires students to problem solve, think deeply and critically, and use and apply their learning.

Productive Struggle: Students expend effort to grapple with perplexing problems or make sense of challenging ideas; effortful practice that goes beyond passive reading, listening, or watching.

Science of Reading: A vast, interdisciplinary body of scientifically-based research about reading and issues related to reading and writing. Included is research highlighting the importance of explicit instruction in the essential components of reading: phonological awareness, phonics, fluency, vocabulary, and reading comprehension. One differentiator between the science of reading approach and alternatives is the importance of comprehensive systematic and explicit phonics instruction rather than incidental phonics instruction.

Modifications: Adaptations that change the learning goal and/or lower the level of challenge for students

Differentiation: An approach to teaching that involves offering several different learning experiences and proactively addressing students' varied needs to maximize learning opportunities for each student in the classroom. It requires teachers to be flexible in their approach and adjust the curriculum and presentation of information to learners of different abilities.

Instructional Scaffolds: Preplanned high leverage practices wherein an educator prepares student-specific support structures designed to maximize access to concepts and tasks at grade-level and beyond. This is a UDL strategy and also connects to schoolwide AVID instructional routines and strategies.

Just in Time Scaffolds: Develops productive perseverance by allowing students to engage in demanding tasks on their own and then assisting them in maintaining the engagement when they struggle by using teacher questioning as the means of support.

Appendix

Appendix A: Common Core Shifts

In the content areas and grade bands covered by the Common Core State Standards, PPS has adopted these standards. However, some of our grade bands (e.g. PK) and content areas (e.g. CCE) are not covered by the Common Core State Standards. For these grade bands and content areas, PPS has adopted other relevant sets of standards to guide our planning and instruction.

In literacy, lessons are centered on a high-quality, grade-level text that builds knowledge through evidence-based discussion and writing; in early literacy foundational skills lessons are grounded in the Science of Reading.

In mathematics, lessons are designed around the major work of the grade and reflect the coherence and rigor intended by the standards.

In science, lessons are designed to reflect the performance standards with students engaging in disciplinary core ideas through the science and engineering practices and the crosscutting concepts.

In social studies, lessons are centered on engaging students and analyzing primary and secondary sources that reflect the breadth of grade level content.

Outside of the core, lessons are designed to engage students in critical thinking and analysis as described in the standards of the content area.

See **Instructional Practice Guides** from Achieve the Core.

Appendix B: Universal Design for Learning (UDL) Guidelines and Principles

An education framework based on decades of research in neuroscience and endorsed by the Every Student Succeeds Act that allows educators to effectively implement inclusive practice in classrooms by removing barriers and providing options and choices for all students. UDL is considered best practice for teaching all students in an inclusive learning environment. The goal of UDL is to create learners who are purposeful & motivated, resourceful & knowledgeable, and strategic & goal oriented, in other words, expert learners. To universally design lessons, teachers must provide multiple means of engagement, multiple means of representation, and multiple means of action and expression. See **"What is UDL?"** (Katie Novak) and Appendix C for more information.

Appendix C: Transformative Social and Emotional Learning Competencies

"Transformative SEL" is a process whereby young people and adults build strong, respectful, and lasting, relationships that facilitate co-learning to critically examine root causes of inequity, and to develop collaborative solutions that lead to personal, community, and societal well-being.

See **CASEL's Transformative SEL website** for core features of Transformative SEL.

Appendix

Appendix D: Equitable Grading Practices

Equitable Grading Practices includes a variety of practices outlined in the **Equitable Grading Practices Continuum**, including using a standards-based and/or competency-based grading model, instead of a norm-based or curve-based grading model, communicating student progress, growth, and proficiency on standards and/or learning targets, calculating grades in ways that reflect a student's final proficiency, providing multiple opportunities to demonstrate proficiency, and including opportunities for student self-assessment. **This handout** summarizes the resources that Portland Public Schools currently uses to support Equitable Grading Practices.

Revisions Since First Version

Annual Revision Process

The first version of the PPS Instructional Framework was released in June of 2022 following development during the Spring of 2022. Our original intent was for the framework to be a living document and thus annually we will review the framework language based upon feedback received throughout the year to make minor revisions based on three criteria:

- Does the revision add something that needs to be included?
- Does the revision clarify something?
- Does the revision fix something that is wrong or misrepresented?

July 2023 Minor Revisions

1.1 - Removed "design principles in" NGSS as this wording was not needed and spelled out Next Generation Science Standards and English Language Proficiency to increase accessibility of language.
1.3 - Added "especially those receiving English Language supports and/or Special Education services" after students to increase inclusivity and focus on our most vulnerable students.
2.3 - Added "within the context of the history, assets, and issues of racial and ethnic groups in Portland" after students in order to contextual that the racial and social awareness an Educator needs to demonstrate should be situated within the unique local context and history of Portland.
3.2 - Spell out Universal Design for Learning to increase accessibility and clarify the meaning of UDL, while adding "leverage Racial Equity and Social Justice practices" to ensure both are integrated as part of differentiation
4.5 - Added an Educator Indicator to call out the importance of Equitable Grading Practices.
4.8 (formerly 4.7) - Added instructional scaffolds to clarify that they are just as important to consider as just-in-time scaffolds and clarify that formative assessment data that is addressed here is individual student data.
4.10 - Added a corresponding Student Indicator to 4.5 about understanding mastery of standards.
Glossary - Clarified that Instructional Scaffolds are a pre-planned high-leverage practices and made the explicit connection to AVID routines and strategies.
Appendix - Clarified Universal Design for Learning language and added Equitable Grading Practices.

Local Option Levy Renewal

PORTLAND
Public Schools

February 6, 2024

Local Option Levy Background

- Portland Public Schools has had a local option levy since May 2000.
- In November 2019, PPS's five-year local option levy was renewed by **77%** of the district's voters **at a rate of $1.99 per $1,000 of assessed property value**.
- Similar to many districts across the state, PPS supplements dollars allocated through the state school fund by administering a local option levy, which has funded **over 800 teaching positions.**
- In order to continue the levy and sustain this level funding for classroom positions from 2025-2030, the Board needs to refer the renewal to District voters for approval, and we recommend that the Board do so at the the **May 21, 2024, primary election**. This is in alignment with the recommendation that was made by the Board Local Option Levy Committee last year.

Fiscal Impact

2019-2024 Local Option Levy - Revenue Collections at a rate of $1.99/$1,000 assessed property value

2020-2021	$102,417,000
2021-2022	$106,124,000
2022-2023	$110,472,000
2023-2024	$108,840,000
2024-2025	$110,067,000

The 2019-2024 local option levy has, on average, funded 800 teaching positions

2025 - 2030 Local Option Levy - Projected Revenue at a rate of $1.99/$1,000 assessed property value

2025-2026	$111,300,000
2026-2027	$112, 600,000
2027-2028	$113,800,000
2028-2029	$115,100,000
2029-2030	$116,400,000

The 2025-2030 local option levy is projected to fund at least 750 teaching positions.

Statutory Limit on Local Option Levy Collections

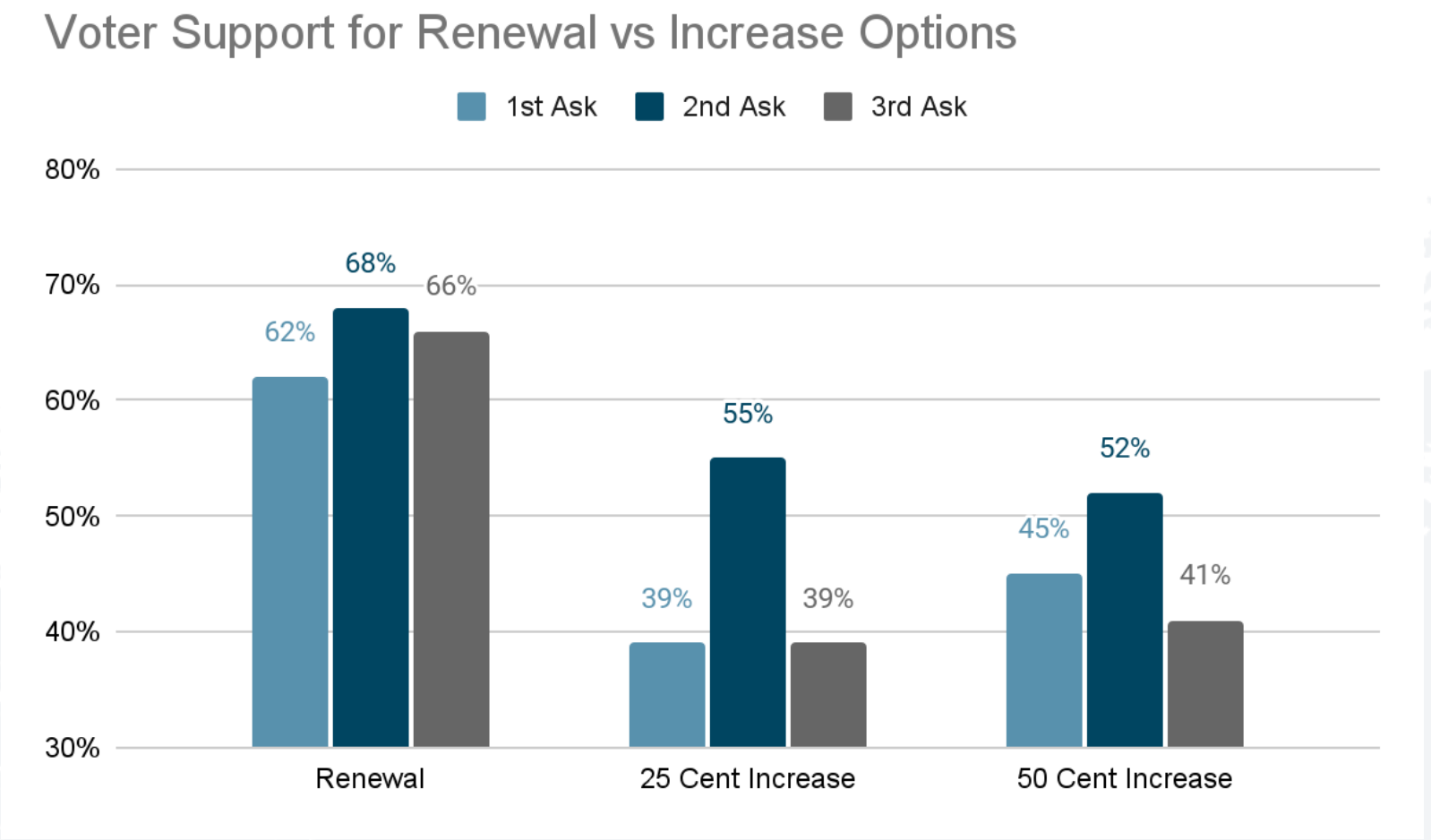
State law limits the amount of revenue school districts can collect from a local option levy. The current limit is the least among the following options:

- The Measure 5 limit on each property.
- 25% of the total received by the district from the state school fund (SSF) formula.
- $2,000 per district extended ADMw (weighted average daily membership) increased each fiscal year by three percent above the amount allowed per district extended ADMw for the prior fiscal year (FY 2022-23 limit is $2,250/ADMw).

Any amount collected above the limit is deducted from the State School Fund grant to the district.

- For fiscal year 2024, the limit is $123,238,555.
- If PPS renews the local option levy at a rate of $1.99/$1,000 assessed property value, it is not expected to reach the limit in the life cycle of the 2025-2030 levy.
- The District could exceed the limit if the rate were increased by $0.25 or $0.50.

Survey of PPS voters



Key Dates and Deadlines

- **March 1, 2024:** Notice of ballot title due to Multnomah County Elections
- **March 21, 2024:** Measure filing deadline (noticed and completed)
- **March 25, 2024:** Voters' pamphlet statements due
- **May 7, 2024:** Tax Supervising & Conservation Commission (TSCC) hearing
- **May 21, 2024:** Primary Election

Staff proposes the following Board meeting dates in alignment with the deadlines:

- **February 6:** Board meeting and discussion
- **February 20:** Board meeting and vote on referral to the ballot; notice to the Tax Supervising and Conservation Commission (TSCC).

Recommendation for Action

- Staff recommends the Portland Public Schools Board of Directors refer the local option levy to voters to be considered in the **May 2024 primary election** and **maintain the rate of $1.99 per $1,000 of assessed property value. This aligns with the Board's 2023 Local Option Levy Committee recommendation.**
- The Board will consider adoption of the 2024 legislative agenda that calls on the Legislature to allocate $41M to PPS to bridge the shortfalls in the 2023-24 and 2024-25 budgets.
- In the 2025 Legislative Session, the Board and PPS staff will advocate for:
  - fully funding the QEM
  - making adjustments to the state funding formula
  - legislation to remove or lower the statutory limit on local option levies.

Date: January 25, 2024
To: PPS Board of Education
From: Lisa Merrick, Senior Manager, Government Relations
Liz Large, Contracted General Counsel

Subject: Recommendation to refer renewal of Portland Public Schools's Local Option Levy to the May 2024 Primary Election

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BACKGROUND

Portland Public Schools's five-year local option levy was renewed by 77% of the district's voters in November 2019 at a rate of $1.99 per $1,000 of assessed property value. Similar to many districts across the state, PPS supplements dollars allocated through the state school fund by administering a local option levy, which has funded over 800 teaching positions.

In 2024-25, PPS is projected to receive $110,067,000 in revenue from the levy. In order to continue the levy and sustain this level funding for classroom positions from 2025-2030, the Board will need to refer the renewal to district voters for approval, and we recommend that the Board do so at the the May 21, 2024, primary election. This approach is in alignment with the recommendation made last summer on the timing of the local option levy renewal by the Board's Local Option Levy Committee.

To place the levy on the May 2024 ballot, the Board needs to vote to renew the local option levy at the current rate of $1.99 per $1,000 of assessed property value or to refer a different rate on the local option levy to the May 2024 ballot.

FISCAL IMPACT

The local option levy renewal at the current rate of $1.99 per $1,000 of assessed property is projected to raise $111.3 million in 2025-2026; $112.6 million in 2026-2027; $113.8 million in

2027-2028; $115.1 million in 2028-2029; and $116.4 million in 2029-30, which would support an estimated 750-800 teaching positions.

According to Oregon statute, school district local option collections are excluded from the State School Fund formula up to a prescribed limit. The limit is updated each year, and for Fiscal year 2024, the limit is $123,238,555 for Portland Public Schools.

It is important to note, if projected collections are close to the applicable limit, future growth in levy revenue could result in actual revenues exceeding the limit and impact the amount the District can collect without sacrificing revenue to the State School Fund formula. The District will need to advocate for and secure a change in state law to maintain all revenue collections as the voters' intend. According to the most recent projections, Portland Public Schools is not expected to reach the statutory limit during the upcoming levy cycle if it renews the local option levy at the current rate of $1.99 per $1,000 of assessed property.

KEY DATES AND DEADLINES

- **March 1, 2024:** Notice of ballot title due to Multnomah County Elections
- **March 21, 2024:** Measure filing deadline (noticed and completed)
- **March 25, 2024:** Voters' pamphlet statements due
- **May 21, 2024:** Primary Election

Staff proposes the following actions to meet the timeline listed above:

- **February 6:** Board meeting and discussion
- **February 20:** Board meeting and vote on referral to the ballot; notice to the Tax Supervising and Conservation Commission (TSCC).

STAFF RECOMMENDATION

Staff recommends the Portland Public Schools Board of Directors refer the local option levy to voters to be considered in the May 2024 primary election and maintain the rate of $1.99 per $1,000 of assessed property value.

Local Option Levy Renewal Documents 2024–subject to further revision

RESOLUTION No.

Call for Five-Year Local Option Levy to Support Schools

RECITALS

A. Strong, healthy public schools are the foundation of Portland and are vital to educating students to prepare them for college, work, life and their future; supporting families and equitable student outcomes; keeping neighborhoods thriving; building community; and strengthening the local economy.

B. Portland Public Schools (PPS) serves more than 42,000 students and enrolls a high proportion of the city's students in its schools.

C. Through conversations and engagement with the greater Portland school community, PPS created a vision that reimagines what and how our students will graduate prepared for college, career and beyond. After identifying the essential skills and attributes educators should have and changes needed in our school systems, PPS released a multi-year strategic plan focused on ensuring that all students have equitable opportunities and supports to achieve high academic goals and outcomes.

D. PPS's staffing levels and educational programming, which support every student's success, are essential to realizing the vision and implementing the strategic plan.

E. For over two decades, Portland voters have shown their support for strong schools and educational programs by approving and renewing a local option levy to fund PPS schools.

F. As recently as 2019, voters again affirmed their support for Portland Public Schools and its students by passing a five-year local option levy to support teaching positions and educational programs with 77% approval.

G. Since it passed in 2019, the local option levy has supported an average of 850 teaching positions each school year, contributing to the school district's equitable staffing of schools and commitment to providing necessary supports for struggling or underserved students.

H. PPS has dedicated significant focus and resources to supporting students following the pandemic, including specialized support in reading and math, as well as more counselors, social workers and mental health supports.

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I. This local option levy requires independent oversight by the Community Budget Review Committee (CBRC) to ensure that levy dollars are used only for purposes approved by local voters.

J. The CBRC has affirmed, in annual reports to the PPS Board of Education, that local option funds have primarily been used to fund hundreds of teachers and maintain or lower class sizes.

K. PPS intends that all funds raised under this proposed levy will be used for Portland students in PPS schools; and none of the funds will be intended for distribution under the state school funding formula.

L. The District has an independent financial audit annually and independent performance audits of District operations.

RESOLUTION

1. The Board shall ask voters to approve a five-year local option levy in May 2024 that will provide an estimated $111.3 million in 2025-2026; $112.6 million in 2026-2027; $113.8 million in 2027-2028; $115.1 million in 2028-2029; and $116.4 million in 2029-30.

2. The levy revenue shall be used to fund teaching positions at every school in the District, ensuring students have access to a well-rounded education with many equitable enrichments for elementary and middle grades and focused electives that help prepare high school students for a career or college, including career and technical programs and STEM programs.

The levy revenue could also fund other classroom support positions across the District, such as educational assistants, reading specialists, and special education certified personnel, to help identify and support students who need support with mental or behavioral health issues, academic issues, or other needs.

3. The fully allowable levy rate shall continue to be $1.99 per $1,000 of assessed value. The cost for a home with an assessed value of $275,706, the current average in the PPS district, would be $45.72 per month.

4. The Community Budget Review Committee will continue to provide independent oversight so that the funds are spent as the voters intended. The CBRC will continue to publish an annual

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report about the use of the local option revenues and their contribution to student achievement.

5. The Board will continue to require performance audits of the District's activities, programs and services to support efficient use of resources, as well as to seek opportunities to improve school effectiveness and capacity-building for increased accountability. Audits will continue to be conducted by internal auditors who will work at the direction of the Board to define the scope and design of audits.

6. The Board of Directors of School District No.1J, Multnomah County, Oregon, finds that, for the reasons and purposes described in the proposed measure set forth below, it is necessary and appropriate to levy a local option tax under ORS 280.040 et seq. for the fiscal year beginning July 1, 2025, and for four additional fiscal years thereafter each commencing July 1.

7. A serial levy election is hereby called to be held at the General Election on the 21st day of May, 2024, in the manner and between the hours provided by law, at which there shall be submitted to the electors of School District No. 1J, Multnomah County, Oregon.

8. PPS authorizes the Board Chair, Superintendent, or the Superintendent's designee (the "Authorized Representative") to take any actions necessary to place the measure that is attached as Exhibit A on the May 21, 2024, election ballot, and to place the explanatory statement that is attached as Exhibit B in the voter's pamphlet for that election. The Authorized Representative shall file the measure with the elections officer of Multnomah County not later than March 1, 2024, and the explanatory statement not later than March 21, 2024. The Authorized Representative is authorized to make technical corrections or correct typographical errors to the filed documents.

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EXHIBIT A:

CAPTION (10 words): Levy Renewal to Maintain Teachers and Classroom Support Staff

QUESTION (20 words): Shall district maintain teachers, classroom support staff; renew levy of $1.99 per $1,000 assessed value for five years beginning 2025? This measure renews current local option taxes.

SUMMARY (175 words): Portland Public Schools's current local option levy was approved by voters in 2019 to provide funding for schools over five years. If renewed, the levy will provide an estimated $111.3 million in the first year and is projected to fund approximately [760] teachers and classroom support staff each year over five years.

If renewed, the local option levy would fund teaching and other positions to:

- Support a well-rounded education, including career and technical programs and enrichments and electives, so students can graduate with the skills they need to be career or college ready.
- Provide classroom supports, such as educational assistants and reading specialists for students struggling with academic or mental/behavioral health issues.
- Help maintain and prevent significant class size increases across the district.

Levy cost remains $1.99 per $1,000 assessed property value, the same rate as the 2019 levy.

Funds will be placed in a sub-account; independent community oversight will review expenditures to verify funds are used as approved by voters. No levy funds will be spent for administration. District is subject to annual independent financial and performance audits.

The levy will raise an estimated $111.3 million in 2025-2026; $112.6 million in 2026-2027; $113.8 million in 2027-2028; $115.1 million in 2028-2029; and $116.4 million in 2029-30. The cost for a home with an assessed value of $275,706, the current average in the PPS district, would be $45.72 per month. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate and may reflect the impact of early payment discounts, compression, and the collection rate.

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EXHIBIT B:
EXPLANATORY STATEMENT (500 words)

Portland Public Schools currently serves over 42,000 students in 81 schools and other programs throughout the neighborhoods of Portland.

PPS's graduation rate of 84.5% remains above the statewide average and has risen 26 percentage points since 2010.

In serving the students of Portland, the district continuously strives to be fiscally responsible with taxpayer resources. Through many years of volatile budgets and the pandemic, school district leaders have worked to preserve classroom education and lower class sizes. At the same time, PPS has advocated for a greater level of state investment by the Legislature and worked to ensure that all dollars are spent well and focused on the classroom. PPS is subject to regular independent financial and performance audits to monitor effective use of taxpayer resources.

Continued investments are needed in our schools to continue to build career and technical programs, prevent class-size increases, and better support struggling students, especially coming out of the pandemic.

If renewed, the levy is estimated to produce $111.3 million for Portland Public Schools in school year 2025-2026. The proposed levy renewal:

Funds teachers at every school in the District

- The levy is projected to fund approximately [760] teachers—nearly one-quarter of all teaching positions in the district—and classroom support staff each year over five years.
- The funds help support a well-rounded education, with enrichments for elementary and middle grades, and electives in varied interest areas for high school students.
- The funds help support career, technical, science, technology, engineering, and math programs, including computer science education, so students can graduate with the skills necessary to be career or college ready.
- The funds provide academic supports, such as reading specialists for students working to recover from learning loss.

Allows funding for other classroom support positions

- The levy revenue could also fund other classroom support positions across the District, such as educational assistants, reading specialists, and special education certified

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personnel to help identify and support students with mental or behavioral health issues, academic issues, or other needs.

Continues to provide fiscal accountability and independent oversight

- This local option requires independent community oversight so that tax dollars are used only for purposes approved by local voters.
- Funds will be placed in an sub-account to ensure their correct use and accurate reporting.
- No funds from this local option levy will be used for district administration.

Maintains the existing tax rate of $1.99 per $1,000 of assessed value

- This local option levy replaces the one passed by voters in 2019 and maintains the existing tax rate.
- For a home at the current average assessed value of $275,706, the levy cost is $45.72 per month, or $548.65 per year.

Submitted by Dr. Sandy Husk

Interim Superintendent, Portland Public Schools

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RESOLUTION No. 6837

Adoption of the Index to the Minutes

The Following Index to the Minutes are offered for Adoption:

- January 16, 2024 – Special Meeting
- January 23, 2024 – Special Meeting and Work Session

PORTLAND PUBLIC SCHOOLS

BOARD OF EDUCATION

Index to the Minutes

(Draft for Approval)

Special Meeting
January 16, 2024

This document is a record of the actions taken by the Board of Education. In accordance with ORS 192.650, the District's official School Board Meeting Minutes are maintained via video recording and may be viewed at https://youtu.be/jFWUwfT5lac?si=dOl6cvjZnMY2q8D

This meeting was held at the Dr. Matthew Prophet Education Center (Prophet Center) located at 501 N Dixon St. Portland, OR 97217 and streamed live at: https://www.youtube.com/@ppsboardofeducation/live

Board Member Attendance

Present: Chair Gary Hollands; Vice-Chair Herman Greene; Directors Julia Brim-Edwards, Michelle DePass, Andrew Scott, Patte Sullivan, and Eddie Wang; Student Representative Frankie Silverstein

Absent: None

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Agenda 02
Actions Taken 02

RESOLUTIONS

No.	Resolution Title	Page
6827	Authorizing Limited-Term Employment for Incoming Interim Superintendent	03

Agenda

Time Started	*Agenda Title*
5:02 pm	Consent Agenda
5:08 pm	Superintendent Search Update
5:20 pm	Adjourned

Action Items

- **Consent Agenda – Resolution 6827**

  Director Greene moved and Director Sullivan seconded the motion to approve the Consent Agenda, including Resolution 6827. The motion was put to a voice vote and passed (7 yes – 0 no).

  Director Julia Brim-Edwards: Yes, Director Michelle DePass: Yes, Director Herman Greene: Yes, Director Gary Hollands: Yes, Director Andrew Scott: Yes, Director Patte Sullivan: Yes, Director Eddie Wang: Yes, Student Representative Silverstein: Yes (Unofficial)

Resolution No. 6827

Authorizing Limited-Term Employment for Incoming Interim Superintendent

The Board of Education recognizes that, to facilitate her effective transition to interim superintendent on February 12, 2024, Dr. Sandy Husk will spend time meaningfully preparing for the brief transition with Superintendent Guerrero and for her tenure as interim superintendent. The Board hereby authorizes the District to offer limited-term employment to Dr. Husk for up to 49 hours before February 11, 2024, at an hourly rate equivalent to her interim superintendent salary.

PORTLAND PUBLIC SCHOOLS

BOARD OF EDUCATION

Index to the Minutes

(Draft for Approval)

Special Meeting and Work Session
January 23, 2024

This document is a record of the actions taken by the Board of Education. In accordance with ORS 192.650, the District's official School Board Meeting Minutes are maintained via video recording and may be viewed at https://youtu.be/HyRMM81cm6o?si=plPCfSe2zBW2k6u7

This meeting was held at the Dr. Matthew Prophet Education Center (Prophet Center) located at 501 N Dixon St. Portland, OR 97217 and streamed live at: https://www.youtube.com/@ppsboardofeducation/live

Board Member Attendance

Present: Chair Gary Hollands; Vice-Chair Herman Greene; Directors Julia Brim-Edwards, Michelle DePass, Andrew Scott, Patte Sullivan, and Eddie Wang; Student Representative Frankie Silverstein

Absent: None

Draft

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RESOLUTIONS

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Agenda

Time Started	*Agenda Title*
6:10 pm	Update on School Closures
6:33 pm	Consent Agenda - Resolutions 6828 - 6830
6:34 pm	Resolution to Approve the Student Investment Account Grant Agreement
6:36 pm	Early Literacy Grant Agreement Presentation
7:19 pm	Jefferson Modernization Update
7:34 pm	Presentation of a Proposal by Albina Vision Trust
8:49 pm	Break
9:04 pm	Legislative Agenda
9:27 pm	Bond Planning
10:38 pm	Adjourn

Student and Public Comment

None

Action Items

- **Consent Agenda – Resolutions 6828 through 6830**

  Director Brim-Edwards moved and Director DePass seconded the motion to approve the Consent Agenda, including Resolutions 6828 through 6830. The motion was put to a voice vote and passed (7 yes – 0 no).

  Director Julia Brim-Edwards: Yes, Director Michelle DePass: Yes, Director Herman Greene: Yes, Director Gary Hollands: Yes, Director Andrew Scott: Yes, Director Patte Sullivan: Yes, Director Eddie Wang: Yes, Student Representative Silverstein: Yes (Unofficial)

- **Resolution 6831 - Resolution to Approve the Student Investment Account Grant Agreement**

  Director Greene moved and Director Brim-Edwards seconded the motion to approve Resolution Number 6831. The motion was put to a voice vote and passed (7 yes – 0 no).

  Director Julia Brim-Edwards: Yes, Director Michelle DePass: Yes, Director Herman Greene: Yes, Director Gary Hollands: Yes, Director Andrew Scott: Yes, Director Patte Sullivan: Yes, Director Eddie Wang: Yes, Student Representative Silverstein: Yes (Unofficial)

Draft

RESOLUTION No. 6828

Adoption of the Index to the Minutes

The Following Index to the Minutes are offered for Adoption:

- January 04, 2024 – Special Meeting
- January 09, 2024 – Regular Meeting

Draft

RESOLUTION No. 6829

Expenditure Contracts that Exceed $150,000 for Delegation of Authority

RECITAL

Portland Public Schools ("District") Public Contracting Rules PPS-45-0200 ("Authority to Approve District Contracts; Delegation of Authority to Superintendent") requires the Board of Education ("Board") enter into contracts and approve payment for products, materials, supplies, capital outlay, equipment, and services whenever the total amount exceeds $150,000 per contract, excepting settlement or real property agreements. Contracts meeting this criterion are listed below.

RESOLUTION

The Superintendent recommends that the Board approve these contracts. The Board accepts this recommendation and by this resolution authorizes the Deputy Clerk to enter into the following agreements.

NEW CONTRACTS

Contractor	Contract Term	Contract Type	Description of Services	Contract Amount	Responsible Admin, Funding Source	Certified Business
Walter E Nelson Company	2/1/24 through 1/31/25 Option to renew for up to four additional one-year terms through 1/31/29	Materials Requirement MR 94570	Provide District with disposable products on an as-needed basis. Request for Proposals 2023-048	Original Term: $550,000 Total through all renewals: $2,750,000	D. Jung Fund 202 Dept. 5570	No

*A Certified Business is a for-profit business certified as a Minority-Owned Businesses (MBE), Women-Owned Businesses (WBE), Emerging Small Businesses (ESB), and/or Service-Disabled Veteran Businesses (SDV) by the State of Oregon Certification Office for Business Inclusion and Diversity.

NEW COOPERATIVE PURCHASING AGREEMENTS

N/A

NEW INTERGOVERNMENTAL AGREEMENTS ("IGAs")

N/A

AMENDMENTS TO EXISTING CONTRACTS

Contractor	Amendment Term	Contract Type	Description of Services	Amendment Amount, Contract Amount	Responsible Admin, Funding Source	Certified Business
PBS Engineering & Environmental, Inc.	1/24/24 through 12/31/25	Cooperative Contract COA 91023 Amendment 2	Funding for an additional year of project management/construction management for district-wide environmental health and safety projects.	$278,400 $1,551,400	D. Jung Funding Source Varies	No
Myonghoon Leigh	1/24/24 through 4/30/24	Personal Services PS 93710 Amendment 1	Deputy Superintendent of Business and Operations services. This amendment extends the contract and adds funds to contract.	$75,000 $220,000	S. Reese Fund 101 Dept. 5461	No

New encumbered contracts: $0

On-call, potential spend contracts: $2,750,000

Amendments: $353,400

Draft

RESOLUTION No. 6830

Authorization for Off-Campus Activities

RECITAL

Portland Public Schools ("District") Policy 6.50.010-P ("Off-Campus Activities") requires the Board of Education ("Board") consent to student out-of-state travel.

RESOLUTION

The Board has reviewed the request for out-of-state travel. All required documents have been submitted to the Risk Management Department. The Superintendent recommends that the Board consent to the student out-of-state travel for the below request:

AUTHORIZATION FOR OFF-CAMPUS ACTIVITIES

Date(s)	School, Course, and Number of Students	Purpose of Travel	Travel Destination	Estimated Cost	Equitable Field Trip Fund; %
3/22-3/28/24	Lincoln HS Baseball, 32	Baseball tournament, practice, team building	San Diego, CA	$2000	N/A

Draft

RESOLUTION No. 6831

Resolution to Approve the Student Investment Account Grant Agreement

RECITALS

A. The Student Success Act requires that the Student Investment Account (SIA) Grant Agreement be presented to the Portland Public Schools Board of Education for approval with the opportunity for the public to provide comments.

B. On January 9, 2023, the Portland Public Schools Board of Education reviewed the Student Investment Account (SIA) Grant Agreement in a public board meeting including the longitudinal performance growth targets.

RESOLVED

Following posting on the PPS website and the oral presentation and opportunity for public comment at a public meeting, the Board of Education approves the Student Investment Account Grant Agreement.

Draft

RESOLUTION No. 6838

Expenditure Contracts that Exceed $150,000 for Delegation of Authority

RECITAL

Portland Public Schools ("District") Public Contracting Rules PPS-45-0200 ("Authority to Approve District Contracts; Delegation of Authority to Superintendent") requires the Board of Education ("Board") enter into contracts and approve payment for products, materials, supplies, capital outlay, equipment, and services whenever the total amount exceeds $150,000 per contract, excepting settlement or real property agreements. Contracts meeting this criterion are listed below.

RESOLUTION

The Superintendent recommends that the Board approve these contracts. The Board accepts this recommendation and by this resolution authorizes the Deputy Clerk to enter into the following agreements.

NEW CONTRACTS

Contractor	Contract Term	Contract Type	Description of Services	Contract Amount	Responsible Admin, Funding Source	Certified Business
Hydro-Temp Mechanical, Inc.	2/7/24 through 8/30/24	Construction C 94535	Drinking water fixture replacement at PESC. Invitation to Bid – Construction 2023-046	$147,300	D. Jung Fund 456 Dept. 5511 Project DS008	No
McKinstry Co.	4/1/24 through 4/2/27 Option to renew for up to one two-year term through 4/2/29	Services S 94568	Annual replacement of drinking fixture filters districtwide. Request for Proposals 2023-044	$850,000	D. Jung Fund 101 Dept. 5592	No

*A Certified Business is a for-profit business certified as a Minority-Owned Businesses (MBE), Women-Owned Businesses (WBE), Emerging Small Businesses (ESB), and/or Service-Disabled Veteran Businesses (SDV) by the State of Oregon Certification Office for Business Inclusion and Diversity.

NEW COOPERATIVE PURCHASING AGREEMENTS

Contractor	Contract Term, Renewal Options	Administering Contracting Agency	Description of Goods or Services	Estimated Spend During Contract Term	Responsible Administrator, Funding Source	Certified Business
Active Internet Technologies, LLC	7/1/24 through 6/30/26 Option to renew for up to three additional one-year terms through 6/30/29	Texas Region 7 ESC COA 94521	Purchase of the District's website subscription, software, and support services.	$755,000	D. Wolff Funding Source Varies	No

NEW INTERGOVERNMENTAL AGREEMENTS ("IGAs")

AMENDMENTS TO EXISTING CONTRACTS

New encumbered contracts: $1,752,300

On-call, potential spend contracts: $

Amendments: $

RESOLUTION No. 3839

Revenue Contracts that Exceed $150,000 Limit for Delegation of Authority

RECITAL

Portland Public Schools ("District") Public Contracting Rules PPS-45-0200 ("Authority to Approve District Contracts; Delegation of Authority to Superintendent") requires the Board of Education ("Board") to enter into and approve all contracts, except as otherwise expressly authorized. Contracts exceeding $150,000 per contractor are listed below.

RESOLUTION

The Superintendent recommends that the Board approve these contracts. The Board accepts this recommendation and by this resolution authorizes the Deputy Clerk to enter into the following agreements.

NEW REVENUE CONTRACTS

No New Revenue Contracts

NEW INTERGOVERNMENTAL AGREEMENTS / REVENUE ("IGA/Rs")

Contractor	Contract Term	Contract Type	Description of Services	Contract Amount	Responsible Administrator, Funding Source
Oregon Department of Education	2/14/24 through 9/30/24	Intergovernmental Agreement / Revenue IGA/R XXXXX*	Provides funding for K-5 sexuality education lessons and development of Ethnic Studies lessons.	$737,070	C. Proctor Fund 205 Dept. 5470 Grant TBD

* Contract is not finalized at this time. Staff seeks advanced authorization for this contract pursuant to the Purchasing & Contracting Delegation of Authority Administrative Directive, 8.50.105-AD, Section X(4): "The District may seek an 'advanced authorization' from the PPS Board of Education for any contract upon the approval of the Director of Purchasing & Contracting. The cost of the contract shall be a 'Not to Exceed' amount. Once the Board has approved it, no further authorization for the contract is required, providing the contract value remains at or below the 'Not to Exceed' amount."

AMENDMENTS TO EXISTING REVENUE CONTRACTS

Contractor	Amendment Term	Contract Type	Description of Services	Amendment Amount, Contract Amount	Responsible Administrator, Funding Source
State of Oregon	7/1/23 through 6/30/24	Intergovernmental Agreement / Revenue IGA/R 93229 Amendment 1	LGBTQ2SIA+ student success programming grant for 23/24 school year.	$103,243 $196,247	C. Proctor
USGS Earthquake Science Center	1/1/24 through 6/15/25	Intergovernmental Agreement / Revenue IGA/R 92396	USGS will reimburse district for a portion of an employee's salary and benefits to support with lesson development and professional development related to the ShakeAlert earthquake early warning system.	$94,000 $170,031	C. Proctor Fund 101 Dept. 5468

RESOLUTION No. 6840

Resolution Approving 3 Capital Projects for Contracted Alternative Schools using ESSER III funds

RECITALS

A. During the 2020-2021 budget year, each Contracted Alternative School (CBO) received an individual ESSER II allocation, which they may spend on a reimbursement basis, following all requirements set forth by PPS District and ODE.

B. During the 2021-2022 budget year, each Contracted Alternative School (CBO) received an individual ESSER III allocation, which they may spend on a reimbursement basis, following all requirements set forth by PPS District and ODE.

C. CBO school leaders are able to determine how to best use these ESSER II & ESSER III funds, based on feedback from their Boards of Directors and other key stakeholders.

D. CBO Schools are eligible for reimbursement using ESSER II and/or ESSER III funds as long as expended funds align with allowable uses for each grant and are pre-approved by PPS leadership and meet ODE requirements for approval.

E. PPS has processes in place to ensure that CBO schools follow each grants allowable uses and guidelines as well as ensure that state and federal requirements are met.

F. Based on an October 2021 ODE Memo & Update, all capital expenditures over $25,000 are now required to be approved by each district's school board for approval.

G. We are requesting that the PPS Board approve 3 capital improvement projects that exceed the $25,000 threshold, all of which have already been submitted to ODE. (ODE Project Tags: 2180-03, 2180-04, 2180-05 & 2180-09)

RESOLUTIONS

1. The Board of Education for Portland Public Schools has determined that the following Capital Expenditure projects for Helensview School and Rosemary Anderson High School are approved and eligible for reimbursement, using ESSER III Funds. ODE Project Tags:

    a. 2180-14: Helensview School: Oregon Valley Greenhouse

    b. 2180-15: Helensview School: Wireless Radio Communication devices

    c. 2180-12: Rosemary Anderson High School: RAHS North Campus Improvement

2. Each of the above mentioned projects meets the eligibility for ESSER II and/or ESSER III funds and our district has followed the ODE rules regarding the process for capital projects exceeding $25,000.

3. The Board of Education for Portland Public Schools directs PPS staff to work with CBO leadership to support these capital projects which will help to ensure the continued physical and mental safety of students.

PORTLAND PUBLIC SCHOOLS
OFFICE OF Multiple Pathways to Graduation

501 North Dixon Street / Portland, OR 97227
Telephone: (503) 916-5437

Date: 2/6/24

To: PPS School Board

From: Korinna Wolfe, Senior Director of Schools, Multiple Pathways to Graduation

Erica Stavis, Program Administrator, Contracted Alternative Schools

Subject: Recommendation to approve ESSER Capital Improvements exceeding $25,000

BACKGROUND

PPS currently contracts with 9 Contracted Alternative Schools (CBO's). Each of these schools provide unique and innovative educational options for PPS students requiring tailored and individualized support. These organizations are seen as strategic partners with PPS and support our district's dropout prevention and educational advancement priorities and goals.

This memo is designed to inform and request approval from the PPS Board for three capital improvement projects from two of our CBO schools. **Please note, this is not a request for new funds.** These ESSER III funds have already been approved and individual ESSER allotments have been awarded to each of the Contracted Alternative Schools as part of the regular budget process. CBO school leaders may determine how to best use these funds, based on feedback from their Board of Directors and other key community stakeholders, as long as it aligns with the allowable uses for this grant and our district's goals. Per ODE guidelines, when schools proceed in requesting ESSER funding for capital improvements that exceed $25,000, School Board approval is required.

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA), was signed into law on December 27, 2020 and provides an additional $54.3 billion for the Elementary and Secondary School Emergency Relief Fund (ESSER II Fund). It provides funding for state and local educational agencies to spend on allowable activities to respond to COVID-19. Elementary and Secondary School Emergency Relief Fund III (ESSER III or ARP ESSER) The American Rescue Plan Act, 2021 (ARP Act or ARPA) provides an additional $122 billion for the Elementary and Secondary School Emergency Relief Fund III (ESSER III or ARP ESSER).

All capital expenditures using ESSER II or ESSER III funds must first be approved by ODE to be considered an eligible use of the grant funds. For the ESSER Grants, "capital expenditure" is defined as follows:
A construction project or individual non-consumable item that:

1) Has a useful life of more than one year; and
2) Costs greater than $5,000

Additionally on 10/25/2021, ODE published a "ESSER Capital Expenditures and Reimbursement Update" which included the new regulation that "all capital expenditures over $25,000 be presented to your district's school board for their approval".

Each of the capital projects listed below have been deemed eligible from the PPS Grant Accounting office and a required form has already been submitted by ODE (please see chart below). ODE states that "Capital expenditure approvals may be submitted prior to obtaining school board approval". We are now requesting Board approval for projects that exceed the $25,000 threshold. Each of these requests align with allowable uses of ESSER III funds as indicated on Oregon.gov, and confirmed with ODE approval. Once approved by ODE, each project will be listed on ODE's "ESSER II and ESSER III Capital Expenditures by District & ESD"

CBO School Name	*Project Name*	*Project Estimate*	*Project Description*
Helensview School	Wireless Radio Communication devices (ODE Project Tag 2180-15)	$ 25,179.46	**Radio devices for keeping students safe and promoting good communication across various locations across the school facility.** Allowable Use "Purchasing educational technology, which could include hardware, software, and connectivity, for students served by the LEA that aids in regular, substantive educational interaction between students and educators, including low-income students and students with disabilities. This could also include assistive technology or adaptive equipment. ARP Act Section 2001(e)(2)(K)."
Helensview School	Oregon Valley Greenhouse (ODE Project Tag 2180-14)	$ 38,294.00	This will address the unique needs of low-income children by providing **sustained opportunity for hands-on learning regarding food cycles, plant life cycles, sustainable agriculture practices, and related professional fields.** These types of hands-on programming are proven to promote high engagement for at-risk students enrolled in an alternative school, needing to tie high school completion to post graduate plans. Students enrolled at Helensview school were disproportionately impacted by the Covid Pandemic and the school is over 70% racially historically underserved.
Rosemary Anderson High School	RAHS North Campus Improvement (ODE Project Tag 2180-12)	$372,203.10	Increasing/expanding space to be able to offer differentiated services to students. This **safe, welcoming learning environment will support academic growth of students** and provide the opportunity to increase family/community engagement centered on promoting a healthy school climate and culture.

RELATED POLICIES/BEST PRACTICES

- PPS has developed a fund contract with each of our CBO schools which codifies various requirements of each grant available. This contract is updated annually to ensure compliance with updated standards.
- Each school has a fund approval planner between CBO school executive leadership and PPS Multiple Pathways Leadership. This document is used to ensure the appropriate use of funds, based on the various projects they wish to undertake. Additionally, the appropriate approvals are detailed on each school's fund planner.

FISCAL IMPACT

The funding identified for the requested capital improvements at Contracted Alternative Schools is designated ESSER III funding from 2021. This funding was approved in the overall ESSER allocations plan and as a part of the PPS District Budget process. There is no new funding requested. Funding identified for this project is required to be spent by September 30, 2024.

COMMUNITY ENGAGEMENT

CBO schools have engaged with their communities, leadership teams and individual organization's Board of Directors prior to submitting their capital improvement requests to the District.

TIMELINE FOR IMPLEMENTATION / EVALUATION

Following Board approval of these expenditures capital improvements will take place before ESSER III funds expiration date of 9/30/2024.

Evaluation of implementation will take place first by the CBO schools and vendors selected. Additional evaluation will be conducted during school site visits at CBO schools by Multiple Pathways to Graduation leaders.

BOARD OPTIONS WITH ANALYSIS

CBO school leadership has discretion in how they plan to use ESSER III Funds, as long as it aligns with allowable uses for each grant category and follows all state and federal grant guidelines.

Results of a yes vote: CBO schools will engage in projects as previously submitted and approved by ODE. These improvements will ensure higher levels of physical and environmental safety for PPS students.

Result of a no vote: CBO schools would not be able to proceed with much needed capital improvements as outlined and approved within the ESSER allowable uses.

CONNECTION TO BOARD GOALS

Projects seeking approval, align with at least two specific board goals as outlined in "Portland Public Schools Goals for Our Students 2022-2027" CBO schools operations and programming are all in direct alignment with goals for High School Graduation & Post-secondary Readiness.

STAFF RECOMMENDATION

Staff recommends that each of the Capital projects outlined above, exceeding $25,000,be approved by the Board since they meet the ESSER eligibility criteria and clearly align with district goals and priorities.

Side-by-side: ESSER, ESSER II, and ARP ESSER allowable activities

ESSER, passed as Section 18003 of the CARES Act in March 2020; ESSER II, passed as Section 313 of the CRRSA Act in December 2020; and ARP ESSER, included in Section 2001 of the American Rescue Plan Act, H.R. 1319, provides billions in funding for state and local educational agencies to spend on allowable activities to respond to COVID-19.

The following side-by-side chart shows the allowable activities for each pool of funding.

Allowable Activities for ESSER, ESSER II, and ARP ESSER		
ESSER (CARES Act)	**ESSER II (CRRSA Act)**	**ARP ESSER (ARP Act)**
Any activities authorized under the Elementary and Secondary Education Act, IDEA, Carl D. Perkins Career and Technical Education Act, Adult Education and Family Literacy Act, and McKinney-Vento. CARES Act Section 18003(d)(1).	Any activities authorized under the Elementary and Secondary Education Act, IDEA, Carl D. Perkins Career and Technical Education Act, Adult Education and Family Literacy Act, and McKinney-Vento. CRRSA Act Section 313(d)(1).	Any activities authorized under the Elementary and Secondary Education Act, IDEA, Carl D. Perkins Career and Technical Education Act, and Adult Education and Family Literacy Act. ARP Act Section 2001(e)(2)(A) through Section 2001(e)(2)(D).
Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to prevent, prepare for, and respond to the coronavirus. CARES Act Section 18003(d)(2).	Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to prevent, prepare for, and respond to the coronavirus. CRRSA Act Section 313(d)(2).	Coordination of preparedness and response efforts of LEAs with state, local, tribal, and territorial public health departments, and other relevant agencies, to prevent, prepare for, and respond to the coronavirus. ARP Act Section 2001(e)(2)(E).
Providing resources for principals and others school leaders to address school-specific needs. CARES Act Section 18003(d)(3).	Providing resources for principals and others school leaders to address school-specific needs. CRRSA Act Section 313(d)(3).	Not included in ARP Act.
Activities that address unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youths, including how outreach and service delivery will meet the needs of each population. CARES Act Section 18003(d)(4).	Activities that address unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youths, including how outreach and service delivery will meet the needs of each population. CRRSA Act Section 313(d)(4).	Activities that address unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youths, including how outreach and service delivery will meet the needs of each population. ARP Act Section 2001(e)(2)(F).

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Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs. CARES Act Section 18003(d)(5).	Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs. CRRSA Act Section 313(d)(5).	Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs. ARP Act Section 2001(e)(2)(G).
Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases. CARES Act Section 18003(d)(6).	Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases. CRRSA Act Section 313(d)(6).	Training and professional development for LEA staff on sanitation and minimizing the spread of infectious diseases. ARP Act Section 2001(e)(2)(H).
Purchasing supplies to sanitize and clean facilities operated by an LEA. CARES Act Section 18003(d)(7).	Purchasing supplies to sanitize and clean facilities operated by an LEA. CRRSA Act Section 313(d)(7).	Purchasing supplies to sanitize and clean facilities operated by an LEA. ARP Act Section 2001(e)(2)(I).
Planning and coordination during long-term closures, including how to provide meals to eligible students, how to provide online learning technology to all students, how to provide guidance on meeting IDEA requirements, and how to ensure other educational services can continue to be provided consistent with federal, state, and local requirements. CARES Act Section 18003(d)(8).	Planning and coordination during long-term closures, including how to provide meals to eligible students, how to provide online learning technology to all students, how to provide guidance on meeting IDEA requirements, and how to ensure other educational services can continue to be provided consistent with federal, state, and local requirements. CRRSA Act Section 313(d)(8).	Planning and coordination during long-term closures, including how to provide meals to eligible students, how to provide online learning technology to all students, how to provide guidance on meeting IDEA requirements, and how to ensure other educational services can continue to be provided consistent with federal, state, and local requirements. ARP Act Section 2001(e)(2)(J).
Purchasing educational technology, which could include hardware, software, and connectivity, for students served by the LEA that aids in regular, substantive educational interaction between students and educators, including low-income students and students with disabilities. This could also include assistive technology or adaptive equipment. CARES Act Section 18003(d)(9).	Purchasing educational technology, which could include hardware, software, and connectivity, for students served by the LEA that aids in regular, substantive educational interaction between students and educators, including low-income students and students with disabilities. This could also include assistive technology or adaptive equipment. CRRSA Act Section 313(d)(9).	Purchasing educational technology, which could include hardware, software, and connectivity, for students served by the LEA that aids in regular, substantive educational interaction between students and educators, including low-income students and students with disabilities. This could also include assistive technology or adaptive equipment. ARP Act Section 2001(e)(2)(K).
Providing mental health services and supports. CARES Act Section 18003(d)(10).	Providing mental health services and supports. CRRSA Act Section 313(d)(10).	Providing mental health services and supports. ARP Act Section 2001(e)(2)(L).

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Planning and implementing summer learning and supplemental afterschool program activities, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care. CARES Act Section 18003(d)(11).	Planning and implementing summer learning and supplemental afterschool program activities, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care. CRRSA Act Section 313(d)(11).	Planning and implementing summer learning and supplemental afterschool program activities, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care. ARP Act Section 2001(e)(2)(M).
Other activities necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff. CARES Act Section 18003(d)(12).	Other activities necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff. CRRSA Act Section 313(d)(15).	Other activities necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff ARP Act Section 2001(e)(2)(R)
	Addressing learning loss among all students in all subgroups, including by: • Administering high-quality, reliable assessments that can assess student academic progress and assist educators in meeting student needs, including by using differentiated instruction. • Implementing evidence-based activities to meet the comprehensive needs of students. • Providing information and assistance to parents and families on ways to support students. • Tracking student performance and engagement in distance learning environments. CRRSA Act Section 313(d)(12).	Addressing learning loss among all students in all subgroups, including by: • Administering high-quality, reliable assessments that can assess student academic progress and assist educators in meeting student needs, including by using differentiated instruction. • Implementing evidence-based activities to meet the comprehensive needs of students. • Providing information and assistance to parents and families on ways to support students. • Tracking student performance and engagement in distance learning environments. ARP Act Section 2001(e)(2)(N).
	School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards and support student health needs. CRRSA Act Section 313(d)(13).	School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards and support student health needs. ARP Act Section 2001(e)(2)(O).

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	Inspecting, testing, maintaining, repairing, replacing, and upgrading projects to improve the indoor air quality in school facilities, including HVAC systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement. CRRSA Act Section 313(d)(14).	Inspecting, testing, maintaining, repairing, replacing, and upgrading projects to improve the indoor air quality in school facilities, including HVAC systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement. ARPA Section 2001(e)(2)(P).
		Development of strategies and implementation of public health protocols that align with Centers for Disease Control and Prevention guidance on reopening and operating school facilities to maintain the health and safety of students, educators, and other staff. ARPA Section 2001(e)(2)(Q).

Source: CARES Act Section 18003; CRRSA Act Section 313; and American Rescue Plan Act, H.R. 1319.

--Charles Hendrix covers education funding and other Title I issues for LRP Publications.

March 11, 2021

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Office of Finance and Information Technology

Last Update: 4/3/2022

School Finance

ESSER II and ESSER III Capital Expenditures by District and ESD

8	Pending Requests
1083	Approved Requests

Entity ID	Entity Name	Fund Source	Project Tag	Expenditure Name	Approved?
2113	Adrian SD 61	ESSER II	2113-01	Engineering for the Remodeling/Reclamation of Two Classrooms	Yes
1899	Alsea SD 7J	ESSER II	1899-01	Classrooms and Cafeteria COVID Barriers/Dividers	Yes
1899	Alsea SD 7J	ESSER II	1899-02	School Entrance Synergy Clear Kiosk	Yes
2252	Amity SD 4J	ESSER II	2252-01	Cooling System - Amity High School	Yes
2252	Amity SD 4J	ESSER III	2252-02	Amity High School Gym HVAC	Yes
2252	Amity SD 4J	ESSER III	2252-03	Amity Elementary HVAC	Yes
2252	Amity SD 4J	ESSER II	2252-04A	Cooling System HS Library/Science/Health/Art Rooms	Yes
2252	Amity SD 4J	ESSER III	2252-04B	Cooling System HS Library/Science/Health/Art Rooms	Yes
2252	Amity SD 4J	ESSER III	2252-05	Structure Support required for 2252-02 HS Gym Air/Cooling System	Yes
2252	Amity SD 4J	ESSER III	2252-06	Expansion of Physical Education Facility	Yes
2252	Amity SD 4J	ESSER III	2252-07	MS Wall	Yes
2252	Amity SD 4J	ESSER II	2252-08	Floor Scrubber	Yes
2115	Arock SD 81	ESSER II	2115-01A	Bus Shed Conversion- Bus Portion	Yes
2115	Arock SD 81	ESSER III	2115-01B	Bus Shed Conversion- CTE portion	Yes
2115	Arock SD 81	ESSER II	2115-02	Classroom Carpet Installation	Yes
2115	Arock SD 81	ESSER II	2115-03	WW Jones School HVAC	Yes
2115	Arock SD 81	ESSER III	2115-04	New Bus	Yes
2051	Ashwood SD 8	ESSER III	2051-01	Ashwood School Window Replacement & Ventilation Upgrade	Yes
2051	Ashwood SD 8	ESSER II	2051-02	Ashwood School HVAC System Upgrade	Yes
2208	Athena-Weston SD 29RJ	ESSER III	2208-01	Air Filtration System	Yes
2208	Athena-Weston SD 29RJ	ESSER III	2208-02	Outdoor Learning Shade Structures	Yes
1894	Baker SD 5J	ESSER II	1894-01	District Office Network Equipment	Yes
1894	Baker SD 5J	ESSER III	1894-02	Brooklyn Primary Food Preparation Table	Yes
1894	Baker SD 5J	ESSER III	1894-03	Baker Early Learning Center Delta Inclined Platform Lift	Yes
1894	Baker SD 5J	ESSER II	1894-04A	Baker Early Learning Center Auditorium curtains and installment	Yes
1894	Baker SD 5J	ESSER III	1894-04B	Baker Early Learning Center Auditorium curtains and installment	Yes
1894	Baker SD 5J	ESSER III	1894-05	Keating Elementary School Playground	Yes
1894	Baker SD 5J	ESSER III	1894-06	Keating Elementary School Play Structure Installation	Yes
1894	Baker SD 5J	ESSER III	1894-07	Baker High School Transportation: Mini Bus	Yes
1894	Baker SD 5J	ESSER III	1894-08	Baker High School Computer Navigated Cutting machine	Yes
1894	Baker SD 5J	ESSER III	1894-09	Baker High School Auditorium curtains/lighting/sound	Yes
1894	Baker SD 5J	ESSER III	1894-10	Baker High School Credit Recovery Room Flooring	Yes
1894	Baker SD 5J	ESSER III	1894-11	Bicycle Trailer	Yes
1894	Baker SD 5J	ESSER III	1894-12	Commercial Grade Dishwasher	Yes
1894	Baker SD 5J	ESSER III	1894-13	Commercial Grade Gas Range w/Convection Oven	Yes
1894	Baker SD 5J	ESSER III	1894-14	Commercial Grade Gas Convection Oven	Yes
1894	Baker SD 5J	ESSER III	1894-15	Commercial Grade Gas Range with Charbroiler and Standard Oven Base	Yes
1894	Baker SD 5J	ESSER III	1894-16	Culinary Arts Room Remodel	Yes
1894	Baker SD 5J	ESSER II	1894-17	South Baker Intermediate Play Structure	Yes
1894	Baker SD 5J	ESSER II	1894-18	Baker Early Learning Center Swingset	Yes
1894	Baker SD 5J	ESSER II	1894-19	Baker Technical Institute Forklifts	Yes
1894	Baker SD 5J	ESSER II	1894-20	Baker High School Outdoor Learning Space	Yes
1894	Baker SD 5J	ESSER II	1894-21	Baker High School Credit Recovery Space	Yes
1894	Baker SD 5J	ESSER II	1894-22	Baker School District Delivery Van	Yes
1894	Baker SD 5J	ESSER II	1894-23	Computer Network Upgrade -- District Office	Yes
1894	Baker SD 5J	ESSER II	1894-24	Computer Network Upgrade -- Haines Elementary	Yes
1894	Baker SD 5J	ESSER II	1894-25	Computer Network Upgrade -- Keating Elementary	Yes
1894	Baker SD 5J	ESSER II	1894-26	Computer Network Upgrade -- South Baker Intermediate	Yes
1894	Baker SD 5J	ESSER II	1894-27	Computer Network Upgrade -- Brooklyn Primary School	Yes
1894	Baker SD 5J	ESSER II	1894-28	Computer Network Upgrade -- Baker Middle School	Yes
1894	Baker SD 5J	ESSER II	1894-29	Computer Network Upgrade -- Baker High School	Yes
1894	Baker SD 5J	ESSER II	1894-30	Computer Network Upgrade -- North Baker Campus BELC and Eagle Cap	Yes
1894	Baker SD 5J	ESSER II	1894-31	Computer Network Upgrade -- Baker Web Academy	Yes
1894	Baker SD 5J	ESSER II	1894-32	Computer Network Upgrade -- Transportation and Maintenance	Yes
1894	Baker SD 5J	ESSER II	1984-33A	School Buildings HVAC Upgrades	Yes
1894	Baker SD 5J	ESSER III	1984-33B	School Buildings HVAC Upgrades	Yes
1894	Baker SD 5J	ESSER III	1984-34	District Computer Network Upgrades	Yes
1969	Bandon SD 54	ESSER II	1969-01	Floor Scrubber for High School	Yes
1969	Bandon SD 54	ESSER III	1969-02	High School HVAC Replacement	Yes
1969	Bandon SD 54	ESSER III	1969-03	Expansion of a CTE Building for MS and HS students	Yes
2243	Beaverton SD 48J	ESSER III	2243-01	Add mechanical ventilation to the Barnes Elementary School (ES) gymnasium.	Yes
2243	Beaverton SD 48J	ESSER III	2243-02	Add mechanical ventilation to the West TV (ES) gymnasium.	Yes
2243	Beaverton SD 48J	ESSER III	2243-03	Improve mechanical ventilation to the Montclair Elementary School (ES) gym.	Yes
2243	Beaverton SD 48J	ESSER III	2243-04	HVAC upgrades for McKinley Elementary School (ES), Kinnaman ES, and Errol Hassell ES.	Yes
2243	Beaverton SD 48J	ESSER III	2243-05	Upgrade and replacement of HVAC in the International School of Beaverton (ISB) gym and mod	Yes
2243	Beaverton SD 48J	ESSER III	2243-06	Replace aging HVAC rooftop units and upgrade controls at Southridge High School (HS)	Yes
2243	Beaverton SD 48J	ESSER III	2243-07	Improve ventilation in the West TV Elementary School (ES) cafeteria	Yes
2243	Beaverton SD 48J	ESSER III	2243-08	International School of Beaverton (ISB): Replace rooftop HVAC units above A & B halls, miscell	Yes
2243	Beaverton SD 48J	ESSER III	2243-09	HVAC Upgrades to Elmonica ES, Greenway ES, Nancy Ryles ES, and Stoller MS	Yes
2243	Beaverton SD 48J	ESSER III	2243-10	HVAC repairs to Hiteon Elementary School (ES)	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-01	La Pine Middle School HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-02	High Desert Middle School HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-03	Juniper Elementary HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-04	Rosland Elementary HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-05	Kenwood Elementary HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-06	Three Rivers School HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-07	Maintenance Facility HVAC Controls	Yes
1976	Bend-LaPine Administrative SD 1	ESSER III	1976-08	Bend International School Multi Purpose Space	pending
2088	Bethel SD 52	ESSER II	2088-01	Willamette HS Electric Blodgett Combo Oven	Yes
2088	Bethel SD 52	ESSER III	2088-02	Clear Lake HVAC	Yes
2088	Bethel SD 52	ESSER III	2088-03	Danebo HVAC	Yes
2088	Bethel SD 52	ESSER III	2088-04	Irving HVAC	Yes
2088	Bethel SD 52	ESSER III	2088-05	Shasta HVAC	Yes
2088	Bethel SD 52	ESSER III	2088-06	Van	Yes
2088	Bethel SD 52	ESSER II	2088-07	WHS Camera Replacement	Yes
2088	Bethel SD 52	ESSER III	2088-08	Van	Yes
2095	Blachly SD 90	ESSER II	2095-01A	TCLS Main Office Modular	Yes

2095	Blachly SD 90	ESSER III	2095-01B	TCLS Main Office Modular	Yes
2095	Blachly SD 90	ESSER III	2095-02	Elementary Playground Structure	Yes
2095	Blachly SD 90	ESSER II	2095-03	Relocation of MS/HS Weight Room	Yes
2095	Blachly SD 90	ESSER III	2095-04	Playground Expansion	Yes
1974	Brookings-Harbor SD 17C	ESSER II	1974-01	School Bus x3	Yes
1974	Brookings-Harbor SD 17C	ESSER II	1974-02	Brookings-Harbor HS Floor Scrubber	Yes
1974	Brookings-Harbor SD 17C	ESSER II	1974-03	Kalmiopsis Elementary HVAC	Yes
1974	Brookings-Harbor SD 17C	ESSER II	1974-04	Azalea Middle School HVAC	Yes
1974	Brookings-Harbor SD 17C	ESSER II	1974-05	Brookings Harbor High School HVAC	Yes
1974	Brookings-Harbor SD 17C	ESSER III	1974-06	10 Passenger Van	Yes
1974	Brookings-Harbor SD 17C	ESSER III	1974-07	Expanded Outdoor Learning Spaces	Yes
1974	Brookings-Harbor SD 17C	ESSER III	1974-08	Elementary And Middle School Floor Scrubbers	Yes
1974	Brookings-Harbor SD 17C	ESSER III	1974-09	BHDS Media Upgrades	Yes
1995	Camas Valley SD 21J	ESSER II	1995-01	Weight Room Remodel & Refurbish	Yes
1995	Camas Valley SD 21J	ESSER II	1995-02	New Modular	Yes
1995	Camas Valley SD 21J	ESSER II	1995-03	Air Filtration Systems	Yes
1995	Camas Valley SD 21J	ESSER III	1995-04	Camas Valley Charter School New Track	Yes
1995	Camas Valley SD 21J	ESSER II	1995-05	New and Safe Access for the Barn	Yes
1995	Camas Valley SD 21J	ESSER III	1995-06	Athletic and Functional Fencing	Yes
2139	Cascade SD 5	ESSER II	2139-01	Air Purification System	Yes
2139	Cascade SD 5	ESSER II	2139-02	Air Purification System	Yes
2139	Cascade SD 5	ESSER II	2139-03	HVAC Improvement Cascade Sr. High	Yes
2139	Cascade SD 5	ESSER II	2139-04	Security Cameras	Yes
2139	Cascade SD 5	ESSER III	2139-05	Inclusive Elementary Playground	Yes
2139	Cascade SD 5	ESSER III	2139-06	Secondary Campus Modular Classroom Spaces	Yes
2185	Centennial SD 28J	ESSER II	2185-01	Hazardous Flooring Replacement	Yes
2185	Centennial SD 28J	ESSER III	2185-02	Ventilation Repairs & Enhancements	Yes
2185	Centennial SD 28J	ESSER III	2185-03	Bus Replacement	Yes
2185	Centennial SD 28J	ESSER III	2185-04	Network Infrastructure Improvements	Yes
2185	Centennial SD 28J	ESSER III	2185-05	Ventilation Repairs & Enhancements	Yes
2185	Centennial SD 28J	ESSER III	2185-06	Hazard Abatement, Remediation, and Repairs	Yes
1972	Central Curry SD 1	ESSER II	1972-01	Gold Beach High School Floor Scrubbers	Yes
1972	Central Curry SD 1	ESSER II	1972-02	School Busses	Yes
1972	Central Curry SD 1	ESSER III	1972-03	School Busses	Yes
2105	Central Linn SD 552	ESSER II	2105-01	Central Linn ES Library HVAC	Yes
2105	Central Linn SD 552	ESSER II	2105-02	CLHS AG Building HVAC	Yes
2105	Central Linn SD 552	ESSER II	2105-03	CLES Gyms HVAC	Yes
2105	Central Linn SD 552	ESSER II	2105-04	Phone and Intercom System Replacement	Yes
2105	Central Linn SD 552	ESSER III	2105-05	CTE Capital Project	Yes
2042	Central Point SD 6	ESSER II	2042-01	Scenic Middle School Modular Classroom	Yes
2042	Central Point SD 6	ESSER II	2042-02A	Hanby Middle School Third Floor Renovation	Yes
2042	Central Point SD 6	ESSER III	2042-02B	Hanby Middle School Third Floor Renovation	Yes
2042	Central Point SD 6	ESSER III	2042-03	Hanby Middle School Third Floor HVAC/Windows	Yes
2042	Central Point SD 6	ESSER II	2042-04	Transportation Van	Yes
2042	Central Point SD 6	ESSER III	2042-05	SMS Drumline Instruments	Yes
2191	Central SD 13J	ESSER III	2191-01	Type 10 Vehicle - McKinney Vento Transport	Yes
1945	Clatskanie SD 6J	ESSER II	1945-01	Playcore Game Structure Match	Yes
1945	Clatskanie SD 6J	ESSER II	1945-02	High School Dry Box	Yes
1945	Clatskanie SD 6J	ESSER II	1945-03	District Office Dry Box	Yes
1927	Colton SD 53	ESSER III	1927-01	District Office Heat Pump	Yes
1927	Colton SD 53	ESSER III	1927-02	CHS Heat Pump	Yes
1927	Colton SD 53	ESSER III	1927-03	CMS Heat Pump	Yes
1927	Colton SD 53	ESSER III	1927-04	Wireless Access Points	Yes
2223	Columbia Gorge ESD	ESSER II	2223-01	Distance Learning/Meeting Camera System	Yes
2006	Condon SD 25J	ESSER III	2006-01	Type 10 Transportation	Yes
1965	Coos Bay SD 9	ESSER II	1965-01	Vehicle for Attendance Advocates	Yes
1965	Coos Bay SD 9	ESSER II	1965-02	Floor scrubbers for Sunset School and Marshfield Junior High	Yes
1965	Coos Bay SD 9	ESSER III	1965-03	Millicoma HVAC Project	Yes
1964	Coquille SD 8	ESSER III	1964-01	Classroom Modular - Winter Lakes ES	Yes
1964	Coquille SD 8	ESSER III	1964-02	Classroom Modular - Winter Lakes HS	Yes
1964	Coquille SD 8	ESSER III	1964-03	Bus Purchase	Yes
1964	Coquille SD 8	ESSER II	1964-04	Playground Equipment	Yes
1964	Coquille SD 8	ESSER II	1964-05	Used Truck Driving Simulator - CTE	Yes
1964	Coquille SD 8	ESSER II	1964-06A	Used MX2 Flight Simulator	Yes
1964	Coquille SD 8	ESSER III	1964-06B	Used MX2 Flight Simulator	Yes
1964	Coquille SD 8	ESSER III	1964-07	School Bus	Yes
1964	Coquille SD 8	ESSER III	1964-08	Food Service Vehicle	Yes
1964	Coquille SD 8	ESSER III	1964-09	Retractable Awning	Yes
2216	Cove SD 15	ESSER II	2216-01	Internet Fiber Connectivity	Yes
2216	Cove SD 15	ESSER III	2216-02	Mental Health and Nursing Services Workspace	Yes
2086	Creswell SD 40	ESSER II	2086-01	Creswell Middle School Turf Field	Yes
1970	Crook County SD	ESSER II	1970-01	Crook County Middle School Modular Decks and Ramps	Yes
1970	Crook County SD	ESSER II	1970-02	Barnes Butte Elementary Air Conditioning	Yes
1970	Crook County SD	ESSER II	1970-03	Pioneer Complex Campus HVAC	Yes
1970	Crook County SD	ESSER III	1970-04	Powell Butte Indoor Air Quality Improvements	Yes
1970	Crook County SD	ESSER II	1970-05	Crook County Middle School Modular Infrastructure/Classrooms	Yes
1970	Crook County SD	ESSER III	1970-06	Pioneer Alternative High School New Building Construction	Yes
1970	Crook County SD	ESSER II	1970-07	Modular Building Lease Crook County Middle School	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER II	2089-01A	Crow Middle/High School Locker Room Restoration	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER III	2089-01B	Crow Middle/High School Locker Room Restoration	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER III	2089-02	Applegate Elementary School Outdoor Bathrooms Restoration	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER III	2089-03	Applegate Elementary School Field Development	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER III	2089-04	Crow Middle/High School Wood Shop Floor Restoration	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER III	2089-05	Applegate Elementary School Playground Restoration	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER II	2089-06	CAL SD Bus Replacement	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER II	2089-07	Security System	Yes
2089	Crow-Applegate-Lorane SD 66	ESSER II	2089-08	Sanitizing Dishwasher for CMHS	Yes
2050	Culver SD 4	ESSER III	2050-01	Type 20 Bus Purchase	Yes
2050	Culver SD 4	ESSER III	2050-02	Commercial Grade Dishwasher	Yes
2050	Culver SD 4	ESSER III	2050-03	Commercial Grade Combination Oven	Yes
2050	Culver SD 4	ESSER III	2050-04	Commercial Grade Tilt Skillet	Yes
2050	Culver SD 4	ESSER III	2050-05	Modular Building	Yes
2190	Dallas SD 2	ESSER II	2190-01	Boardroom Technology for Public Digital Access	Yes
2190	Dallas SD 2	ESSER III	2190-02	Outdoor Covered Learning Structure LVCS	Yes
2190	Dallas SD 2	ESSER III	2190-03	Dallas Community School Playground/Physical Fitness Equipment	Yes
2190	Dallas SD 2	ESSER III	2190-04	Dallas Community School CTE Instructional Makerspace	Yes

2187	David Douglas SD 40	ESSER III	2187-01	New School buses	Yes
2187	David Douglas SD 40	ESSER III	2187-02	Menlo Park HVAC Replacement	Yes
2187	David Douglas SD 40	ESSER III	2187-03	New School Busses, Round 2	Yes
2253	Dayton SD 8	ESSER II	2253-01	Modular Classroom at JH/HS	Yes
2253	Dayton SD 8	ESSER III	2253-02	ADA Accessible Playground	Yes
2011	Dayville SD 16J	ESSER III	2011-01	Elementary HVAC	Yes
2011	Dayville SD 16J	ESSER III	2011-02	Gymnasium HVAC	Yes
2017	Diamond SD 7	ESSER II	2017-01A	Diamond SD HVAC	Yes
2017	Diamond SD 7	ESSER III	2017-01B	Diamond SD HVAC	Yes
2017	Diamond SD 7	ESSER III	2017-02	School Flooring	Yes
1993	Douglas County SD 15	ESSER II	1993-01	Replacement Server	Yes
1993	Douglas County SD 15	ESSER II	1993-02	Security Cameras	Yes
1993	Douglas County SD 15	ESSER III	1993-03	Baseball Field Renovation	Yes
1991	Douglas County SD 4	ESSER II	1991-01	Roseburg High School Shade Structure	Yes
1991	Douglas County SD 4	ESSER II	1991-02	Roseburg High School Shade Structure	Yes
1991	Douglas County SD 4	ESSER II	1991-03A	Phoenix Charter School HVAC Upgrades	Yes
1991	Douglas County SD 4	ESSER III	1991-03B	Phoenix Charter School HVAC Upgrades	Yes
1991	Douglas County SD 4	ESSER II	1991-04	Fremont Middle School Gym HVAC Upgrade	Yes
1991	Douglas County SD 4	ESSER III	1991-05	Roseburg High School modular classrooms	Yes
1991	Douglas County SD 4	ESSER III	1991-06	Elementary school campus fencing, all schools	Yes
2019	Drewsey SD 13	ESSER II	2019-01A	Drewsey Asbestos Removal	Yes
2019	Drewsey SD 13	ESSER III	2019-01B	Drewsey Asbestos Removal	Yes
2229	Dufur SD 29	ESSER III	2229-01	2004 Dodge Pickup	Yes
2229	Dufur SD 29	ESSER III	2229-02	Outdoor Canopies	Yes
2229	Dufur SD 29	ESSER III	2229-03	CTE Curriculum	Yes
2229	Dufur SD 29	ESSER III	2229-04	Security Camera System	Yes
2043	Eagle Point SD 9	ESSER II	2043-01	Crater Lake Academy K-8 Campus HVAC	Yes
2043	Eagle Point SD 9	ESSER II	2043-02	Crater Lake Academy High School Campus HVAC	Yes
2043	Eagle Point SD 9	ESSER III	2043-03	Table Rock Elementary School Modular Classrooms Building	Yes
2203	Echo SD 5	ESSER II	2203-01	Middle and High School Lockers	Yes
2203	Echo SD 5	ESSER II	2203-02	CTE Instructional Space & Building	Yes
2217	Elgin SD 23	ESSER II	2217-01	Playground Upgrade	Yes
2217	Elgin SD 23	ESSER II	2217-02	Playground Equipment Upgrade	Yes
2217	Elgin SD 23	ESSER III	2217-03	Air Quality Facility Upgrade	Yes
2217	Elgin SD 23	ESSER II	2217-04	High School Grounds	Yes
1998	Elkton SD 34	ESSER II	1998-01	Elkton Elementary and Elkton High School Air Purifiers for HVAC	Yes
1998	Elkton SD 34	ESSER II	1998-02	Fresh Air Exchange Systems	Yes
1998	Elkton SD 34	ESSER III	1998-03	New HVAC System installation Gym and Classroom Spaces	Yes
2221	Enterprise SD 21	ESSER III	2221-01	Targeted replacement of end of life existing HVAC	Yes
1930	Estacada SD 108	ESSER III	1930-01	High School and Middle School Update AP/Wi-Fi access	Yes
1930	Estacada SD 108	ESSER II	1930-02	High School and Middle School Video Conferencing	Yes
1930	Estacada SD 108	ESSER II	1930-03	All District Buildings HVAC	Yes
1930	Estacada SD 108	ESSER II	1930-04	District Grounds Mower	Yes
1930	Estacada SD 108	ESSER II	1930-05	Middle School Auto Scrubber	Yes
1930	Estacada SD 108	ESSER III	1930-06	River Mill Elementary Modular (new)	Yes
1930	Estacada SD 108	ESSER III	1930-07	District Office Modular	Yes
1930	Estacada SD 108	ESSER III	1930-08	River Mill Elementary Modular (update and move existing)	Yes
1930	Estacada SD 108	ESSER III	1930-09	High School Generator	Yes
1930	Estacada SD 108	ESSER III	1930-10	River Mill, Clackamas River, and Middle School Access Control	Yes
1930	Estacada SD 108	ESSER III	1930-11	High School Dishwasher and Steamer	Yes
1930	Estacada SD 108	ESSER III	1930-12	High School Weight room HVAC	Yes
1930	Estacada SD 108	ESSER III	1930-13	Adult Transition Program - Building	Yes
1930	Estacada SD 108	ESSER III	1930-14	Air Conditioners for Air Quality	Yes
2082	Eugene SD 4J	ESSER II	2082-01	Village School HVAC Upgrade Installation	Yes
2082	Eugene SD 4J	ESSER III	2082-02	Colin Kelly Middle School Portable Classrooms	Yes
2082	Eugene SD 4J	ESSER II	2082-03	Ridgeline HVAC Improvements	Yes
2082	Eugene SD 4J	ESSER III	2082-04	Ridgeline HVAC Improvements	Yes
2082	Eugene SD 4J	ESSER III	2082-05	Five Type 10 Vans for Student Transportation	Yes
2082	Eugene SD 4J	ESSER III	2082-06	Covered Outdoor Shelter	Yes
2082	Eugene SD 4J	ESSER III	2082-07	Awning Upgrade at the Village School	Yes
2082	Eugene SD 4J	ESSER III	2082-08	Bathroom Upgrades at the Village School	Yes
2082	Eugene SD 4J	ESSER III	2082-09	Courtyard Seating upgrade at the Village School	Yes
2082	Eugene SD 4J	ESSER III	2082-10	Flooring Upgrade at the Village School	Yes
2082	Eugene SD 4J	ESSER III	2082-11	Windows Upgrade at the Village School	Yes
2082	Eugene SD 4J	ESSER III	2082-12	Coburg Community Charter School- Repairs on Heating System	Yes
2193	Falls City SD 57	ESSER III	2193-01	High School Modular	Yes
2193	Falls City SD 57	ESSER II	2193-02	Gym Floor	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-01	High School Health Clinic	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-02	Fern Ridge Middle School Restroom Renovation	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-03	Fern Ridge Middle School Carpet Replacement	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-04	Fern Ridge Middle School Door Replacement	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-05	Veneta Elementary Carpet Replacement	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-06	Elmira Elementary School Playground	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-07	Fern Ridge SD Buildings - Cameral Systems Upgrade	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-08	Fern Ridge SD Buildings - Cafeteria Tables	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-09	Elmira High School Gym Floor Auto Scrubber	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-10	Elmira High School and Fern Ridge High School Self Contained Carpet Extractor	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-11	Installation and Finishing for New "Portable" Building	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-12	Replace and Install Outdoor PA Systems	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-13	Karcher Chariot Ride Vacuum	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-14A	HVAC Controls Upgrade	Yes
2084	Fern Ridge SD 28J	ESSER III	2084-14B	HVAC Controls Upgrade	Yes
2084	Fern Ridge SD 28J	ESSER II	2084-15	Fern Ridge Middle School Carpet Removal and Replacement	Yes
2084	Fern Ridge SD 28J	ESSER III	2084-16	Elmira High school intercom - communication system	Yes
2084	Fern Ridge SD 28J	ESSER III	2084-17	Fern Ridge School District Warehouse Improvements	Yes
2084	Fern Ridge SD 28J	ESSER III	2084-18	EHS Hot Water Heater	Yes
2241	Forest Grove SD 15	ESSER II	2241-01	Unit Ventilator Replacement	Yes
2241	Forest Grove SD 15	ESSER II	2241-02	Air Handler Replacement	Yes
2241	Forest Grove SD 15	ESSER II	2241-03	Neil Armstrong MS Exhaust	Yes
2241	Forest Grove SD 15	ESSER III	2241-04	FGCS Classroom Remodel	Yes
2241	Forest Grove SD 15	ESSER III	2241-05	FGCS HVAC Upgrade	Yes
2241	Forest Grove SD 15	ESSER II	2241-06	FX 80 Upgrades	Yes
2241	Forest Grove SD 15	ESSER II	2241-07	Neil Armstrong MS Boiler	Yes
2241	Forest Grove SD 15	ESSER III	2241-08	Neil Armstrong Storage Container	Yes
2241	Forest Grove SD 15	ESSER II	2241-09	HVAC Improvements	Yes
2241	Forest Grove SD 15	ESSER III	2241-10	Window Replacements	Yes

2241	Forest Grove SD 15	ESSER III	2241-11	Chiller Replacement	Yes
2241	Forest Grove SD 15	ESSER III	2241-12	Safety & Security	Yes
2248	Fossil SD 21J	ESSER II	2248-01A	Upgrade Grade School HVAC	Yes
2248	Fossil SD 21J	ESSER III	2248-01B	Upgrade Grade School HVAC	Yes
4040	Four Rivers Community School	ESSER II	2108-100	FRCS Elementary/Jr Prep Outdoor Table	Yes
4040	Four Rivers Community School	ESSER II	2108-101	FRCS Classroom Desks	Yes
4040	Four Rivers Community School	ESSER II	2108-102	FRCS Upgrade to VOIP Phone Systems	Yes
4040	Four Rivers Community School	ESSER II	2108-103	FRCS Jr Prep Carpet Replacement	Yes
4040	Four Rivers Community School	ESSER II	2108-104	FRCS Storage Container	Yes
4040	Four Rivers Community School	ESSER II	2108-105	FRCS Outdoor Basketball Court	Yes
4040	Four Rivers Community School	ESSER II	2108-106	FRCS Community School Front Parking Lot	Yes
4040	Four Rivers Community School	ESSER II	2108-107	Tennis Courts	Yes
4040	Four Rivers Community School	ESSER II	2108-108	IT Office Space	Yes
4040	Four Rivers Community School	ESSER II	2108-109A	Purchase of Additional Facility Space	Yes
4040	Four Rivers Community School	ESSER III	2108-109B	Purchase of Additional Facility Space	Yes
4040	Four Rivers Community School	ESSER III	2108-110	Painting of Purchased Facility	Yes
4040	Four Rivers Community School	ESSER III	2108-111	Security Cameras for Purchased Facility	Yes
4040	Four Rivers Community School	ESSER III	2108-112	Outdoor Electronic Reader Board	Yes
4040	Four Rivers Community School	ESSER III	2108-113	FRCS Exterior Door	Yes
4040	Four Rivers Community School	ESSER III	2108-114	Wall for Health and Wellness Space	Yes
4040	Four Rivers Community School	ESSER III	2108-115	Health and Wellness Equipment	Yes
4040	Four Rivers Community School	ESSER III	2108-116	Flooring for Yoga Space	Yes
4040	Four Rivers Community School	ESSER III	2108-117	Gender Neutral Staff Restroom	Yes
4040	Four Rivers Community School	ESSER III	2108-118	School Accounting Software	Yes
4040	Four Rivers Community School	ESSER III	2108-220	Gym Floor Replacement	Yes
2245	Gaston SD 511J	ESSER III	2245-01	Gaston SD Touchless Drinking Fountains	Yes
2245	Gaston SD 511J	ESSER III	2245-02	Gaston SD 30x20 Carport for Outdoor Eating Space (x2)	Yes
2245	Gaston SD 511J	ESSER II	2245-03	Gaston JSHS Lighting Pole Restoration	Yes
2245	Gaston SD 511J	ESSER II	2245-04	HVAC Air Circulation	Yes
2245	Gaston SD 511J	ESSER II	2245-05	Outside Lighting	Yes
2137	Gervais SD 1	ESSER II	2137-01	Gervais SD Insta-Trace Tracking Badges	Yes
2137	Gervais SD 1	ESSER II	2137-02	Gervais SD Replace Infrastructure Switches	Yes
2137	Gervais SD 1	ESSER II	2137-03	Gervais SD Chromebooks	Yes
2137	Gervais SD 1	ESSER II	2137-04	Gervais SD Touchless Paper Towel and Soap Dispensers	Yes
2137	Gervais SD 1	ESSER II	2137-05	Sam Brown Academy Window Replacement	Yes
2137	Gervais SD 1	ESSER II	2137-06	GMS Sport Court Flooring, part 1	Yes
2137	Gervais SD 1	ESSER II	2137-07	Infrastructure Upgrades	Yes
2137	Gervais SD 1	ESSER II	2137-08	Gervais Elementary School Tent	Yes
2137	Gervais SD 1	ESSER III	2137-09	Gervais Middle School Tent	Yes
2137	Gervais SD 1	ESSER II	2137-10	District Hotspots	Yes
2137	Gervais SD 1	ESSER II	2137-11	TeachLogic IRQ-3650 Quantum II Wireless System	Yes
2137	Gervais SD 1	ESSER III	2137-12	Contact Tracing Badges Batteries & Subscription Renewal	Yes
2137	Gervais SD 1	ESSER III	2137-13	GMS Sport Court Flooring, part 2	Yes
2137	Gervais SD 1	ESSER III	2137-14	Tech: Wireless bridge; Laptops and Chromebooks	Yes
2137	Gervais SD 1	ESSER III	2137-15	GHS Commercial Washing Machine	Yes
2137	Gervais SD 1	ESSER III	2137-16	Gervais Middle School Desks	Yes
1931	Gladstone SD 115	ESSER II	1931-01	Germicidal UV-C Equipment & Retrofit Installation	Yes
1931	Gladstone SD 115	ESSER II	1931-02	Kraxberger Middle School Boiler Conversion	Yes
2000	Glendale SD 77	ESSER III	2000-01	Glendale Elementary School Parking Lot Paving	Yes
2000	Glendale SD 77	ESSER III	2000-02	Glendale Jr. High/High School Parking Lot Paving/Resealing/Coating	Yes
2000	Glendale SD 77	ESSER III	2000-03	Glendale Jr. High/High School Community Basketball Court Paving	Yes
2000	Glendale SD 77	ESSER II	2000-04	Glendale High School Merchandiser Equipment	Yes
2000	Glendale SD 77	ESSER III	2000-06	Bleachers for the High School	Yes
2000	Glendale SD 77	ESSER II	2000-07	Digital Reader Board for Junior/High School	Yes
2000	Glendale SD 77	ESSER II	2000-08	Digital Reader Board for Elementary School	Yes
1992	Glide SD 12	ESSER II	1992-01	Elementary Window Tinting	Yes
1992	Glide SD 12	ESSER II	1992-02	Middle/High School Window Tinting	Yes
1992	Glide SD 12	ESSER II	1992-03	Glide Elementary School Play Structure and Resurfacing	Yes
1992	Glide SD 12	ESSER II	1992-04A	Outdoor Cover Structure	Yes
1992	Glide SD 12	ESSER III	1992-04B	Outdoor Cover Structure	Yes
2054	Grants Pass SD 7	ESSER II	2054-01	Lincoln Elementary HVAC Improvements	Yes
2054	Grants Pass SD 7	ESSER II	2054-02	Redwood Elementary HVAC Improvements	Yes
2054	Grants Pass SD 7	ESSER II	2054-03	Riverside Elementary Classroom Addition	Yes
2054	Grants Pass SD 7	ESSER II	2054-04	North Middle School Track and Field Upgrade	Yes
2054	Grants Pass SD 7	ESSER III	2054-05	South Middle School Track and Field Upgrade	Yes
2054	Grants Pass SD 7	ESSER III	2054-06	Grants Pass SD Vehicle Purchase (6xVans)	Yes
2054	Grants Pass SD 7	ESSER III	2054-07	Highland Elementary Asbestos Abatement and Carpet Installation	Yes
2054	Grants Pass SD 7	ESSER II	2054-08	Board Room Audio Video	Yes
2054	Grants Pass SD 7	ESSER III	2054-09	GP Flex Modular Classrooms	Yes
2054	Grants Pass SD 7	ESSER III	2054-10	GP Flex Modular Classrooms	Yes
2054	Grants Pass SD 7	ESSER III	2054-11	HVAC Installation	Yes
2054	Grants Pass SD 7	ESSER II	2054-12	Outdoor Classroom Space	Yes
2054	Grants Pass SD 7	ESSER III	2054-13	Bathroom Upgrades Grants Pass HS	Yes
2054	Grants Pass SD 7	ESSER II	2054-14	Bathroom Upgrades North MS	Yes
2054	Grants Pass SD 7	ESSER II	2054-15	Bathroom Upgrades South MS	Yes
2054	Grants Pass SD 7	ESSER II	2054-16	PAC Streaming Technology	Yes
2054	Grants Pass SD 7	ESSER II	2054-17	Band-Theater Streaming Technology	Yes
2054	Grants Pass SD 7	ESSER II	2054-18	Board Room Audio Video (additional costs to finish project)	Yes
2054	Grants Pass SD 7	ESSER II	2054-19	South Middle School Classroom-Restroom Addition	Yes
2054	Grants Pass SD 7	ESSER II	2054-20	North Middle School Classroom-Restroom Addition	Yes
2054	Grants Pass SD 7	ESSER II	2054-21	Equipment for Modular Classrooms	Yes
2054	Grants Pass SD 7	ESSER II	2054-22	Gladiola HS Fencing	Yes
2054	Grants Pass SD 7	ESSER II	2054-23	Grants Pass HS Fencing	Yes
2054	Grants Pass SD 7	ESSER II	2054-24	Gym floor refinishing various locations.	Yes
2054	Grants Pass SD 7	ESSER II	2054-25	Intercom System - Gladiola Campus	Yes
2100	Greater Albany Public SD 8J	ESSER III	2100-01	Takena Elementary School Expansion	Yes
2100	Greater Albany Public SD 8J	ESSER III	2100-02	South Shore Elementary School Expansion	Yes
2100	Greater Albany Public SD 8J	ESSER II	2100-03A	Waverly Elementary Modular	Yes
2100	Greater Albany Public SD 8J	ESSER III	2100-03B	Waverly Elementary Modular	Yes
2100	Greater Albany Public SD 8J	ESSER II	2100-04A	North Albany Elementary Modular	Yes
2100	Greater Albany Public SD 8J	ESSER III	2100-04B	North Albany Elementary Modular	Yes
2100	Greater Albany Public SD 8J	ESSER III	2100-05	Central School Heating and Cooling Central Air Handling System	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-01	eGBSD Learning Center Remodel	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-02	Metro East Web Academy HVAC upgrade	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-03	Gresham HS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-04	Barlow HS Vape Sensors	Yes

2183	Gresham-Barlow SD 10J	ESSER II	2183-05	Springwater Trail HS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-06	Dexter McCarty MS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-07	Clear Creek MS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-08	Gordon Russell MS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-09	West Orient MS Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-10	Deep Creek Damaskus K-8 Vape Sensors	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-11	Hall Elementary School HVAC Controls	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-12	Hollydale Elementary School HVAC Controls	Yes
2183	Gresham-Barlow SD 10J	ESSER II	2183-13	Deep Creek Damascus K-8 School HVAC Controls	Yes
2183	Gresham-Barlow SD 10J	ESSER III	2183-14	Flexible Learning Experiences Facility Remodel	Yes
2014	Harney County SD 3	ESSER II	2014-01	Audio/Video/Security Enhancement - Slater Elementary School	Yes
2014	Harney County SD 3	ESSER II	2014-02	Audio/Video/Security Enhancement - Burns High School	Yes
2014	Harney County SD 3	ESSER II	2014-03	Audio/Video/Security Enhancement - Hines Middle School	Yes
2114	Harper SD 66	ESSER III	2114-01	HVAC Replacement	Yes
2099	Harrisburg SD 7J	ESSER III	2099-01	Elementary School/Middle School HVAC	Yes
2201	Helix SD 1	ESSER II	2201-01	Helix SD Custodial Floor Scrubber	Yes
2201	Helix SD 1	ESSER II	2201-02	Helix SD Custodial Battery Powered Floor Mop - I-mop XL Plus 18"	Yes
2206	Hermiston SD 8	ESSER II	2206-01	Sandstone Middle School Clock & IP Speaker Upgrade	Yes
2206	Hermiston SD 8	ESSER II	2206-03	Desert View Elementary School HVAC Upgrade	Yes
2206	Hermiston SD 8	ESSER III	2206-04	HHS Athletic Trainer Room Expansion	Yes
2206	Hermiston SD 8	ESSER III	2206-05	HHS HVAC Chiller	Yes
2206	Hermiston SD 8	ESSER III	2206-06	WPES HVAC Chiller	Yes
2206	Hermiston SD 8	ESSER III	2206-07	HHS SPED Conference Rooms	Yes
2206	Hermiston SD 8	ESSER II	2206-08	Rocky Heights Elem. I-MOPXL floor scrubber	Yes
2206	Hermiston SD 8	ESSER II	2206-09	Rocky Heights Elem. I-MOPXL floor scrubber	Yes
2206	Hermiston SD 8	ESSER II	2206-10	District Office Carpet Extractor	Yes
2206	Hermiston SD 8	ESSER II	2206-11	DVES Carpet Extractor	Yes
2206	Hermiston SD 8	ESSER II	2206-12	HHS Carpet Extractor	Yes
2206	Hermiston SD 8	ESSER II	2206-13	LHES Scrubber	Yes
2206	Hermiston SD 8	ESSER II	2206-14	RHES Scrubber	Yes
1975	High Desert ESD	ESSER II	1975-01	Plasma Air Ionization Air Cleaners at PEC	Yes
1975	High Desert ESD	ESSER II	1975-02	Plasma Air Cleaners at Alyce Hatch Center	Yes
1975	High Desert ESD	ESSER II	1975-03	Plasma Air Cleaners at Manzanita Building	Yes
1975	High Desert ESD	ESSER II	1975-04	Plasma Air Cleaners at HDREC Building	Yes
1975	High Desert ESD	ESSER II	1975-05	Prineville Education Center Classroom Construction	Yes
1975	High Desert ESD	ESSER II	1975-06	Madras Classroom Bathroom Addition	Yes
1975	High Desert ESD	ESSER II	1975-07	Tamarack Vestibule	Yes
1975	High Desert ESD	ESSER II	1975-08	Soundproof Pods	Yes
2239	Hillsboro SD 1J	ESSER II	2239-01	Witch Hazel Elementary School HVAC	Yes
2239	Hillsboro SD 1J	ESSER II	2239-02	Imlay Elementary School HVAC Controls Retrofit	Yes
2239	Hillsboro SD 1J	ESSER II	2239-03	Nutrition Services Bulk Receiving Freezer Project	Yes
2239	Hillsboro SD 1J	ESSER II	2239-04	Jackson Elementary School HVAC Controls Retrofit	Yes
2239	Hillsboro SD 1J	ESSER II	2239-07	Butternut Creek Elementary School HVAC Controls Retrofit 2021	Yes
2239	Hillsboro SD 1J	ESSER III	2239-08	Type 20 Activity Bus Purchases	Yes
2239	Hillsboro SD 1J	ESSER II	2239-09	School Bus Purchases	Yes
2239	Hillsboro SD 1J	ESSER III	2239-10	Administration Center Building Improvements	Yes
2024	Hood River County SD	ESSER III	2024-01	Mid Valley Elementary School Air Handling Repair	Yes
2024	Hood River County SD	ESSER III	2024-02	Parkdale Ventilation and Air Handling Installation	Yes
2215	Imbler SD 11	ESSER II	2215-02	High School Foyer/Office HVAC	Yes
2215	Imbler SD 11	ESSER III	2215-03	Locker Room Relocation	Yes
2215	Imbler SD 11	ESSER II	2215-04	Gym HVAC	Yes
2200	InterMountain ESD	ESSER II	2200-01	Malheur ESD HVAC -EI/ECSE	Yes
2200	InterMountain ESD	ESSER II	2200-02	Carpet Extractor	Yes
2200	InterMountain ESD	ESSER II	2200-03	Main Building Mini-Split	Yes
2200	InterMountain ESD	ESSER II	2200-04	Malheur EI/ECSE Playground Project	Yes
2200	InterMountain ESD	ESSER II	2200-05	Main Building Mini-Split 2nd Request	Yes
3997	Ione SD R2	ESSER II	3997-01	Air Quality Improvements	Yes
2053	Jefferson County SD 509J	ESSER II	2053-01	JCMS - HVAC Repairs	Yes
2053	Jefferson County SD 509J	ESSER II	2053-02	Pavilion Structures	Yes
2053	Jefferson County SD 509J	ESSER II	2053-02A	Pavilion Structures- Additional Buildings	Yes
2053	Jefferson County SD 509J	ESSER II	2053-03	Storage Units	Yes
2049	Jefferson ESD	ESSER II	2049-01	HVAC and Lighting Upgrades	Yes
2049	Jefferson ESD	ESSER II	2049-02	Exterior Door Replacement	Yes
2140	Jefferson SD 14J	ESSER II	2140-01	Jefferson High School Bleachers	Yes
1934	Jewell SD 8	ESSER III	1934-01	Internet Towers for Jewell School Community	Yes
1934	Jewell SD 8	ESSER III	1934-02	HVAC Updates Jewell High School	Yes
1934	Jewell SD 8	ESSER II	1934-03	New Bus	Yes
1934	Jewell SD 8	ESSER II	1934-04	Gym partition/wall/curtain	Yes
1934	Jewell SD 8	ESSER II	1934-05A	Enlarge Commons Area	Yes
1934	Jewell SD 8	ESSER III	1934-05B	Enlarge Commons Area	Yes
2008	John Day SD 3	ESSER II	2008-01	Phone System upgrade	Yes
2008	John Day SD 3	ESSER II	2008-02	Camera system upgrade	Yes
2008	John Day SD 3	ESSER II	2008-03	Website upgrade	Yes
2008	John Day SD 3	ESSER II	2008-04	Humbolt Elem and Grant Union Jr/Sr High School Chromebooks	Yes
2008	John Day SD 3	ESSER II	2008-05	Air Purifiers	Yes
2107	Jordan Valley SD 3	ESSER II	2107-01	High school Security Camera System	Yes
2107	Jordan Valley SD 3	ESSER II	2107-02	Desks and Chairs for Jordan Valley Elementary and Rockville Elementary	Yes
2107	Jordan Valley SD 3	ESSER II	2107-03	New Carpet and Linoleum for Jordan Valley Elementary	Yes
2091	Junction City SD 69	ESSER III	2091-01A	Modular Classrooms for Oaklea Middle School	Yes
2091	Junction City SD 69	ESSER II	2091-01B	Modular Classrooms for Oaklea Middle School	Yes
2091	Junction City SD 69	ESSER III	2091-02	JCHS Window Replacement	Yes
2091	Junction City SD 69	ESSER III	2091-03	Junction City High School-West Wing	Yes
2091	Junction City SD 69	ESSER III	2091-04	Junction City High School-East Wing HVAC Units	Yes
2091	Junction City SD 69	ESSER III	2091-05	Junction City High School Preschool Promise Room Update	Yes
2109	Juntura SD 12	ESSER II	2109-01	Juntura SD Playground	Yes
2109	Juntura SD 12	ESSER III	2109-02	Juntura SD Window Installation	Yes
2057	Klamath County SD	ESSER II	2057-01	Shasta Elementary Classroom Addition	Yes
2057	Klamath County SD	ESSER II	2057-02	Chiloquin Track Renovation	Yes
2057	Klamath County SD	ESSER III	2057-04	Shasta Elementary Bathroom Remodel	Yes
2057	Klamath County SD	ESSER III	2057-05	Mazama Turf Fields	Yes
2057	Klamath County SD	ESSER III	2057-06	Henley High School HVAC	Yes
2057	Klamath County SD	ESSER III	2057-08	Chiloquin High School Turf Field	Yes
2057	Klamath County SD	ESSER III	2057-09	Chiloquin Elementary New Flooring	Yes
2057	Klamath County SD	ESSER III	2057-10	Merrill Elementary School Flooring Upgrades	Yes
2057	Klamath County SD	ESSER III	2057-11	High School Bleacher Replacement	Yes
2057	Klamath County SD	ESSER III	2057-13	Peterson Elementary Parking Lot Resurface-Restriping	Yes

2057	Klamath County SD	ESSER III	2057-14	Stearns Elementary Track Project	Yes
2057	Klamath County SD	ESSER III	2057-15	Lost River Community Center Construction	Yes
2057	Klamath County SD	ESSER III	2057-17	Ferguson Elementary HVAC Controls Upgrade	Yes
2057	Klamath County SD	ESSER III	2057-18	HVAC Controls Upgrade - Malin Elementary School	Yes
2057	Klamath County SD	ESSER III	2057-19	District Firewall Upgrade	Yes
2057	Klamath County SD	ESSER III	2057-20	Remodel/Renovation of Mazama HS Kitchen	Yes
2057	Klamath County SD	ESSER II	2057-21	Chiloquin Gymnasium	Yes
2057	Klamath County SD	ESSER III	2057-22	Bonanza Gymnasium	Yes
2057	Klamath County SD	ESSER II	2057-23	Henley High School Green House	Yes
2057	Klamath County SD	ESSER II	2057-24	McKinney Vento Homeless Liaison Vehicle	Yes
2057	Klamath County SD	ESSER II	2057-25	Alternative Ed Annex Renovation	Yes
2057	Klamath County SD	ESSER III	2057-26	Henley Middle School Expansion and Renovation	Yes
2057	Klamath County SD	ESSER III	2057-27	Brixner Junior High School Expansion and Renovation	Yes
2056	Klamath Falls City Schools	ESSER II	2016-04	Pelican Elementary HVAC	pending
2056	Klamath Falls City Schools	ESSER II	2016-05	Roosevelt Elementary HVAC	Yes
2056	Klamath Falls City Schools	ESSER II	2056-01	Classroom Remodel EagleRidge High School	Yes
2056	Klamath Falls City Schools	ESSER II	2056-02	Network Security and Capacity Improvement	Yes
2056	Klamath Falls City Schools	ESSER II	2056-03	Bus Purchase	Yes
2056	Klamath Falls City Schools	ESSER III	2056-06	EagleRidge High School CTE Building	pending
2262	Knappa SD 4	ESSER II	2262-01	Knappa High School HVAC Updates	Yes
2262	Knappa SD 4	ESSER II	2262-02	Knappa High School Window Updates	Yes
2262	Knappa SD 4	ESSER III	2262-03	Hilda Lahti Elementary HVAC Controls	Yes
2212	La Grande SD 1	ESSER III	2212-01	Summer Activities Transportation and IT Services	Yes
2212	La Grande SD 1	ESSER III	2212-02	Greenwood Playground	Yes
2212	La Grande SD 1	ESSER III	2212-03	Island City Elementary - Expanding Student Play	Yes
2059	Lake County SD 7	ESSER III	2059-01	Snow Plow Pickup	Yes
2064	Lane ESD	ESSER II	2064-01	Westmoreland HVAC Upgrades	Yes
2064	Lane ESD	ESSER II	2064-02	Touchless Water Dispenser Installation	Yes
2064	Lane ESD	ESSER II	2064-03	Touchless Water Dispensers, Spark Lab	Yes
2064	Lane ESD	ESSER II	2064-04	Westmoreland Campus Outdoor Furniture	Yes
2064	Lane ESD	ESSER II	2064-06	HVAC Upgrades to Lane ESD Main Campus	Yes
2064	Lane ESD	ESSER II	2064-07	Technology Workspace Expansion	Yes
2064	Lane ESD	ESSER II	2064-08	Migrant Education Space Remodel	Yes
2064	Lane ESD	ESSER II	2064-09	Westmoreland Patio Project	Yes
2101	Lebanon Community SD 9	ESSER II	2101-01	Seven Oak Middle School Modular Classrooms	Yes
2101	Lebanon Community SD 9	ESSER II	2101-02	Sand Ridge Charter School Equipment, HVAC, and Storage	Yes
2101	Lebanon Community SD 9	ESSER II	2101-03	LHS Gym Indoor Air Quality Repair	Yes
2101	Lebanon Community SD 9	ESSER III	2101-04	Seven Oak Middle School Modular Classrooms	Yes
2101	Lebanon Community SD 9	ESSER III	2101-05	Sandridge Charter Flooring and Parking Lot Updates	Yes
2101	Lebanon Community SD 9	ESSER II	2101-06	Food Service Counter	Yes
2101	Lebanon Community SD 9	ESSER III	2101-07	Food Preparation Refrigeration Unit	Yes
2097	Lincoln County SD	ESSER III	2097-01	Yaquina View Elementary Gym	Yes
2097	Lincoln County SD	ESSER II	2097-02	Siletz Valley School MS Bathroom Upgrades and Renovations	Yes
2097	Lincoln County SD	ESSER III	2097-03	Newport High School Outdoor Grandstands & Bathrooms	Yes
2097	Lincoln County SD	ESSER II	2097-04	Siletz Valley School Bleachers - Indoor/Outdoor Activities	Yes
2097	Lincoln County SD	ESSER II	2097-05	Siletz Valley School Classroom Carpet and Flooring	Yes
2097	Lincoln County SD	ESSER II	2097-06	TAHS Emergency Communications	Yes
2097	Lincoln County SD	ESSER II	2097-07	Taft High School Communications	Yes
2097	Lincoln County SD	ESSER II	2097-08	TLC Public Address System	Yes
2097	Lincoln County SD	ESSER III	2097-09	Siletz Gates/Fencing	Yes
2097	Lincoln County SD	ESSER III	2097-10	Siletz Valley Schools - Phone System Upgrade	Yes
2097	Lincoln County SD	ESSER III	2097-11	Compass K-12 Online School - Arcadia Phone System	Yes
2098	Linn Benton Lincoln ESD	ESSER II	2098-01	LBL ESD HVAC Improvement	Yes
2098	Linn Benton Lincoln ESD	ESSER II	2098-02	LBL ESD Window Improvement	Yes
2098	Linn Benton Lincoln ESD	ESSER II	2098-03	Dixie School ADA Ramp Replacement	Yes
2012	Long Creek SD 17	ESSER II	2012-01	School District Staff Housing Repair	Yes
2012	Long Creek SD 17	ESSER III	2012-02	School District Gym Floor Repair	Yes
2012	Long Creek SD 17	ESSER III	2012-03	LC School District Security Cameras	Yes
2012	Long Creek SD 17	ESSER II	2012-04	Playground Safety	Yes
2092	Lowell SD 71	ESSER III	2092-01	Lowell High School Outdoor Weight Room Tents	Yes
2092	Lowell SD 71	ESSER III	2092-02	Lowell High School Outdoor Weight Training Fitness Equipment	Yes
2092	Lowell SD 71	ESSER III	2092-03	Business Office Manager Office Upgrade	Yes
2092	Lowell SD 71	ESSER III	2092-04	Additional Classroom Space	Yes
2092	Lowell SD 71	ESSER III	2092-05	Summer Learning Program Vans	Pending
2106	Malheur ESD Region 14	ESSER II	2106-01	Malheur Early Learning Center Classrooms	Yes
2085	Mapleton SD 32	ESSER II	2085-01	Bus Purchase	Yes
2085	Mapleton SD 32	ESSER III	2085-02	Elementary School Preparation	Yes
2085	Mapleton SD 32	ESSER III	2085-03	Elementary Play Structure	Yes
2094	Marcola SD 79J	ESSER II	2094-01A	Marcola SD Portables and Restroom	Yes
2094	Marcola SD 79J	ESSER III	2094-01B	Marcola SD Portables and Restroom	Yes
2094	Marcola SD 79J	ESSER II	2094-02A	Electronic Door Locks	Yes
2094	Marcola SD 79J	ESSER III	2094-02B	Electronic Door Locks	Yes
2090	McKenzie SD 68	ESSER III	2090-01	McKenzie School Bus	Yes
2090	McKenzie SD 68	ESSER III	2090-02	Improvement to preschool space	Yes
2048	Medford SD 549C	ESSER II	2048-01	Jefferson Elementary HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-02	Hoover Elementary HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-03	Purchase of Facility for Online Academy	Yes
2048	Medford SD 549C	ESSER III	2048-04	Oakdale Facility Expansion	Yes
2048	Medford SD 549C	ESSER II	2048-05	Medford SD Education Center HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-06	McLoughlin Middle School HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-07	Hedrick Middle School HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-08	Maslow Project HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-09	Griffen Creek Elementary HVAC	Yes
2048	Medford SD 549C	ESSER III	2048-10	Jacksonville Elementary HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-11	Medford Online Academy HVAC	Yes
2048	Medford SD 549C	ESSER II	2048-12	MSDEC Gym Chiller	Yes
2048	Medford SD 549C	ESSER II	2048-13	Madrone Trail Charter School Yurts	Yes
2048	Medford SD 549C	ESSER II	2048-14	Battery Backup Unit for Additional Surveillance System	Yes
2048	Medford SD 549C	ESSER II	2048-15	Outdoor CTE Classroom and Storage Facility	Yes
2048	Medford SD 549C	ESSER III	2048-16	Outdoor Seating Tables	Yes
2048	Medford SD 549C	ESSER II	2048-17	Oakdale Middle School Auditorium Chiller	Yes
2048	Medford SD 549C	ESSER II	2048-18	Medford Annex HVAC Upgrade	Yes
2048	Medford SD 549C	ESSER III	2048-19	The Valley School of Southern Oregon Larger Classrooms	Yes
2048	Medford SD 549C	ESSER III	2048-20	Madrone Trail Charter Modular Classroom	Yes
2048	Medford SD 549C	ESSER III	2048-21	Madrone Trail Charter Early Grades Bathroom Update	Yes
2048	Medford SD 549C	ESSER II	2048-22	School Activities Van - Logos	Yes

2048	Medford SD 549C	ESSER II	2048-23A	Student Information System Upgrade - Logos	Yes
2048	Medford SD 549C	ESSER III	2048-23B	Student Information System Upgrade - Logos	Yes
2048	Medford SD 549C	ESSER II	2048-24	Security Upgrades- Logos	Yes
2048	Medford SD 549C	ESSER III	2048-25	The Valley School Charter Multi-Purpose Space	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-01	Lunch Services Vehicle - Cargo Van	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-02	Transportation Ford Passenger SUV	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-03	High School Gym HVAC	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-04	Ferndale Elementary HVAC	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-06	District Intercom and Alert System	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-07	Teacher Instructional Flat Panels	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-08	Lighting Structure System at Grove Complex	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-09	Gymnasium Curtain Dividers	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-10	Lighting Structure System at Shockman Complex	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-11A	Building Educational Additional Classrooms	Yes
2205	Milton-Freewater Unified SD 7	ESSER III	2205-11B	Building Educational Additional Classrooms	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-12	Ford Passenger SUV #2	Yes
2205	Milton-Freewater Unified SD 7	ESSER III	2205-13	Interactive Flat Panels	Yes
2205	Milton-Freewater Unified SD 7	ESSER II	2205-14	Central Middle School HVAC	Yes
2249	Mitchell SD 55	ESSER II	2249-01	Dormitory HVAC System	Yes
2249	Mitchell SD 55	ESSER III	2249-02	Type 10 Transportation	Yes
1925	Molalla River SD 35	ESSER III	1925-01	Molalla River Academy Middle School Modular	Yes
1898	Monroe SD 1J	ESSER III	1898-01	Monroe Grade School Outdoor Learning Space	Yes
1898	Monroe SD 1J	ESSER III	1898-02	Monroe High School Outdoor Learning Space	Yes
1898	Monroe SD 1J	ESSER II	1898-03	Monroe Grade School Ventilation Upgrade	Yes
2147	Morrow SD 1	ESSER II	2147-01	Windy River Elementary Parking Lot	Yes
2147	Morrow SD 1	ESSER II	2147-02	Sam Boardman Elementary Parking Lot	Yes
2147	Morrow SD 1	ESSER II	2147-03	Type 10 Vehicles	Yes
2147	Morrow SD 1	ESSER II	2147-04	Entry Security (All Schools)	Yes
2147	Morrow SD 1	ESSER II	2147-05	AC Houghton Controls	Yes
2147	Morrow SD 1	ESSER II	2147-06	Irrigon Junior Senior High School Controls and HVAC Replacement	Yes
2147	Morrow SD 1	ESSER II	2147-07	Riverside Junior Senior High School Controls and HVAC	Yes
2147	Morrow SD 1	ESSER III	2147-08	Heppner Junior Senior High School Controls and HVAC Replacement	Yes
2147	Morrow SD 1	ESSER II	2147-09	Sam Boardman Elementary Controls and HVAC Replacement	Yes
2148	Multnomah ESD	ESSER II	2148-01	Arata Creek HVAC Controls	Yes
2148	Multnomah ESD	ESSER II	2148-02	Wireless Networking Capacity	Yes
2148	Multnomah ESD	ESSER II	2148-03	Networking Equipment Refresh	Yes
2148	Multnomah ESD	ESSER II	2148-04	Burlingame Creek HVAC Controls	Yes
2148	Multnomah ESD	ESSER II	2148-05	Added security cameras at Knott Creek	Yes
2148	Multnomah ESD	ESSER II	2148-06	Security cameras at Ainsworth	Yes
2148	Multnomah ESD	ESSER II	2148-07	Exterior Lighting at Ainsworth	Yes
2148	Multnomah ESD	ESSER II	2148-08	Fencing at Ainsworth	Yes
2148	Multnomah ESD	ESSER II	2148-09	Outdoor School Advenchair	Yes
2148	Multnomah ESD	ESSER II	2148-10	Ainsworth HVAC Hardware Platform	Yes
2148	Multnomah ESD	ESSER II	2148-11	Front Door Security at Ainsworth	Yes
2148	Multnomah ESD	ESSER II	2148-12	A/V Equipment at Ainsworth	Yes
2148	Multnomah ESD	ESSER II	2148-13	Replacing NVRs in Security Systems	Yes
2148	Multnomah ESD	ESSER II	2148-14	Arata HVAC Maintenance	Yes
2148	Multnomah ESD	ESSER II	2148-15	BCS HVAC Maintenance	Yes
2148	Multnomah ESD	ESSER II	2148-16	UPS Upgrade for Network Closets	Yes
2148	Multnomah ESD	ESSER II	2148-17	Auditorium Projector Upgrade	Yes
2148	Multnomah ESD	ESSER II	2148-18	OTDR Fiber Tool	Yes
2148	Multnomah ESD	ESSER II	2148-19	Finalize Conference Room AV Upgrades	Yes
1968	Myrtle Point SD 41	ESSER II	1968-01	Myrtle Crest Elementary	Yes
1968	Myrtle Point SD 41	ESSER II	1968-02	Myrtle Crest Elementary HVAC Wiring	Yes
1968	Myrtle Point SD 41	ESSER III	1968-03	Myrtle Point SD Transportation	Yes
2198	Neah-Kah-Nie SD 56	ESSER II	2198-01	High School Student Based Health Center HVAC	Yes
2198	Neah-Kah-Nie SD 56	ESSER II	2198-02A	Neah-Kah-Nie High School HVAC project	Yes
2198	Neah-Kah-Nie SD 56	ESSER III	2198-02B	Neah-Kah-Nie High School HVAC project	Yes
2199	Nestucca Valley SD 101	ESSER II	2199-01A	Nestucca Valley Wired Wireless Internet Tower Project	Yes
2199	Nestucca Valley SD 101	ESSER III	2199-01B	Nestucca Valley Wired Wireless Internet Tower Project	Yes
2199	Nestucca Valley SD 101	ESSER III	2199-02	Cloverdale K-8 Playground	Yes
2199	Nestucca Valley SD 101	ESSER III	2199-03	Wrestling Mats	Yes
2254	Newberg SD 29J	ESSER III	2254-01	Accounting Module Upgrade	Yes
1966	North Bend SD 13	ESSER II	1966-01A	North Bay Elementary Modular	Yes
1966	North Bend SD 13	ESSER III	1966-01B	North Bay Elementary Modular	Yes
1966	North Bend SD 13	ESSER II	1966-02A	Hillcrest Elementary Modulars	Yes
1966	North Bend SD 13	ESSER III	1966-02B	Hillcrest Elementary Modulars	Yes
1966	North Bend SD 13	ESSER III	1966-03	North Bend SD Floor Scrubbing Equipment	Yes
1966	North Bend SD 13	ESSER III	1966-04	HVAC/Boiler System Upgrades	Yes
2004	North Central ESD	ESSER II	2004-01	Door Locks	Yes
2004	North Central ESD	ESSER II	2004-02	Copy Machine	Yes
2004	North Central ESD	ESSER II	2004-03	Electrical Repairs and Upgrade	Yes
1924	North Clackamas SD 12	ESSER II	1924-01	Rex Putnam High School Advance Ride-On Scrubber	Yes
1924	North Clackamas SD 12	ESSER II	1924-02	North Clackamas SD Genie GR-20 Lift	Yes
1924	North Clackamas SD 12	ESSER II	1924-03	Beatrice Morrow Cannady Elementary HVAC Controls	Yes
1924	North Clackamas SD 12	ESSER III	1924-04	Putnam High Aged HVAC Unit Replacement	Yes
1996	North Douglas SD 22	ESSER III	1996-01	HS HVAC FOR HS Gym and Hallways	Yes
1996	North Douglas SD 22	ESSER II	1996-02	HS Lockers	Yes
1996	North Douglas SD 22	ESSER II	1996-03	Elementary School Mold Damage	Yes
1996	North Douglas SD 22	ESSER III	1996-04	Elementary/Middle School Improve back entrance/exit	Yes
1996	North Douglas SD 22	ESSER II	1996-06	Elementary School Technology wiring	Yes
1996	North Douglas SD 22	ESSER III	1996-07	NDSD HVAC High School Room 10 and HS office	Yes
1996	North Douglas SD 22	ESSER II	1996-08	NDSD Library Air Transfer	Yes
1996	North Douglas SD 22	ESSER II	1996-09	ES/MS Floors for added classrooms	Yes
1996	North Douglas SD 22	ESSER II	1996-10	Replace floor in HS Computer Lab	Yes
1996	North Douglas SD 22	ESSER III	1996-11	District Office building HVAC	Yes
1996	North Douglas SD 22	ESSER III	1996-12	Student Shop building HVAC	Yes
1996	North Douglas SD 22	ESSER II	1996-13	HS Locker Room HVAC	Yes
1996	North Douglas SD 22	ESSER III	1996-14	NDSD HS Security System - Access Control Multipurpose Bldg	Yes
1996	North Douglas SD 22	ESSER III	1996-15	NDSD Elementary and Middle School Security and Communications Phase I	Yes
1996	North Douglas SD 22	ESSER III	1996-16	NDSD Elementary Security System - Access Control Front entrance and Playshed	Yes
1996	North Douglas SD 22	ESSER III	1996-17	NDSD Elementary and Middle School Security and Communications Phase II	Yes
1996	North Douglas SD 22	ESSER III	1996-18	NDSD Elementary and Middle School Security and Communications Phase III	Yes
2061	North Lake SD 14	ESSER III	2061-01	Type 10 Vehicles	Yes
2061	North Lake SD 14	ESSER III	2061-02	Food Truck/Trailer	Yes
2141	North Marion SD 15	ESSER II	2141-01	On Target Electrostatic Room Sprayers and Batteries	Yes

2141	North Marion SD 15	ESSER II	2141-02	HVAC Assessment and upgrade or replacement as needed	Yes
2214	North Powder SD 8J	ESSER II	2214-01	North Powder Elementary Auto Scrubber/HVAC Updates	Yes
2214	North Powder SD 8J	ESSER II	2214-02	All purpose utility vehicle/snow blade	Yes
2214	North Powder SD 8J	ESSER II	2214-03	Playground Security Fence	Yes
2143	North Santiam SD 29J	ESSER II	2143-01	Outdoor Covered Classroom Space	Yes
2143	North Santiam SD 29J	ESSER II	2143-02	Stayton Middle School Carpet Replacement	Yes
2143	North Santiam SD 29J	ESSER II	2143-03	Stayton Middle School HVAC	Yes
2143	North Santiam SD 29J	ESSER II	2143-04	Mari Linn Elementary School HVAC	Yes
2143	North Santiam SD 29J	ESSER II	2143-05	Sublimity Elementary School HVAC	Yes
2143	North Santiam SD 29J	ESSER II	2143-06	Stayton High School HVAC	Yes
2143	North Santiam SD 29J	ESSER II	2143-07	Mari-Linn School HVAC Office/Health Student Assistance Room	Yes
2143	North Santiam SD 29J	ESSER II	2143-08	Stayton Middle School HVAC Summer School Student Support Areas/School Office	Yes
2143	North Santiam SD 29J	ESSER II	2143-09	Stayton Elementary School Floor Scrubber	Yes
2143	North Santiam SD 29J	ESSER II	2143-10	Sublimity Elementary School Floor Scrubber	Yes
2143	North Santiam SD 29J	ESSER II	2143-11	Stayton High School Floor Scrubbers	Yes
2143	North Santiam SD 29J	ESSER III	2143-12	Stayton Options Academy Building	Yes
2143	North Santiam SD 29J	ESSER III	2143-13	Mari-Linn Elementary Outdoor Covered Classroom Space	Yes
4131	North Wasco County SD 21	ESSER III	4131-02	The Dalles High School Outdoor Cafeteria Shelter	Yes
4131	North Wasco County SD 21	ESSER III	4131-05	Nutrition Services Refrigerated Van	Yes
4131	North Wasco County SD 21	ESSER II	4131-06	Eastside Building Upgrade	Yes
4131	North Wasco County SD 21	ESSER II	4131-07	Mosier Community School Upper Floor/Gismo building HVAC	Yes
4131	North Wasco County SD 21	ESSER II	4131-08	Mosier Community School Lower Floor HVAC	Yes
4131	North Wasco County SD 21	ESSER II	4131-09	Chenowith Elementary School Outdoor Eating Area	Yes
4131	North Wasco County SD 21	ESSER III	4131-10	The Dalles High School Food Truck	Yes
2230	Northwest Regional ESD	ESSER II	2230-01	NWRESD Washington Service Center HVAC	Yes
2230	Northwest Regional ESD	ESSER II	2230-02	NWRESD Sanitizing System Utilizing Dry Mist Nebulizers	Yes
2230	Northwest Regional ESD	ESSER II	2230-03	HVAC and Air Quality Improvements	Yes
2230	Northwest Regional ESD	ESSER II	2230-04	Employee Workspace	Yes
2230	Northwest Regional ESD	ESSER II	2230-05	AV Upgrades	Yes
2230	Northwest Regional ESD	ESSER II	2230-06	SIEM/SOAR (Security Analysis Device)	Yes
2230	Northwest Regional ESD	ESSER II	2230-07	Advanced Thermal Imager	Yes
2110	Nyssa SD 26	ESSER II	2110-01	Bus Purchases (2x 84 passenger & 2x Type 20)	Yes
2110	Nyssa SD 26	ESSER II	2110-02	Satellite Kitchen Equipment	Yes
2110	Nyssa SD 26	ESSER II	2110-03	Nyssa Elementary Playground Equipment	Yes
2110	Nyssa SD 26	ESSER III	2110-04	High School HVAC upgrade	Yes
2110	Nyssa SD 26	ESSER III	2110-05	High school office addition and commons area remodel	Yes
1990	Oakland SD 1	ESSER II	1990-01	HVAC for Oakland Elementary School	Yes
1990	Oakland SD 1	ESSER II	1990-02	HVAC for Oakland High School	Yes
1990	Oakland SD 1	ESSER II	1990-03	HVAC for Lincoln Middle School	Yes
1990	Oakland SD 1	ESSER II	1990-04	Health and PE Equipment for Wellness classroom	Yes
1990	Oakland SD 1	ESSER III	1990-05	Oakland District Office Relocation	pending
1990	Oakland SD 1	ESSER II	1990-06A	Lincoln Middle School Play Shed	Yes
1990	Oakland SD 1	ESSER III	1990-06B	Lincoln Middle School Play Shed	Yes
2093	Oakridge SD 76	ESSER III	2093-02	District wide Window/Screen Replacements	Yes
2093	Oakridge SD 76	ESSER III	2093-03	Westridge High School HVAC	Yes
2093	Oakridge SD 76	ESSER II	2093-04	Oakridge High School Air Ventilation Project	Yes
2093	Oakridge SD 76	ESSER II	2093-05	School Based Health Center	Yes
2093	Oakridge SD 76	ESSER II	2093-06	High School Locker Rooms	Yes
2093	Oakridge SD 76	ESSER II	2093-07	HS Welding Ventilation Remodel	Yes
2093	Oakridge SD 76	ESSER III	2093-08	Telephone System Improvement	Yes
2093	Oakridge SD 76	ESSER III	2093-09	HS Gym Lights	Yes
2093	Oakridge SD 76	ESSER III	2093-10	Exterior Doors/Security	Yes
2093	Oakridge SD 76	ESSER II	2093-11	CTE Expansion	pending
2108	Ontario SD 8C	ESSER III	2108-01	Classroom Expansion	Yes
2108	Ontario SD 8C	ESSER II	2108-02	OHS Window Replacement and Asbestos Abatement	Yes
1928	Oregon City SD 62	ESSER II	1928-01	Barclay Boys Bathroom Remodel	Yes
1928	Oregon City SD 62	ESSER II	1928-02	Boys & Girls Locker Rooms/Bathrooms & Changing Stalls	Yes
1928	Oregon City SD 62	ESSER II	1928-03	LUCID Building Management Controls (HVAC Controls)	Yes
1928	Oregon City SD 62	ESSER II	1928-04	HVAC Infrastructure to Support LUCID Controls	Yes
1928	Oregon City SD 62	ESSER II	1928-05	Cafeteria Overhead Garage Doors	Yes
1928	Oregon City SD 62	ESSER II	1928-06	HVAC Upgrades to Band Mechanical Unit	Yes
1928	Oregon City SD 62	ESSER II	1928-07	HVAC Upgrades Holcomb Elementary School	Yes
1928	Oregon City SD 62	ESSER II	1928-08	HVAC Upgrades Candy Lane Elementary School	Yes
1928	Oregon City SD 62	ESSER II	1928-09	HVAC Upgrades Redland Elementary School	Yes
1928	Oregon City SD 62	ESSER III	1928-10	Outdoor Covered PE Area Springwater	Yes
1926	Oregon Trail SD 46	ESSER II	1926-01	Boring Middle School Cafeteria Serving Line Equipment	Yes
1926	Oregon Trail SD 46	ESSER II	1926-02	Cafeteria Serving Line Equipment	Yes
2060	Paisley SD 11	ESSER III	2060-01	Activity Van	Yes
2181	Parkrose SD 3	ESSER II	2181-01	Sacramento Elementary Two Covered Play Structures	Yes
2181	Parkrose SD 3	ESSER III	2181-02	Roofing	Yes
2181	Parkrose SD 3	ESSER III	2181-03	Replace and Repair 9 HVAC Compressor at Parkrose HS	Yes
2181	Parkrose SD 3	ESSER III	2181-04	District Office Security Cameras	Yes
2181	Parkrose SD 3	ESSER III	2181-05	Sacramento Intercom System	Yes
2181	Parkrose SD 3	ESSER III	2181-06	H/S & M/S Tennis Courts	Yes
2192	Perrydale SD 21	ESSER II	2192-01	ON Target Electrostatic Sprayer	Yes
2192	Perrydale SD 21	ESSER III	2192-02A	Classroom Modular (2 Qty)	Yes
2192	Perrydale SD 21	ESSER II	2192-02B	Classroom Modular (2 Qty)	Yes
1900	Philomath SD 17J	ESSER III	1900-01	Clemens Primary School Expansion	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-01	Outdoor Discovery School (ODP) HVAC	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-02	District Office HVAC Upgrade	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-03	Phoenix High School Weight Room HVAC	Yes
2039	Phoenix-Talent SD 4	ESSER III	2039-04	Talent Middle School HVAC Upgrade	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-05	Talent Outdoor Program HVAC Upgrade	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-06	Maintenance Facility HVAC Upgrades	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-07	Phoenix Elementary HVAC and Window Replacement	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-08	Phoenix High School Media Arts CTE Lab Machines	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-09	Talent Elementary Playground Improvements	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-10	Talent Middle School Interactive Screens	Yes
2039	Phoenix-Talent SD 4	ESSER II	2039-11	Phoenix High School TLC playground/outdoor physical fitness area	Yes
2202	Pilot Rock SD 2	ESSER II	2202-01	Secondary Building HVAC Repair	Yes
2202	Pilot Rock SD 2	ESSER II	2202-02	Elementary Building HVAC Repair	Yes
2202	Pilot Rock SD 2	ESSER II	2202-03	Door Replacement, Stairs & ADA Ramp	Yes
2202	Pilot Rock SD 2	ESSER III	2202-04	HVAC Upgrade - Elementary School	Yes
2202	Pilot Rock SD 2	ESSER III	2202-05	HVAC Upgrade - High School	Yes
1897	Pine Eagle SD 61	ESSER II	1897-01	(2) Floor Cleaning Machines	Yes
2081	Pleasant Hill SD 1	ESSER II	2081-01	Classroom Ionization Air Handling Units (x31)	Yes

2081	Pleasant Hill SD 1	ESSER II	2081-02A	High School Shop Wing HVAC	Yes
2081	Pleasant Hill SD 1	ESSER III	2081-02B	High School Shop Wing HVAC	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-01	District Air Purifiers	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-02	Pacific High School Lockers	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-03	Driftwood Elementary Lockers	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-04	Gym Floor	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-05	Driftwood Elementary Playshed Floor	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-06	Pacific High School Track Resurfacing	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-07	Pacific High School Media Lab Update	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-08	Pacific High School Sidewalk/Step Installation	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-09	Driftwood Elementary Window Installation	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-10	Additional Air Purifiers	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-11	Additional Air Purifiers	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-12	Bus Purchase	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-13	Driftwood Cafeteria Tables	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-14	Food Service Catering Truck and Trailer	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-15	Driftwood Elementary Track	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-16	Ventilation for Welding Room	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-17	Driftwood Outdoor Play and Learning Area	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-18	Pacific High School Drainage System	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-19	Pacific High School Outdoor Resurfacing	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-20	POLSD Bus-Wheelchair Accessible	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-21	Driftwood Elementary Outdoor Surfacing	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-22	High School Cafeteria Expansion	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER II	1973-23	District Digital Sign located at Driftwood Elementary	Yes
1973	Port Orford-Langlois SD 2CJ	ESSER III	1973-24	Student SIS System with Parent Communication System	Yes
2180	Portland SD 1J	ESSER II	2180-01	Tents for Outdoor Meals	Yes
2180	Portland SD 1J	ESSER III	2180-02	Helensview Security Fencing	Yes
2180	Portland SD 1J	ESSER II	2180-03	Helensview Sound booth construction	Yes
2180	Portland SD 1J	ESSER III	2180-04	New HVAC System	Yes
2180	Portland SD 1J	ESSER II	2180-05	Roof Repair	Yes
2180	Portland SD 1J	ESSER II	2180-06	Mt Scott Window Replacement	Yes
2180	Portland SD 1J	ESSER II	2180-07	Mt Scott Indoor Air Quality	Yes
2180	Portland SD 1J	ESSER II	2180-08	Helensview Walls	Yes
2180	Portland SD 1J	ESSER III	2180-09	Helensview Stage & Lights Safety Upgrade	Yes
2180	Portland SD 1J	ESSER II	2180-10	Mt Scott Door Replacement	Yes
1967	Powers SD 31	ESSER II	1967-01	Outdoor Classroom	Yes
2009	Prairie City SD 4	ESSER II	2009-01	Prairie City High School HVAC	Yes
2009	Prairie City SD 4	ESSER III	2009-02	Bates Building Remodel	Yes
2009	Prairie City SD 4	ESSER III	2009-03	Book Vending Machines	Yes
2045	Prospect SD 59	ESSER II	2045-01	Multi-Purpose Room Floor Replacement	Yes
2045	Prospect SD 59	ESSER II	2045-02	Prospect Charter School Classroom Windows and Installation	Yes
2045	Prospect SD 59	ESSER III	2045-03	Type 10 Vehicle Purchase (3 Vans)	Yes
1977	Redmond SD 2J	ESSER III	1977-01	Type-10 Bus - 5 Row	Yes
1977	Redmond SD 2J	ESSER III	1977-02	Type-10 Bus - 4 Row	Yes
1977	Redmond SD 2J	ESSER III	1977-03	RSDFlex Office/Classroom Remodel	Yes
1977	Redmond SD 2J	ESSER III	1977-04	Two 30' x 60' Tents	Yes
1977	Redmond SD 2J	ESSER III	1977-05	Four Large Rider Auto Scrubbers	Yes
1977	Redmond SD 2J	ESSER III	1977-06	Four Chariot Auto Scrubbers	Yes
1977	Redmond SD 2J	ESSER III	1977-07	Two Large Carpet Extractors	Yes
1977	Redmond SD 2J	ESSER III	1977-08	RHS ILS Fencing Project	Yes
1977	Redmond SD 2J	ESSER III	1977-09	RHS CTE Electrical Project	Yes
2001	Reedsport SD 105	ESSER III	2001-01	District Camera System	Yes
2001	Reedsport SD 105	ESSER III	2001-02	School District Delivery Van	Yes
2001	Reedsport SD 105	ESSER III	2001-03	HES P.A. System	Yes
2001	Reedsport SD 105	ESSER III	2001-04	Asbestos Abatement	Yes
2001	Reedsport SD 105	ESSER III	2001-05	Asbestos Abatement	Yes
2001	Reedsport SD 105	ESSER III	2001-06	Electrical Panel Upgrades for Safe Learning Environment	Yes
2001	Reedsport SD 105	ESSER III	2001-07	Roofing Replacement for Safe Learning Environment	Yes
2001	Reedsport SD 105	ESSER III	2001-08	Reedsport Charter School P.A. System	Yes
2001	Reedsport SD 105	ESSER III	2001-09	Security Cameras for School Buses	Yes
2001	Reedsport SD 105	ESSER III	2001-10	District Nutrition Services Program Forklift	Yes
2001	Reedsport SD 105	ESSER III	2001-11	Outdoor Equipment Purchase- Tractor	Yes
2001	Reedsport SD 105	ESSER III	2001-12	RCCS Gym Floor Resurfacing	Yes
2182	Reynolds SD 7	ESSER II	2182-01	Renovation of Edgefield Buildings I and J	Yes
2182	Reynolds SD 7	ESSER II	2182-02	Modular Classroom	Yes
2182	Reynolds SD 7	ESSER II	2182-03	Cubical Walls	Yes
2182	Reynolds SD 7	ESSER II	2182-04	Tyler Drive Transportation System	Yes
2182	Reynolds SD 7	ESSER III	2182-05	Four Corners Building Renovation	Yes
2182	Reynolds SD 7	ESSER III	2182-06	Middle and High School Track Resurfacing (4 tracks)	Yes
1999	Riddle SD 70	ESSER III	1999-01A	Riddle High School Outdoor Covered Area	Yes
1999	Riddle SD 70	ESSER III	1999-01B	Riddle High School Outdoor Covered Area PART 2	Yes
2142	Salem-Keizer SD 24J	ESSER II	2142-01	Optimum Learning Environment Charter School Water Bottle Fill Station	Yes
2142	Salem-Keizer SD 24J	ESSER II	2142-02	Salem-Keizer SD Radio Upgrade Project	Yes
2142	Salem-Keizer SD 24J	ESSER II	2142-04	Howard Street Charter School HVAC Replacement	Yes
2142	Salem-Keizer SD 24J	ESSER II	2142-05	Howard Street Charter School Fencing	Yes
2142	Salem-Keizer SD 24J	ESSER II	2142-06A	Howard Street Charter School Dance Studio	Yes
2142	Salem-Keizer SD 24J	ESSER III	2142-06B	Howard Street Charter School Dance Studio	Yes
2142	Salem-Keizer SD 24J	ESSER III	2142-07	Howard Street Charter New HVAC	Yes
2142	Salem-Keizer SD 24J	ESSER III	2142-08	Howard Street Charter Gutters and Student Safety	Yes
2104	Santiam Canyon SD 129J	ESSER III	2104-01A	SES HVAC Upgrade	Yes
2104	Santiam Canyon SD 129J	ESSER II	2104-01B	SES HVAC Upgrade	Yes
1944	Scappoose SD 1J	ESSER III	1944-01	Scappoose High School Cameras	Yes
1944	Scappoose SD 1J	ESSER III	1944-02	Warren Elementary School Cameras	Yes
1944	Scappoose SD 1J	ESSER III	1944-03	Scappoose Middle School Cameras	Yes
1944	Scappoose SD 1J	ESSER III	1944-04	Otto Petersen Elementary School Cameras	Yes
1944	Scappoose SD 1J	ESSER III	1944-05	Grant Watts Elementary School Cameras	Yes
1944	Scappoose SD 1J	ESSER III	1944-06	South Columbia Family School Flooring	Yes
2103	Scio SD 95	ESSER III	2103-01	Scio School District Access Controls	Yes
2103	Scio SD 95	ESSER II	2103-02	Outdoor Playground Cover	Yes
1935	Seaside SD 10	ESSER II	1935-01	Cannon Beach Academy Mold Remediation in Attic	Yes
2257	Sheridan SD 48J	ESSER II	2257-01	Boiler Repair	Yes
2257	Sheridan SD 48J	ESSER II	2257-02	Septic Pump Replacement	Yes
2257	Sheridan SD 48J	ESSER II	2257-03	Ctech Building Escrow Deposit	Yes
2257	Sheridan SD 48J	ESSER II	2257-04	Fire System Installation- Tiny Titans	Yes
2257	Sheridan SD 48J	ESSER II	2257-05	Replace Deck/Landing- Tiny Titans	Yes

2257	Sheridan SD 48J	ESSER II	2257-06	Play Structure	Yes
2257	Sheridan SD 48J	ESSER II	2257-07	Fiber optic installation	Pending
2138	Silver Falls SD 4J	ESSER II	2138-01	Butte Creek School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-02	Evergreen School Equipment - Ice IBT Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-03	Mark Twain School Equipment - Ice IBT Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-04	Pratum School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-05	Silver Crest School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-06	Silverton High School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-07	Silverton High School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-08	Scotts Mills School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-09	Silverton Middle Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-10	Victor Point School Equipment - Karcher Auto Scrubber	Yes
2138	Silver Falls SD 4J	ESSER II	2138-11	Mark Twain Elementary Solar/Roller Shade Window Coverings and Installation	Yes
2138	Silver Falls SD 4J	ESSER II	2138-12	Silver Falls SD Equipment - Kaivac Versa High Performance Cleaning Caddy	Yes
2138	Silver Falls SD 4J	ESSER II	2138-13	Robert Frost Elementary School Furniture	Yes
2138	Silver Falls SD 4J	ESSER II	2138-14	Mark Twain Elementary School Furniture	Yes
2138	Silver Falls SD 4J	ESSER II	2138-15	Window Coverings	Yes
2138	Silver Falls SD 4J	ESSER II	2138-16	Meal Tent Purchase	Yes
2138	Silver Falls SD 4J	ESSER II	2138-17	HVAC Improvements	Yes
1978	Sisters SD 6	ESSER III	1978-01	GMC Yukon XL	Yes
2096	Siuslaw SD 97J	ESSER III	2096-01	Type A Wheelchair Bus	Yes
2096	Siuslaw SD 97J	ESSER III	2096-02	Siuslaw High School - Office Modular Building	Yes
2096	Siuslaw SD 97J	ESSER III	2096-03	Siuslaw High School - Office Modular Building - Electrical Service	Yes
2096	Siuslaw SD 97J	ESSER III	2096-04	Siuslaw High School - Office Modular Building - Custom Floor Plan	Yes
2096	Siuslaw SD 97J	ESSER III	2096-05	Siuslaw High School - Office Modular Building - Site Work	Yes
2096	Siuslaw SD 97J	ESSER III	2096-06	Siuslaw High School - Office Modular Building - Security Fencing	Yes
2096	Siuslaw SD 97J	ESSER III	2096-07	Siuslaw High School - Canopies & Covered Walkways	Yes
1949	South Coast ESD	ESSER II	1949-01	File Room Remodel	Yes
1949	South Coast ESD	ESSER II	1949-02	HVAC Replacement District Office	Yes
1949	South Coast ESD	ESSER II	1949-03	Battery Backup System	Yes
2022	South Harney SD 33	ESSER II	2022-01	School HVAC	Yes
2087	South Lane SD 45J3	ESSER II	2087-01	Bohemia Elementary School HVAC	Yes
2087	South Lane SD 45J3	ESSER II	2087-02	South Lane SD Transportation Type 10 Vehicle	Yes
2087	South Lane SD 45J3	ESSER II	2087-03	South Lane SD Transportation Type 10 Vehicle	Yes
2087	South Lane SD 45J3	ESSER II	2087-04	School Spirit Trailer	Yes
2087	South Lane SD 45J3	ESSER II	2087-05	Outdoor Electronic Reader Boards	Yes
2087	South Lane SD 45J3	ESSER III	2087-06	Academy for Character Education Smartboards	Yes
2087	South Lane SD 45J3	ESSER II	2087-07	Outdoor Electronic Reader Boards	Yes
1994	South Umpqua SD 19	ESSER II	1994-01A	Coffenberry Middle School Expansion	Yes
1994	South Umpqua SD 19	ESSER III	1994-01B	Coffenberry Middle School Expansion	Yes
1994	South Umpqua SD 19	ESSER II	1994-02	South Umpqua High School Communications/Sound System	Yes
1994	South Umpqua SD 19	ESSER II	1994-03	HVAC Improvements Canyonville School	Yes
1994	South Umpqua SD 19	ESSER II	1994-04	HVAC Upgrade Myrtle Creek Elementary	Yes
1994	South Umpqua SD 19	ESSER II	1994-05	Practice Facility Upgrade	Yes
1994	South Umpqua SD 19	ESSER II	1994-06	HS South Wall	Yes
1994	South Umpqua SD 19	ESSER II	1994-07	Disability Learning Center Playground Equipment	Yes
1994	South Umpqua SD 19	ESSER II	1994-08	Greenhouse kit	Yes
1994	South Umpqua SD 19	ESSER II	1994-09	Windows for Canyonville Annex Building	Yes
1994	South Umpqua SD 19	ESSER II	1994-10	Canyonville Classroom Addition	Yes
2247	Spray SD 1	ESSER II	2247-01	Cafeteria Tables	Yes
2247	Spray SD 1	ESSER II	2247-02	District Vehicle	Yes
2083	Springfield SD 19	ESSER II	2083-01	Springfield SD Admin Building Modular Work Spaces	Yes
2083	Springfield SD 19	ESSER II	2083-02	Mt. Vernon Elementary HVAC Upgrades	Yes
2083	Springfield SD 19	ESSER II	2083-03	Riverbend Elementary HVAC Upgrades	Yes
2083	Springfield SD 19	ESSER II	2083-04	Agnes Stewart Middle School HVAC Upgrades	Yes
2083	Springfield SD 19	ESSER II	2083-05	Thurston Middle School HVAC Upgrades	Yes
2083	Springfield SD 19	ESSER II	2083-06	Two Rivers/Dos Rios School HVAC Upgrades	Yes
2083	Springfield SD 19	ESSER III	2083-07	Mobile Classroom Set Up WLA	Yes
2083	Springfield SD 19	ESSER II	2083-08	HVAC Upgrade WLA	Yes
2083	Springfield SD 19	ESSER II	2083-09	R-Zero Arc: UV-C Light Devices (Sanitization)	Yes
2083	Springfield SD 19	ESSER II	2083-10A	District Wide HVAC Upgrade	Yes
2083	Springfield SD 19	ESSER III	2083-10B	District Wide HVAC Upgrade	Yes
2083	Springfield SD 19	ESSER III	2083-11	All Tire Supply Wheel Balancer	Yes
2083	Springfield SD 19	ESSER III	2083-12	2 midrise auto lifts for our CTE Auto/Diesel Mechanic Pathway	Yes
2083	Springfield SD 19	ESSER III	2083-13	Yamaha YBS-480 Baritone Saxophone	Yes
2083	Springfield SD 19	ESSER III	2083-14	MarimbaOne 5.0 Octave Wave Series Marimba	Yes
2083	Springfield SD 19	ESSER III	2083-15	Laser Cutter for the Digital Arts Pathway	Yes
2083	Springfield SD 19	ESSER III	2083-16	Conrad Machine Etching Press Model E31	Yes
2083	Springfield SD 19	ESSER III	2083-17	Portable Sawmill	Yes
2083	Springfield SD 19	ESSER III	2083-18	Student Store Vending Machine	Yes
2083	Springfield SD 19	ESSER III	2083-19	Surface Planer	Yes
2083	Springfield SD 19	ESSER III	2083-20	Theater Control Console Board	Yes
2083	Springfield SD 19	ESSER III	2083-21	Acoustic Choir Shells	Yes
2083	Springfield SD 19	ESSER III	2083-22	Rehearsal Piano	Yes
1948	St Helens SD 502	ESSER II	1948-01A	HVAC - Columbia City	Yes
1948	St Helens SD 502	ESSER III	1948-01B	HVAC - Columbia City	Pending
1948	St Helens SD 502	ESSER II	1948-02	HVAC - Lewis & Clark Elementary	Yes
1948	St Helens SD 502	ESSER II	1948-03	HVAC - McBride Elementary	Yes
1948	St Helens SD 502	ESSER II	1948-04	Voice Amplification & Intercom - Columbia City School	Yes
1948	St Helens SD 502	ESSER II	1948-05	Voice Amplification & Intercom - Lewis & Clark Elementary	Yes
1948	St Helens SD 502	ESSER II	1948-06	Voice Amplification & Intercom - McBride Elementary	Yes
1948	St Helens SD 502	ESSER II	1948-07	Classroom Technology - Visual and Audio Presentation - Columbia City School	Yes
1948	St Helens SD 502	ESSER II	1948-08	Classroom Technology - Visual and Audio Presentation - Lewis & Clark Elementary	Yes
1948	St Helens SD 502	ESSER II	1948-09	Classroom Technology - Visual and Audio Presentation - McBride Elementary	Yes
2144	St Paul SD 45	ESSER II	2144-01	St Paul SD HVAC Air Cleaner Unit Install	Yes
2144	St Paul SD 45	ESSER III	2144-02	Middle/High School Lockers	Yes
2144	St Paul SD 45	ESSER III	2144-03	Middle/High School agriculture classroom/shop air quality improvement	Yes
2144	St Paul SD 45	ESSER III	2144-04	Cafeteria Tables	Yes
2144	St Paul SD 45	ESSER III	2144-05	Honda Odyssey Minivan for Student Transport	Yes
2209	Stanfield SD 61	ESSER III	2209-03	Bus Garage	Yes
2003	Sutherlin SD 130	ESSER II	2003-01	Food Service Ovens	Yes
2003	Sutherlin SD 130	ESSER II	2003-02	Food Service Dishwasher	Yes
2003	Sutherlin SD 130	ESSER III	2003-03	Sutherlin High School Classroom Modular	Yes
2003	Sutherlin SD 130	ESSER III	2003-04	Installation of Air Purifiers	Yes
2003	Sutherlin SD 130	ESSER III	2003-05	District Heating Units with Air Purifiers	Yes
2003	Sutherlin SD 130	ESSER III	2003-06	Facilities Upgrades	Yes

2003	Sutherlin SD 130	ESSER II	2003-07	Campus Fencing	Yes
2102	Sweet Home SD 55	ESSER II	2102-01	Foster Elementary HVAC Upgrade	Yes
2102	Sweet Home SD 55	ESSER II	2102-02	Holley Elementary HVAC Upgrade	Yes
2102	Sweet Home SD 55	ESSER II	2102-03	Sweet Home Charter School HVAC Units	Yes
2102	Sweet Home SD 55	ESSER II	2102-04	Sweet Home Charter School New Playground Cover	Yes
2102	Sweet Home SD 55	ESSER III	2102-05	Hawthorne Elementary HVAC units and controls upgrade	Yes
2102	Sweet Home SD 55	ESSER III	2102-06	Oak Heights Elementary HVAC units and controls upgrade	Yes
2102	Sweet Home SD 55	ESSER III	2102-07	Sweet Home High School HVAC units and controls upgrade	Yes
2102	Sweet Home SD 55	ESSER III	2102-08	Sweet Home Junior High School HVAC controls upgrade	Yes
2102	Sweet Home SD 55	ESSER III	2102-09	Oak Heights Elementary School Design Development Work	Yes
2102	Sweet Home SD 55	ESSER III	2102-10	Oak Heights Elementary Outdoor Learning Project	Yes
2102	Sweet Home SD 55	ESSER III	2102-11	Expand Safety Communications	Yes
2102	Sweet Home SD 55	ESSER III	2102-12	Hawthorne Elementary Classroom Acoustics and Lighting Improvements	Yes
2102	Sweet Home SD 55	ESSER III	2102-13	Holley Elementary Classroom Acoustics and Lighting Improvements	Yes
2102	Sweet Home SD 55	ESSER III	2102-14	Sweet Home High School Intercom System Replacement	Yes
2102	Sweet Home SD 55	ESSER III	2102-15	Sweet Home High School Fencing and Gates	Yes
4604	The Cottonwood School	ESSER II	2180-100	Outdoor Eating Tent	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-01	Fort Vannoy Elementary Modular	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-02	Manzanita Elementary Modular	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-03	English Language Learner Facility Renovations	Yes
2055	Three Rivers/Josephine County SD	ESSER III	2055-04	SOSA Modular	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-05	Fruitdale Elementary Classroom Addition	Yes
2055	Three Rivers/Josephine County SD	ESSER III	2055-06	YCEP Storage Container	Yes
2055	Three Rivers/Josephine County SD	ESSER III	2055-07	TRSD Restroom Renovation	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-08	Sunny Wolf Charter School Van	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-09	Southern Oregon Success Academy West	Yes
2055	Three Rivers/Josephine County SD	ESSER III	2055-10	JP Transition Kitchen	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-11	Sunny Wolf HVAC	Yes
2055	Three Rivers/Josephine County SD	ESSER II	2055-12	Sunny Wolf Main Building HVAC and Electrical Upgrade	Yes
2055	Three Rivers/Josephine County SD	ESSER III	2055-13	Sunny Wolf Title I/Special Education HVAC	Yes
2197	Tillamook SD 9	ESSER III	2197-01	Tillamook High School Science Lab Upgrade	Yes
2210	Ukiah SD 80R	ESSER II	2210-01	District Buildings Window Upgrade	Yes
2210	Ukiah SD 80R	ESSER III	2210-02	District-Wide Split Air Exchange	Yes
2210	Ukiah SD 80R	ESSER II	2210-03	Replace Furnaces	Yes
2204	Umatilla SD 6R	ESSER III	2204-01	Credit Recovery and Daycare Building	Yes
2213	Union SD 5	ESSER II	2213-01	Miller Ventilation and HVAC	Yes
2213	Union SD 5	ESSER III	2213-02	Hutchinson Elementary Miller Ventilation and HVAC	Yes
2116	Vale SD 84	ESSER II	2116-01	Vale Elementary School HVAC Upgrade	Yes
2116	Vale SD 84	ESSER III	2116-02	Vale SD Communication System Upgrade	Yes
2116	Vale SD 84	ESSER II	2116-03	Vale SD Touchless Time and Attendance System	Yes
2116	Vale SD 84	ESSER II	2116-04	Vale SD Classroom Audio Systems	Yes
2116	Vale SD 84	ESSER II	2116-05	Vale Elementary School Playground Structure	Yes
2116	Vale SD 84	ESSER II	2116-06	Vale SD Cafeteria Seating	Yes
2116	Vale SD 84	ESSER II	2116-07	Vale SD Bottle Filler Stations	Yes
2116	Vale SD 84	ESSER III	2116-08	Vale School District Outdoor Seating Upgrade	Yes
2116	Vale SD 84	ESSER III	2116-09	English Language Arts Curriculum	Yes
2116	Vale SD 84	ESSER II	2116-10	Vale Elementary School HVAC Upgrade - Phase II	Yes
2116	Vale SD 84	ESSER III	2116-11	Vale Elementary School HVAC Upgrade - Phase II	Yes
1947	Vernonia SD 47J	ESSER II	1947-01	Vernonia K-12 Main Entry Access Control	Yes
1947	Vernonia SD 47J	ESSER II	1947-02	Vernonia K-12 Classroom Entry Access Walkways	Yes
2220	Wallowa SD 12	ESSER II	2220-01	Elementary Carpet Replacement	Yes
2220	Wallowa SD 12	ESSER III	2220-02	Secondary Carpet Replacement	Yes
2220	Wallowa SD 12	ESSER III	2220-03	Tables and Benches for Cafeteria	Yes
2117	Willamette ESD	ESSER II	2117-01	Marion Center HVAC	Yes
2117	Willamette ESD	ESSER II	2117-02	Yamhill Center HVAC	Yes
2117	Willamette ESD	ESSER II	2117-03	Transportation Vehicle at Lord High School	Yes
2117	Willamette ESD	ESSER II	2117-04	Yamhill Center Facility Reconfiguration and Improvement	Yes
2117	Willamette ESD	ESSER II	2117-05	Yamhill Center Audiology Booth Replacement	Yes
2255	Willamina SD 30J	ESSER III	2255-01	Additional Classrooms and Secondary Entrance	Yes
2255	Willamina SD 30J	ESSER II	2255-02A	Outdoor Physical Activity Space K-12	Yes
2255	Willamina SD 30J	ESSER III	2255-02B	Outdoor Physical Activity Space K-12	Yes
2002	Winston-Dillard SD 116	ESSER II	2002-01	McGovern Elementary and DO Modulars	Yes
2002	Winston-Dillard SD 116	ESSER II	2002-02	Winston Middle School Band Room	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-03	Winston Middle School Ventilation Upgrades	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-04	Cover for playground	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-05	Cover for playground	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-06	Musical Instruments and Supplies	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-07	Socio-emotional Learning Curriculum	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-08	School Message Boards (x4)	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-09	Classroom Furniture - District Wide	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-10	McGovern Elementary School Ventilation Upgrades	Yes
2002	Winston-Dillard SD 116	ESSER III	2002-11	Edgenuity Online Curriculum for CDL Students (3 years)	Yes
2146	Woodburn SD 103	ESSER II	2146-01	Lincoln Elementary/French Prairie MS Access and Entry Safety Plan	Yes
2146	Woodburn SD 103	ESSER II	2146-02	Woodburn District Office - IT SmartDeploy	Yes
2146	Woodburn SD 103	ESSER II	2146-03	Lincoln Elementary Concrete Flooring	Yes
2146	Woodburn SD 103	ESSER III	2146-04	Woodburn IT Building Data and Connectivity Back-Up Generator	Yes
2146	Woodburn SD 103	ESSER III	2146-05	Woodburn District Buildings Expanded Co2 Sensors Classroom Ventilation Systems	Yes
2146	Woodburn SD 103	ESSER II	2146-06A	Woodburn District Buildings Touchless Water Fill Stations	Yes
2146	Woodburn SD 103	ESSER III	2146-06B	Woodburn District Buildings Touchless Water Fill Stations	Yes
2146	Woodburn SD 103	ESSER II	2146-07	Expand Safety Communications	Yes
2146	Woodburn SD 103	ESSER II	2146-08	3 Activity Buses	Yes
2146	Woodburn SD 103	ESSER III	2146-09	French Prairie Middle School Window Replacement	Yes
2146	Woodburn SD 103	ESSER III	2146-10	RTU Replacement Washington Elementary	Yes
2146	Woodburn SD 103	ESSER III	2146-11	Woodburn Arthur Academy Quad Roof	Yes
2146	Woodburn SD 103	ESSER III	2146-12	Outside Learning Environments- all middle and elementary schools	Yes
2146	Woodburn SD 103	ESSER III	2146-13	RTU Replacement Lincoln and French Prairies	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-01	Elementary School Auto Scrubber	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-02	Intermediate School Auto Scrubber	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-03	High School Auto Scrubber	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-04	CTE Dome Auto Scrubber	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-05	Tiger Dome Auto Scrubber	Yes
2251	Yamhill Carlton SD 1	ESSER II	2251-06	Yamhill Campus Extractor (Carpet/Grout)	Yes
2251	Yamhill Carlton SD 1	ESSER III	2251-07	Camera System Upgrade	Yes
2251	Yamhill Carlton SD 1	ESSER III	2251-08	Security Door Lock System Upgrade	Yes
2251	Yamhill Carlton SD 1	ESSER III	2251-09	Yamhill Campus Intercom System	Yes
1997	Yoncalla SD 32	ESSER III	1997-01	Elementary Kitchen Remodel	Yes

1997	Yoncalla SD 32	ESSER III	1997-02	Elementary Bleachers	Yes
1997	Yoncalla SD 32	ESSER II	1997-03A	Elementary Playground	Yes
1997	Yoncalla SD 32	ESSER III	1997-03B	Elementary Playground	Yes
1997	Yoncalla SD 32	ESSER III	1997-04	Yoncalla Transportation	Yes
1997	Yoncalla SD 32	ESSER III	1997-05	Yoncalla High School Field Lighting	Yes

Portland Public Schools Goals for Our Students
2022-2027

June 28, 2022

Introduction

It remains the core mission and responsibility of our school system to ensure that every student has opportunities to thrive and experience success. Unfortunately, too many students have been historically underserved, and there has not been evidence of racial equity in PPS as revealed by persistent gaps in student outcomes along the lines of race. We are dedicated to the continuous improvements necessary to drive the system shifts that will better support our students, educators, and leaders and result in improved student performance. This will include a focus on building our individual and organizational capacity through ongoing professional learning and differentiated support for teachers, leaders, and central office staff.

We understand that this work will require focus and intentionality to interrogate how we serve the unique needs of our students, especially for students of color and other students who need us to accelerate their growth so that they are able to demonstrate both grade-level proficiency and the skills and dispositions described in our Graduate Portrait.

Included here are a set of academic milestones along the pre-K to 12 continuum that we intend to progress monitor and hold ourselves accountable to achieving. Since students of color currently demonstrate the greatest gaps in achievement and performance, our goals reinforce an explicit expectation of accelerated growth and gap closure for students of color. **To be clear, the gaps in student performance along the lines of race are persistent, generational, unacceptable, and at odds with our belief that all students can learn. Here at PPS, we intend to eliminate gaps in opportunity and outcomes completely.** We will begin this work with a focused effort on narrowing the persistent gaps in student outcomes in order to eventually eliminate these gaps completely.

Third Grade Reading

We must accelerate achievement for students of color in order to eliminate persistent gaps. Our goal is to close the opportunity and outcome gaps in third grade reading between students of color and their white peers by the metrics set forth, as measured by the Oregon State Assessment System (OSAS)

- African - American Students by 5.5 percentage points per year
- Pacific Islanders by 5.0 percentage points per year
- Native - American Students by 6.1 percentage points per year
- Latino Students by 3.9 percentage points per year
- Asian Students by 2.6 percentage points per year

Reading is arguably the most important and critical skill we teach in school. Therefore, a first and critical step along the Graduate Portrait continuum is preparing all students to read to learn by the end of Grade 3. During the early elementary years, students transition from learning to read to reading to learn. They move from learning alphabetic principles and decoding site words

to making deep meaning of text to which they are exposed.

Foundational reading skills unlock the pathways for all the learning in which students will engage for the rest of their lives. Disciplinary literacy–the ability to read, write and reason across a variety of content areas such as science and social studies–begins with the ability to independently and fluently read for information with great understanding.

Reading is a civil right and it is our responsibility to ensure that all students can read. The data on reading are clear: students who do not read proficiently by 3rd grade are four times more likely to leave high school without a diploma than are proficient readers. We must ensure that all students are reading on grade level by the end of their 3rd grade year.

Fifth Grade Mathematics

We must accelerate achievement for students of color in order to eliminate persistent gaps. Our goal is to close the opportunity and outcome gaps in fifth grade mathematics between students of color and their white peers by the metrics set forth, as measured by the Oregon State Assessment System (OSAS)

- African - American Students by 4.4 percentage points per year
- Pacific Islanders by 4.1 percentage points per year
- Native American Students by 3.5 percentage points per year
- Latino Students by 3.2 percentage points per year
- Asian Students by 1.2 percentage points per year

Fifth grade mathematics is a critical touch point for a number of reasons. It is important for students to have a solid grasp on the foundations of mathematics established in elementary school in order to be effectively prepared for the rigor of middle school mathematics. As students enter middle school, the connections between mathematical areas of conceptual understanding becomes more complex, indicating a necessity for procedural fluency. Procedural fluency builds from an initial exploration and discussion of number concepts to using informal reasoning strategies and the properties of operations to develop general methods for solving problems.

Without a solid foundation in mathematics, students are at risk of falling into a mathematics gap of conceptual understanding as they may experience greater challenges as they grapple to understand concepts through middle school mathematics and beyond. Successful completion of advanced high school coursework in mathematics is predicated on having a solid foundation established in elementary school. It is imperative that students receive grade-level high quality instruction every year in mathematics in order to realize the characteristics of the Graduate portrait, specifically as critically thinking problem solvers.

Eighth Grade Readiness

We must accelerate achievement for students of color in order to eliminate persistent gaps. Our goal is to close the opportunity and outcome gaps in eighth grade readiness between students of color and their white peers by the metrics set forth, as measured by the Oregon State Assessment System (OSAS)

- African - American Students by 3.2 percentage points per year
- Pacific Islanders by 2.7 percentage points per year

- Native - American Students by 1.1 percentage points per year
- Latino Students by 2.6 percentage points per year
- Asian Students by - percentage points per year. Asian students are already on track for this goal.

When students exit Grade 8 ready for the complexities and rigor of high school, a world of possibilities and coursework opens for them. Eighth grade students should be prepared to navigate and adapt to high school's complex challenges and reading, writing and performing mathematics on grade level is one of the key ways by which we can ensure that they are adequately prepared.

Entering high school with grade level proficiency in English language arts and mathematics positions students for more advanced coursework. That advanced coursework, in turn, creates and strengthens college and career readiness of students. Grade 8 readiness can be considered a gateway to postsecondary success.

Conversely, students who enter high school without mastery of core academic knowledge face barriers to a successful high school experience and experience lower-level coursework. If we want every student to have the opportunity to experience the full range of high school coursework – CTE, arts, AP, IB and more–we must commit to adequately preparing them for such by ensuring that students are proficient in English Language arts and mathematics by the end of Grade 8.

High School Graduation
We must accelerate achievement for students of color by eliminating the graduation gaps. Our goal is to eliminate the opportunity and outcome gaps in graduation rates for our students of color while setting higher graduation requirements for all our students, by the metrics set forth, measured by the four-year cohort graduation rate.

- African - American Students by 2.4 percentage points per year
- Pacific Islanders by 3.0 percentage points per year
- Native - American Students by 7.6 percentage points per year
- Latino Students by 2.6 percentage points per year
- Asian Students by - percentage points per year. Asian students are already on track for this goal.

There are persistent and predictable gaps in graduation rates among groups of students and while our graduation data certainly looks a fair bit better than our assessment data, there are still achievement gaps that demand our attention. Therefore, instead of halving the graduation gaps here in PPS, we are proposing that we eliminate them completely.

Successful completion of high school leaves students prepared for wherever their future might take them– college, military or career. We want our students to have infinite possibilities for their future based on following whatever dreams they might have. This often cannot happen without successfully completing high school with a diploma.

Failure to complete high school creates a future earnings gap that cannot be bridged later in life. What's more, in addition to the opportunity to earn a higher income, high school graduates also gain access to better living conditions, healthier foods, and better health care services. High school graduation unlocks endless possibilities for students. We must ensure that all students graduate from high school.

Reporting

Post-secondary Readiness
We must accelerate achievement for students of color in order to eliminate persistent gaps in post-secondary readiness. Every student needs to have the core academic knowledge and opportunity of experience that will prepare them for post-secondary success that are reflective of the diverse skills and interest that our students have pursued through their high school career, including but not limited to, successful completion or achievement of: (a) Career Technical Education, (b) Visual & Performing Arts pathways, (c) Dual-Credit coursework, (d) Advanced Placement , (e) Seal of Biliteracy, (f) International Baccalaureate or (g) college readiness.

We will annually report – in a disaggregated form – the high school students who are successfully completing one or more of the following post-secondary indicators.

1. Successful completion of Career and Technology Pathway (2 or more courses in the same path).
2. Successful completion of Visual & Performing Arts pathways (2 or more courses in the same path).
3. Successful completion (C or Better) of 3 or more Dual Credit courses.
4. Successful completion (C or better) of 3 or more International Baccalaureate courses.
5. Successful completion (C or better) of 3 or more Advanced Placement courses.
6. Successful achievement of the seal of biliteracy
    a. AP foreign language: 3 or above
    b. IB foreign language: 4 or above
    c. SLIP: 6 or above in both Writing and Speaking
    d. STAMP: 6 or above in all of Reading, Writing, Listening, Speaking

Summary
The proposed Board Goals represent a rigorous set of benchmarks along the Pre-K to 12 academic continuum that will allow us to gauge student progress towards realizing the promise of the Graduate Portrait. These goals and targets strongly and transparently signal our need to double down on our equity work on behalf of our students to realize the promise of eliminating persistent, generational and unacceptable outcome gaps along the lines of students' race and ethnicity. The time is now. Our students deserve no less. We have an urgent need to accelerate achievement and performance for students of color here in PPS as we have a series of critically important instructional benchmarks and indicators such as reading, mathematics, high school readiness and graduation, among others, that demonstrate chronic underperformance of students of color. In order to eliminate these gaps, we will leverage systemic investments and supports through high quality, standards-aligned curriculum materials, a unified vision of teaching and learning via our instructional framework, and ongoing, job-embedded professional learning for all educators in order to improve systemic instructional practices.

RESOLUTION No. 6843

Authorization for Off-Campus Activities

RECITAL

Portland Public Schools ("District") Policy 6.50.010-P ("Off-Campus Activities") requires the Board of Education ("Board") consent to student out-of-state travel.

RESOLUTION

The Board has reviewed the request for out-of-state travel. All required documents have been submitted to the Risk Management Department. The Superintendent recommends that the Board consent to the student out-of-state travel for the below request:

AUTHORIZATION FOR OFF-CAMPUS ACTIVITIES

Date(s)	School, Course, and Number of Students	Purpose of Travel	Travel Destination	Estimated Cost	Equitable Field Trip Fund; %
2/10-2/18/24	Roosevelt HS Japanese class, 13	Visit educational & research institutions, hear lectures on diplomatic relations, workshops.	Japan	$0 – paid for by Kakehashi Project	N/A
2/15-2/18/24	Lincoln HS Band, 70	Collegiate-level instruction, attend professional concert, etc	Los Angeles, CA	$1600	N/A
2/15-2/18/24	Lincoln HS Choir, 75	Collegiate-level instruction, attend professional concert, etc	Los Angeles, CA	$1600	N/A
3/22-4/3/24	Cleveland HS Mandarin, 22	Practice Mandarin skills, experience culture	Taiwan	$537.50	N/A
3/25-3/30/24	Grant HS Baseball, 23	Baseball tournament	Phoenix, AZ	$1500	N/A