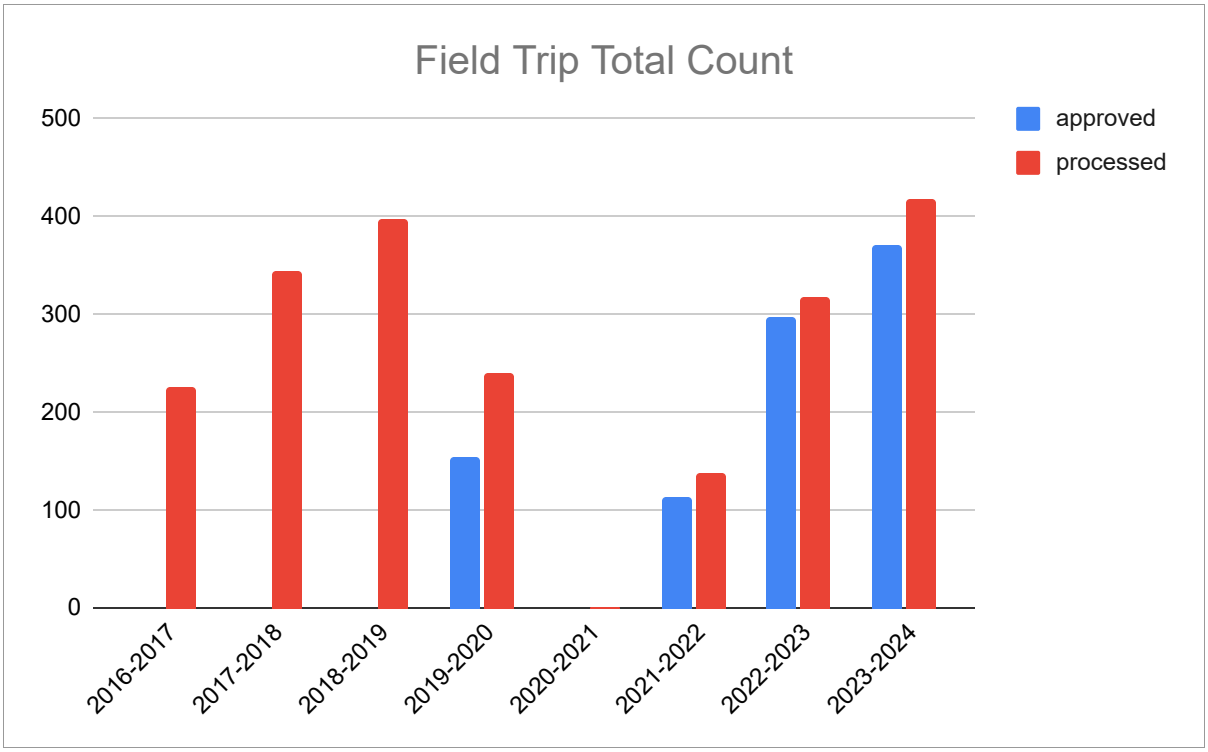
Policy Committee Meeting
Monday, October 20, 2025 4:30 PM

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

Agenda

1. Call to Order / Introductions
2. Public Comment - 5 Two-Minute slots **To sign-up for public comment email PublicComment@pps.net or call 503-916-3741*
3. Field Trips, Foreign Travel, and Other Off-Campus Activities Policy 6.50.010-P
4. Purchasing and Contracting Rules / Policy
5. Liability of Employees of the District Policy 5.50.020-P
6. Districtwide Advocacy and Fundraising 7.10.020-P (Discussion Only)
7. Adjourn


Field Trip Total Count
500
400
300
200
100
0
2016-2017
2017-2018
2018-2019
2019-2020
2020-2021
2021-2022
2022-2023
2023-2024
approved
processed

Field trip policies comparison

Policy Provisions	Policy Provisions	Current Version (2019)	Version 3 from Board member
District recognizes value of special activities to the total school program.	Yes	Yes	Yes, includes making the experiences equitable & inclusive for all students
The stated priorities are educational value, student safety and well-being, appropriate behavior by all participants, and selecting suitable adult supervision from school staff or community volunteers	Yes	Yes	No
Staff organizing extended trips must inform building administrators ahead of time to ensure continuity of instruction for students staying on campus. These plans must be shared with the school community and followed to prevent any disruption.	No	Yes	No
Written parental permission is required for each trip, and the signed form, including acknowledgment of conduct guidelines, must be kept on file for at least one year.	Yes	No	No
The superintendent will create materials to ensure students and supervisors understand conduct standards and district policies, including rules on alcohol and tobacco, handling illness or accidents, and communication procedures in discipline cases.	Yes	No	No
All out-of-state travel requires prior Board approval, based on an acceptable plan covering travel, budget, parental involvement, student and supervisor orientation, and administrator support.	Yes	Out of state travel more than 150 miles from PEC requires Board approval	No
The district may charge a fee for an off-campus trip when the trip is considered optional to the district's regular school program.	Yes	No	No
"Senior trips" are specifically addressed	Yes	No	No

Non-sponsored field trips: Teachers who want to guide students on social excursions unrelated to the instructional program. The unique professional status of staff members makes it impossible to separate school-sponsored from informal non-school-sponsored trips.	Yes	Yes	The AD may authorize separate requirements for non-District sponsored activities & Travel Study Programs
The district prohibits staff involvement in developing, planning and supervising trips represented as "school, class, club or other," other than what is allowed under this policy and the implementing administrative directives.	Yes	Yes	The AD may authorize separate requirements for non-District sponsored activities & Travel Study Programs
Ski Programs - Administrative directive 4.40.051-AD Types of Clubs Authorized points out that ski clubs which go beyond the study of the sport and actually involve mountain trips are not approved because of problems of supervision and safety. Nevertheless, booster clubs and other parent organizations may assume primary responsibility for insurance and other arrangements or schools may arrange to provide credit for off-campus ski programs.	Yes	No	No
Travel Study Programs: involves student travel that are planned, marketed, & conducted by organizations other than PPS. These are not considered PPS-sponsored.	No	Yes	The AD may authorize separate requirements for non-District sponsored activities & Travel Study Programs
Schools and staff to submit field trip requests for review, and approval or denial, prior to any planned activities.	No	Yes	No
When planning a trip, avoid factors that will prohibit student participation, including financial burden, hazards or barriers for students arising from discriminatory policies/practices based on race, religion, culture, gender orientation, sexual identity, or immigration status.	No	Yes	Yes, includes making the experiences equitable & inclusive for all students
Students & supervisors need to be acquainted with & comply with relevant District policies, ADs, & other guidance including the student handbook.	No	Yes	No
Board of Education may request an annual report of field trip activities	No	No	Yes

6.50.010-P Off-Campus Activities 2002-2019

BOARD POLICY

I. General

The district recognizes the value of special activities to the total school program. Students need to be allowed to participate in and profit from carefully planned learning experiences, which fall outside the normal school program/day and sometimes off of campus.

This policy applies to all off-campus activities, including those for students, unless otherwise noted.

(1) The superintendent or designee may authorize field trips and other curricular/co-curricular activities involving travel when such trips or activities contribute to the achievement of desirable educational/social/cultural goals.

(2) In planning and authorizing such trips, primary consideration shall be given to educational values derived, the safety and welfare of students involved, community standards of conduct and behavior on the part of all participants and the selection of appropriate adult supervision, either from within the school staff or from the parent and community volunteer pool.

(3) Written parental permission shall be obtained for each trip. The signed form showing parental approval and acknowledgment of student conduct guidelines shall be maintained on file for a period of no less than one year.

(4) The superintendent shall develop materials as needed to ensure both students and adult supervisors are acquainted with the standards for conduct and with district policy while representing the district. Such material will reinforce district policy in areas such as alcohol and tobacco use, procedure to be used in cases of illness or accident, and methods for communicating with administrators/parents in discipline situations.

(5) All out-of-state travel shall have prior Board approval. Such approval is predicated on an acceptable plan for travel arrangements, including a budget, parental involvement, orientation of students and supervisors and support of the appropriate administrator(s).

(6) The district may charge a fee for an off-campus trip when the trip is considered optional to the district's regular school program.

II. Senior Trips

(1) The district further recognizes senior trips as an extension of the school experience. District-sponsored senior trips may be authorized.

(2) In-state senior trips require approval by the building principal. Requests for out-of state or foreign travel shall be submitted to the Board for approval.

(3) Students participating in senior trips are subject to all applicable policies and directives that they are otherwise be subject to while on campus. Violations

6.50.010-P Off-Campus Activities

will result in appropriate disciplinary action and may include referral to law enforcement.

(4) Private groups and organizations may be permitted to use district facilities and equipment during non-school time to promote senior trips on the same basis as facilities and equipment are provided to others, and in accordance with district policy on community use of school buildings.

III. Non-school Sponsored Trips

(1) The district recognizes the possibility that teachers may wish to guide students on social excursions unrelated to the instructional program. It further recognizes that such events have potential for being developmentally and educationally desirable and useful. The unique professional status of staff members makes it impossible to separate school-sponsored from informal non-school-sponsored trips. This occurs when staff members plan, organize and implement such events for students enrolled in their classes or school of assignment.

(2) For this reason, the district prohibits staff involvement in developing, planning and supervising trips represented as "school, class, club or other," other than what is allowed under this policy and the implementing administrative directives.

IV. Ski Programs

(1) Administrative directive 4.40.051-AD Types of Clubs Authorized points out that ski clubs which go beyond the study of the sport and actually involve mountain trips are not approved because of problems of supervision and safety. Nevertheless, booster clubs and other parent organizations may assume primary responsibility for insurance and other arrangements or schools may arrange to provide credit for off-campus ski programs.

(2) Notwithstanding the regulation regarding ski clubs, organizations, which are experienced in conducting supervised ski programs, may cooperate with schools in providing such programs. With principals' approval, they may cooperate with booster clubs or other parent groups in each school to arrange and conduct ski programs as an adjunct to school programs.

Legal References: ORS 332.107; ORS 336.183; ORS 339.155

History: Adpt 9/9/02; BA 2421 *(This policy incorporates 6.50.015-AD Non-School Sponsored Trips as Section III, and 6.50.072-AD Ski Programs as Section IV. Directives 6.50.015-AD and 6.50.072-AD are rescinded and are incorporated here)*

Board Policy 2019 – present 6.50.010-P

Field Trips, Foreign Travel, and Other Off-Campus Activities

The District believes in the value of experiences outside the classroom and endeavors to make these opportunities available to all. As in all other aspects of school life, PPS is committed to both the access to and the inclusivity of off-campus activities. In planning and authorizing off-campus activities, primary consideration shall be given to the educational outcomes derived, the safety and welfare of students involved, District expectations of conduct and behavior on the part of all participants, and the selection of appropriate adult supervision in accordance with Board Policy 5.10.064-P Professional Conduct between Adults and Students.

I. District-Sponsored Activities

Special activities outside the classroom are an important part of an educational experience. Students shall be allowed to participate in carefully planned learning experiences or co-curricular activities, which fall outside the normal school program, school day, and/or are off-campus when they serve a legitimate educational purpose. Off-campus activities should promote and not compromise the integrity and purpose of the District's educational programs. Plans for continuity of curriculum must be made for the off-campus activity and likewise for students remaining on campus. This policy applies to all off-campus activities, unless otherwise noted.

1) As authorized through this policy and Administrative Directives, the Superintendent's designees may authorize field trips and other extra-curricular activities involving travel off-campus when such activities contribute to educational goals.

2) District staff responsible for overseeing extended travel must notify building administrators in advance of the trip so that plans for continuity of curriculum and instruction can be assured for students remaining on campus. Those plans will be communicated to the school community and observed so that no disruption in curriculum or programming will occur for students remaining on campus.

3) Schools and staff to submit field trip requests for review, and approval or denial, prior to any planned activities.

   a. Principals shall have the authority to approve regular off-campus field trips, subject to Risk Management approval, occurring during the course of one school day.

   b. All off-campus trips comprising more than one school day will be reviewed by Risk Management and approved by the supervising Area Assistant Superintendent.

   c. Specific timelines, procedures, and requirements of this field trip approval process will be outlined in a related Administrative Directive.

4) All out-of-state and foreign travel shall require prior Board approval with the exception of travel up to 150 miles from the PPS headquarters.

5) In planning for off-campus activities, staff members must avoid factors that might prohibit student participation, including financial burden, as well as any hazards or barriers for students arising from discriminatory policies or practices in the destination or during transit based on race, religion, culture, gender orientation, sexual identity, or immigration status. Trips should be designed to promote healthy, safe, and inclusive experiences for all students, and consider the identified special needs and required accommodations of students with an Individualized Education Plan (IEP) and/or plans under Section 504 of the Rehabilitation Act of 1973. .

7) Both students and adult supervisors should be acquainted with and comply with relevant District policies, administrative directives, and other guidance, including the *PPS Student Responsibilities, Rights, and Discipline Handbook*, while representing the District. These expectations should be reviewed again by all students and staff prior to any extended off-campus activity.

II. Non-School Sponsored Off-Campus Activities Must Clearly Indicate They Are Not Affiliated with the District

The unique professional status of District staff members may at times make it difficult for students and families to distinguish between school-sponsored off-campus activities from non-school privately sponsored off-campus activities. While working as PPS staff and/or representing PPS, District staff may not develop, plan, and/or supervise off-campus activities represented as "school, class, club, etc." other than what has been approved under this policy and the implementing administrative directives. In addition, District staff or other persons may not use District email, social media, hardcopy distribution to students, or other methods of District-controlled distribution that are not open to the general public to communicate to District students or families about private, non-school sponsored off-campus activities, without the pre-approval of the school building administrator and in adherence with PPS Disclaimer Requirement (11.1.a)

1) Travel Study Programs

Travel Study Programs are activities involving student travel that are planned, marketed, and conducted by organizations other than Portland Public Schools. Portland Public Schools does not fund, sponsor, or endorse any such programs.

a) Disclaimer Requirements: Any information about travel study programs must include the following disclaimer: "Portland Public Schools does not fund, sponsor, or endorse this travel study program. The District is not responsible for conducting or supervising this trip. Portland Public School employees who participate in travel study programs are not acting in their capacity as District employees and do so at their own risk. Students participating in travel study programs do so at their own risk."

b) Any information distributed about travel study programs cannot contain the name of the District or any Portland Public school.

c) Distribution of information by travel study organizations must follow distribution guidelines in Board Policy 3.30.035-P Distribution of Materials and Information to Students and Administrative Directive 3.30.038-AD. Information distributed about

travel study programs shall not be made through PPS email, without the pre-approval of the school-building administrator and in adherence with PPS Disclaimer Requirement (see 11.1.a).

d) Travel study organizations must use the Civic Use of Buildings (CUB) procedures for informational/planning meetings after the school day. See Policy 3.30.010-P Community Use of School Buildings and Facilities and 3.30.011-AD Community Use of School Buildings and Facilities: Short-Term Use.

Legal References: ORS 332.107; ORS 336.183; ORS 339.155

Amended 9/2002, Amended 3/2019

DRAFT Field Trip Policy – Proposed Aug 2025 Policy 6.50.010-P

Field Trips, Foreign Travel, and Other Off-Campus Activities

Field trips and experiences outside of the classroom provide unique opportunities and enrichment for students. The District shall strive to make these experiences equitably accessible and inclusive for all students. The District is responsible for overseeing the educational value of field trips and for the safety and welfare of all students involved.

I. Field Trip Approval Process

A. The District shall determine the appropriate approval process in the subsequent Administrative Directive and/or in the appropriate Risk Management procedures.

B. Field trip and risk management approval procedures should be developed with consultation from school administrators. School administrators may also request exceptions or alternative procedures in order to account for special or unique circumstances.

C. Field trips and adult supervision must be in accordance with Board Policy 5.10.064-P Professional Conduct between Adults and Students.

II. District Sponsored Activities, Non-District Sponsored Activities, and Travel Study

A. The Administrative Directive may authorize separate requirements for Non-District Sponsored Activities and Travel Study Programs.

B. The Board of Education may request an annual report of Field Trip activities.

Administrative Directive 6.50.011-AD

Field Trips

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I. Introduction

When planning and conducting field trips, field studies, excursions, off-campus experiences, presentations, performances, student conferences, school-sponsored senior trips, and foreign study programs in accordance with Board Policies 6.50.010-P and 6.50.020-P, staff must use the following procedures and guidelines. Any field trip that does not follow these procedures and guidelines is prohibited.

Field trips must have a valid instructional purpose. Field trips require that the highest standards of safety must be in place and that the educational benefits have been determined to outweigh the risks involved.

II. Definitions

1. Field Trip

   Any school-sponsored academic activity in which school personnel and students leave school grounds.

2. Walking Day Field Trip

   a. Any school-sponsored academic activity in which school personnel

and students leave and return to the school grounds by foot during the same day.

b. Examples of walking field trips include, but are not limited to: trips to public libraries, parks, bowling alleys, businesses and museums which are within walking distance of the school.

3. Standard Day Field Trip

a. Any school-sponsored academic activity in which school personnel and students leave and return to the school grounds by commercial or private transportation during the same day.

b. Examples of day field trips include, but are not limited to: educational resources such as museums, concerts, parks, temporarily available exhibits and displays, films, plays and city / county / state governmental enterprises.

4. Wilderness Field Trip

a. Any school-sponsored activity that includes travel to an area inside or outside the Portland metropolitan urban boundaries that may involve especially hazardous activities for which additional administrative approval is necessary. For the purposes of this directive, wilderness field trips may include, but are not limited to:

i. guided water rafting, whale-watching, beach or ocean activities, swimming, hiking, back packing, camping, mountain biking and high-altitude activities
ii. activities along the Willamette, Columbia or other rivers
iii. outdoor activities in forested natural areas, such as Portland Parks and Recreation's Forest Park

b. A wilderness field trip will require specific planning by knowledgeable experts.

c. A wilderness field trip may be wilderness and day, wilderness and overnight or wilderness and international. In these cases, guidelines for both kinds of field trips must be followed.

d. All plans for wilderness trips must be approved by Risk Management; many wilder- ness activities are not permitted. If you have questions regarding these types of trips, contact Risk Management.

5. Overnight Academic Field Trip

a. Any school-sponsored academic activity within the United States that lasts one or more nights.

b. Examples include, but are not limited to: regional and national conferences, tours of sites important in American history, state or national development, special exhibits of art and antiquity, fairs, expositions, drama productions, environmentally important sites, performances and non-athletic competitions.

6. Overnight PIL Sports / School Curriculum-Related Student Club Field Trip

a. Applies to any travel by PIL athletic teams for competition beyond the PIL within the United States that lasts one or more nights.

b. Staff must follow the guidelines for academic field trips found in this Administrative Directive, in addition to applicable Athletic Department policies and procedures.

c. PIL sports teams or curriculum-related student clubs participating in state tourna- ments may not receive sufficient notice of participation to submit trip requests within the time parameters set forth in this Administrative Directive. In those cases, schools are to submit the overnight requests as soon as possible with an accompanying explanation of the time constraints.

d. For definitions of school curriculum-related student clubs, refer to Administrative Directive 4.40.050-AD.

7. International Field Trip

a. Any school-sponsored academic activity that takes students beyond the borders of the United States to any other country, including Canada and Mexico.

b. International field trips require specific planning by knowledgeable experts and proper student documentation to cross international borders and to re-enter the US.

c. At least two adults, including one administrator, must accompany students on an international field trip. The District may consider a waiver to this procedure. The school must submit a written request that must be approved in writing by the principal, regional administrator, and Risk Management. Such a waiver request must be submitted as part of the initial field trip application. The waiver request must cover why a building administrator is not necessary for the trip, how district procedures and rules will be managed during the trip and by whom, and how communications will be maintained during the trip with the building administrator when necessary.

d. Principals must state a compelling reason why a field trip within the borders of the United States cannot provide a similar academic experience.

8. Off-Campus Performances / Presentations

A student activity such as a choir, band or orchestra concert, or a speech or drama production outside the school that the students attend. The activity may take place at a community event, another school or other public venue. Examples include, but are not limited to: singing at a mall, speech and debate competitions, marching in the Rose Festival Parade, and performing part of a high school play at a feeder middle School (See section IX of this Administrative Directive for details).

9. Sponsored Field Trip

Any academic activity that is conducted by Portland Public Schools for which school personnel and students leave school grounds and for which the procedures and guide-lines in this Administrative Directive are followed in the planning and conduct of the trip.

10. Travel Study Program

Any academic activity involving student travel that is sponsored by an organization other than Portland Public Schools and which may or may not include District staff as facilitators or participants. Student participation in a travel study program is always

optional. See Section X (4) of this Administrative Directive for cautions and prohibitions. For additional information, refer to Administrative Directive 6.50.012-AD Travel Study Programs.

11. Required field trip

A field trip that is an integral part of an instructional program and in which all students in a given class or course are expected to participate. A student fee cannot be charged for a required field trip.

12. Optional field trip

A field trip that is not a requirement of any instructional program.

13. Home Stay

For international trips only. A student staying for one or more nights in a private residence.

14. Commercial Lodging

A commercial establishment which provides sleeping accommodations and services that has obtained appropriate business licensure, insurance, safety inspections, etc. as required by applicable laws, codes, and ordinances.

15. Camping as lodging

School-sponsored student field trips which involve travel to an area in which there is no available commercial lodging. This will include sites such as for-fee campgrounds and state and/or federal parklands. For Risk Management review, the PPS trip leader may be required to provide an illustrated camping safety plan and obtain a certificate of insurance from the site owner.

16. Trip Leader

Portland Public Schools employee in the leader's role and with the primary responsibility on a field trip. See section 14.

III. General Requirements

Well-planned and carefully conducted field trips can be an important supplement to in-school education programs. Field trips are encouraged within the context of the following requirements:

1. Planned objectives

As part of the instructional program, field trips must be planned with definite educational objectives stated in writing.

2. Attention to student safety

Student and staff safety is the most important consideration when planning, conducting and supervising field trips. . Risk Management may require written safety plan and procedures.

a. Appropriate chaperones If students of both sexes participate in an overnight or international trip, both sexes must be represented by the adult staff or chaperones.

b. Discussion of safety procedures Prior to each field trip, the teacher must discuss safety procedures specific to the trip with students and accompanying adults.

c. Food Food provided by Nutrition Services (usually box lunches) and taken on field trips will be properly prepared, refrigerated, handled and stored. Nutrition services can provide instructions about transporting and serving food safely. Schools may share these instructions with parents who send food with their students.

d. Permission and responsibility to terminate field trip District staff leading the field trip have permission and responsibility to terminate any field trip in which proper safety measures are not in place. If, for any reason, a teacher experiences serious problems or difficulties on a field trip, these must be communicated immediately to the principal or another building administrator.

e. Industrial plants On field trips to industrial plants, an employee of the plant shall lead the students through the plant, such arrangements being agreed to in advance. Appropriate safety equipment must be used at all times by students and staff.

f. Student Accident Insurance The District has purchased an accident and emergency sickness insurance policy for students on field trips. The maximum benefit payable per accident is in excess of any other insurance.

3. Accommodations Including Special Education and Section 504 Students

a. Appropriate planning, transportation, supervision and accommodation must be provided for any students having special needs including Special Education and Section 504 students. Considerations including extra costs, safe and proper supervision, medication administration, accessibility via ramps, curb cuts, entrances and exits, restrooms, conditions of walkways, assistive devices and medical protocols should be addressed early in the field trip planning process.

b. Additional costs to provide adequate lodging, transportation, or supervision are the responsibility of the school planning the trip. The family of a special needs or Section 504 student cannot be charged additional fees in order to enable an identified student to attend. Additional costs must be planned for as part of the overall field trip activity. Information regarding any additional costs incurred to accommodate special needs or Section 504 students must remain confidential. A student's parent / guardian can volunteer to provide necessary support or accommodations but the district cannot require their participation. If a school determines that a parent / guardian should be required to attend in order to keep the student safe, the principal may contact the Special Education / Section 504 counsel for guidance.

4. Limitations and Prohibitions

Participation in dangerous sports and hazardous activities is prohibited on field trips. Staff must consult with Risk Management to determine if specific activities are safe and acceptable.

a. Recreational swimming Recreational swimming during a field trip (including, but not limited to: motel / hotel / water park pools, lakes, parks, the

ocean) is prohibited unless appropriate, certified lifesaving trained staff are on duty and the activity is supervised by District staff.

b. Recreational watercraft Student use of recreational watercraft is prohibited. Examples of prohibited activities include, but are not limited to: unguided kayaking, unguided water rafting, inner tubing, jet skiing, motor boating, and water-skiing. Canoeing is permitted when a responsible adult is in each canoe and all students and adults in the canoe are wearing flotation devices. Licensed and approved jet boat excursions are allowed if approved by risk management.

c. Group charters of commercial watercraft Field trips involving commercial watercraft must be cleared through Risk Management to assure that District-approved safety measures are in place. Group charters of commercial watercraft may be permitted if Risk Management is provided with proof of insurance coverage confirming that the owner / operator of the watercraft carries the required insurance to protect the District, its staff and students.

d. Flotation devices Students and adults must wear appropriately sized and rated flotation devices on any watercraft under sixty (60) feet in length.

e. Horseback riding Horseback riding on any field trip is prohibited unless the horses are secured to a carousel and each student wears a helmet or unless a part of an adaptive horseback riding program.

f. Elementary grade level trips While overnight and international trips are generally considered more appropriate for middle and high school students, elementary students may participate in such trips with approval of the principal's supervisor.

5. Emergency Contact Information

Contact information must be recorded at the school. Contact information must include the cell telephone numbers of those persons, including all drivers, who will know the location of the group and how the group may be reached.

6. First Aid and CPR Certification

All field trips must be supervised by District staff in possession of a school-provided first aid kit. All wilderness, overnight and international field trips require that at least one District staff chaperone hold valid first aid and CPR certification. Appropriately trained parents / volunteers with valid first aid and CPR certification may fill this requirement.

7. Security Considerations

a. It is the responsibility of the principal and Risk Management to be aware of security matters to determine if a trip must be cancelled within 24 hours of departure.

b. Under no circumstances will field trips be permitted to countries cited in the United States Homeland Security Travel Warning List or during an elevated level of terrorism threat.

c. Approval for a field trip may be withdrawn on the basis of changing political conditions or other emergencies.

8. Volunteers

a. Volunteers who will have unsupervised contact with students are required to successfully complete the criminal history verification process. Refer to Board Policy 7.20.020-P.

b. Volunteers are not permitted to bring their spouses, relatives, children other than participating student(s), friends or pets on field trips.

c. The District has elected to provide volunteers with excess accident insurance coverage. This insurance covers individuals while acting within their duties as volunteers. The maximum benefit payable per accident is in excess of any other insurance. The District does not provide any other health or medical insurance for volunteers.

9. Forms

District field trip forms and documents are necessary for field trips. These forms are

available on the PPS Inside website under Forms.

10. Field Trip Official Record

All field trips will be a matter of official record. Such a record will contain the following information:

a. Educational objectives;

b. Departure and return times / dates;

c. Transportation arrangements specifying carriers by name;

d. Itinerary;

e. Trip activities;

f. Details of supervision; staff, parent / volunteer names and phone numbers;

g. Students' names, addresses and telephone numbers when going on an overnight or international trip;

h. Details about lodging, if applicable;

i. Names, addresses and telephone numbers of out-of-Portland contacts as applicable;

j. Costs, insurance forms, where necessary;

k. Copies of executed contracts, where necessary.

11. School Level Review and Approval

a. All Field Trips

i. Teachers considering any and all field trips must obtain preliminary

approval of the principal prior to undertaking any planning activity and before discussing the trip with parents, students and community groups. Signed approval on appropriate forms within timelines is required before any trip.

ii. Principals must approve all parents / volunteers and confirm that each one with unsupervised student contact has successfully cleared the criminal history verification process.

iii. If volunteers are driving, principals must confirm that each driver has met the appropriate automobile license and insurance requirements. It is highly recommended that each driver carry a cell phone with a hands-free device.

b. Standard and Walking Day Trips Principal approval alone is sufficient for standard day field trips. The approval form must be signed at least five (5) business days before the trip. Less than five days' notice is acceptable with principal's permission. Approved forms must be kept in the school for one year.

c. Overnight, Wilderness, International Trips Principals must approve all overnight, wilderness, and international field trips. In addition, all of these trips require district level approval. For process and required district signatures, see Section 11 below.

12. District Level Review and Approval

Timelines for district review allow Risk Management staff to ensure that all facets of the field trip and personnel involvement are within district policy and risk tolerances. Timelines allow for additional information to be clarified with the trip leader, certificates of insurance to be obtained when applicable, and original plans altered if necessary. In cases of late forms, Risk Management will make reasonable efforts to complete the request.

The Field Trip Request form must be sent to Risk Management

- At least ten (10) business days prior to the trip if transportation is by car or bus.
- At least thirty (30) business days prior to the trip if by airplane, train, or ship, and/or if contracts are to be secured for the field trip.
- At least sixty (60) business days prior to the trip for international field trips.

Following is the process work-flow for district review and approval for overnight,

wilderness, and international field trips.

1. Ensure school level approval is complete. See section 11.
2. Principal e-mails the completed Field Trip Request form to Risk Management.
3. Risk Management staff will review, seek additional information or changes if needed, and approve or deny the field trip request.
4. If international, the form will be routed to the Senior Director for review and approval or denial.
5. Risk Management will return the forms to the principal with approval or denial.
6. Completed Field Trip Request forms will be digitally archived by Risk Management.

13. Parent / Guardian Approval

a. Prior written approval by a parent / guardian is required for student participation on all field trips.

b. Parent / Guardian approval must be on District field trip forms. No other means of approval is acceptable. Please refer to Section III – Forms in this Administrative Directive.

c. The information on the parent approval form must include a complete description of the trip: departure and return times/dates, transportation arrangements, itinerary as applicable, trip activities, details of supervision and cost to the student, if any, and student medical information / medical protocols, if applicable.

d. Details regarding all costs to the students must be communicated to parents in writing in advance of the trip.

e. All transportation arrangements and costs must be clearly specified and included in the total cost of the field trip. If there is a possibility that students may incur additional local transportation costs or other unplanned expenses may be encountered, these possibilities must be described.

f. The information must be in a language the parent / guardian can understand.

g. Documentation of parent / guardian approval for field trips organized for students who are part of Portland Public Schools' DART programs will be overseen and arranged by the programs' administrators or their designees.

14. Supervision on Field Trips

As in conducting regular classes and activities on campus, District personnel must assume primary responsibility for all reasonable and usual supervision of students and activities. The role of parents and other volunteers is to accompany and assist with students on field trips.

a. High school students may not act as sole chaperones for younger-grade students.

15. Adult to Student Ratios on Field Trips

The ratio of adult supervision to students participating will ordinarily not be less than 1:10 for elementary, 1:15 for middle school and 1:20 for high school trips. However, principals may exercise professional judgment in adjusting adult supervision, taking into consideration trip uniqueness, special needs of students and activities planned to occur on the trip.

16. Student Behavioral Expectations

District behavioral expectations as presented in Portland Public Schools Student Rights, Responsibilities, and Discipline materials apply to students on field trips, including international field trips. Students in violation of behavioral expectations as indicated in these materials may be sent home from the field trip at parent / guardian expense and are subject to consequences as set forth in the discipline materials.

17. Property

a. The District does not pay for student property that is lost, stolen or damaged on field trips.

b. Any District property or equipment taken on a field trip by staff must be properly checked out from and returned to the school.

18. Use of a Commercial Travel Organization for Planning and Implementing a Field Trip

The principal may ask an outside organization to provide information and services for a trip for which the superintendent's designee has reviewed and signed the Approval to Plan a Field Trip form. The organization must have a record of responsible performance to include:

a. A history of financial stability and experience in providing travel assistance for field trips for students.

b. References by teachers, parents and / or administrators who have used the program or travel organization.

c. Accessibility to District personnel.

d. Insurance required from the organization must include:

i. Liability insurance naming the District as an additional insured with a $1,000,000 single-limit minimum. The evidence of the insurance must be filed with the school and must become part of the field trip application evaluated by the principal and Risk Management.

ii. Medical and medical evacuation insurance, if appropriate to the trip. The evidence of the insurance must be filed with the school and must become part of the field trip application evaluated by the principal and Risk Management.

iii. A trip cancellation policy, if appropriate. A trip cancellation policy is mandatory for international field trips and optional, but recommended, for domestic overnight field trips. The evidence of the insurance must be filed with the school and must become part of the field trip application evaluated by the principal and Risk Management.

19. Makeup Work

Students are expected to make up work missed during absences due to field trips.

20. Credit

a. Required Field Trips High school credit for required field trips is part of the credit earned for the class through which the trip was taken. If a student cannot participate, an alternative assignment must be provided.

b. Optional Field Trips Optional field trips may qualify for high school credit if the experience meets the criteria established by the state for units of credit.

i. A written plan of goals, activities and hours is submitted to appropriate school staff prior to the trip, and a final report is presented at the conclusion of the trip confirming that the student has achieved those goals; and

ii. Approval of plans according to the provisions of the regulation for off-campus credit is a matter of record.

IV. Funding of Field Trips

The District recognizes that on some field trips there are optional items and activities for which students may bring money from home. At the principal's discretion, the school or other funding partners may assist students with reasonable financial support for the optional items. Students shall not be excluded from participation in any required field trip because of inability to pay.

1. Acceptable Funding Sources for Field Trips

a. Finances may be provided through school budgets, grants, private sponsorship, contributions from school parent groups, by family donations and / or by fund-raising events consistent with District policies and administrative directives.

b. No staff member or member of his or her immediate family shall receive any benefits or compensation from outside agencies in relation to school-sponsored trips.

c. Only with the authorization of the school principal and clear notice to

families may expenses for staff members and volunteers who accompany students on trips be included in the cost of the trip.

2. Funding of Required Field Trips

a. Funding of field trips that are an integral part of an instructional program and in which all students in a given class or course are expected to participate shall be at District expense or through fund-raising.

i. Parents shall be informed of the need for fund-raising efforts.

ii. Parents shall not be asked to pay for the cost of their student's participation in required field trips. No fee may be charged for a required field trip.

iii. The principal shall annually prepare budgets to be locally used in allocating District-provided field trip funds.

b. Local school field trip budgets shall ensure fairness and balance in the use of funds among grade levels, instructional programs and special activities.

c. School offices will make arrangements for buses through the Student Transportation Department.

d. Records of all field trip expenditures, including date, destination, teacher, number of students, transportation costs and admission fees (where relevant) will be maintained by the school principal.

3. Funding of Optional Field Trips

a. Field trips which are optional or otherwise not a part of any required instructional program may be authorized by the principal, with the cost to be borne by students. Special administrative care should be used in making such a determination.

b. When approved, students and their parents are to be informed of the optional nature of the field trip, including per-student cost.

i. Each student shall independently choose whether or not to participate.

ii. School budgets may contribute to the cost of an optional field trip.

4. District Employee Travel Expenses

a. District employee travel expenses, including but not limited to: transportation, lodging and meals, may be paid from funds raised for a trip. Employee expense / cost shall not govern the level of supervision necessary for a trip.

b. District employee travel expenses must be documented on Travel/Training Authorization forms located in the PPS Inside website under Forms.

c. Employee salary is not included in the cost of a trip.

5. Unexpended Funds

When funds raised for a field trip are in excess of expenditures, the excess funds will be allocated in the following ways:

a. If the funds were raised by student assessment, excess funds are to be rebated to the students who were assessed;

b. If the trip was financed by parent or other group contributions, the unexpended funds will be returned to the group or placed in the student body funds as determined by the group;

c. If prior notice is supplied, unexpended funds raised by student fundraisers will be placed in the student body funds for a clearly designated purpose.

6. Reporting of Field Trip Finances

Accurate records of field trip receipts and disbursements must be kept at the school and be available to parents and others upon request.

7. Contracts for Field Trips

a. All contracts with organizations providing travel services for overnight and wilderness trips, even those for amounts under $2,000, must be submitted at least 30 calendar days prior and proceed through the regular contract process to be reviewed for proper terms and conditions. Contracts for international field trips must be submitted at least 60 calendar days prior.

b. Only those contracts with proper terms and conditions will be approved. If assistance is required, contact the District's Purchasing and Contracts department.

c. A copy of the proposed contract must be attached to the Field Trip Approval Request form that is reviewed by the principal, Risk Management, Purchasing and Contracts, and the superintendent's designee.

V. Transportation

1. Commercial Transportation

a. Except as elsewhere authorized, transportation of students shall be by the District, by District-contracted transportation, or by an insured commercial or public carrier.

b. When contracted bus transportation is required, only authorized vendors shall be utilized. Scheduling procedures and the list of authorized vendors can be obtained from the District's Student Transportation Department.

c. Transportation arrangements for international field trips must be on public carrier(s) to assure the safety of the students. (Exception: trips to Canada and Mexico).

2. Private Transportation

Principals may authorize adult volunteers and staff members to use private vehicles to transport students on field trips (not regularly scheduled classes off campus) or on other school activities, provided:

a. The school administrator has approved the activity, and the adult volunteer or staff driver of the private vehicle has knowledge of the automobile's safety equipment. A safety belt and / or a booster seat (if applicable) must be available for and used by each passenger.

b. A permission slip signed by the student's parent / guardian has been received by the principal or his/her designee granting permission for the student to participate in the field trip and to ride in a private vehicle.

c. The adult volunteer or staff member is properly licensed to drive, has the minimum insurance mandated by the State of Oregon, will operate the vehicle according to the Oregon Motor Vehicle Code and is in compliance with other District requirements.

d. The District provides excess automobile liability insurance for adult volunteers and staff members driving private vehicles on field trips. This insurance is for liability coverage only and is in excess of any other insurance.

e. Drivers who are not District staff must have a criminal records check. Drivers must agree to comply with all District policies, including refraining from smoking and use of alcohol and drugs.

f. Students, even those 18 and older, may not participate as field trip drivers. With administrative and written parental permission, students with valid drivers' licenses may drive themselves to and from a field trip location.

g. In no circumstances shall a student who is not the child of the driver be alone in the car with the driver (i.e. there must be at least two students in each car).

VI. Use of School Time for Field Trips

1. Travel During School Time

Upon recommendation of the principal, the principal's supervisor may authorize an absence from school for field trips for up to five (5) school days and, in very exceptional cases, an absence for up to twenty (20) school days.

2. Travel During Non-School Time

Upon recommendation and approval of the principal and principal's supervisor, students may engage in school-sponsored field trips on weekends and during vacation periods when planned and conducted within the provisions of this Administrative Directive.

VII. Lodging / Home Stays

1. Home stays are prohibited as part of an overnight domestic field trip. Commercial lodging accommodations are to be used when an overnight stay is necessary. Male and female students are to sleep in separate rooms.

2. If home stays are part of an international field trip, parents / guardians must be informed of the extent of the information the Portland school has about housing arrangements.

a. The parent / guardian must specifically approve the student's participation in a home stay.

b. Male and female students are to sleep in separate areas.

c. All home stay arrangements, detailed to provide adequate contact information, must be a matter of record in the Portland school principal's office and in the offices of the principal's supervisor and Risk Management.

VIII. Student Travel Documents for International Travel

1. Required Documentation

Schools must verify that students have proper documentation to re-enter the US from abroad. Passports are required for all international travel. An exception is that minors traveling in a school group by ground transportation do NOT need a passport to enter Canada. However, they do need a notarized letter from a parent / guardian as well as the District's permission form. The parent's letter must include the student's complete

name, date of birth, address and offer permission for the trip.

a. In addition to a passport and the District's permission form, when escorting a minor child without his or her parents, a letter from both parents is required, giving permission to travel with the minor.

b. If the child is accompanied by only one parent, the parent must bring a letter of permission from the child's other parent.

c. If a single parent has sole custody, a copy of the court custody document or other legal documentation such as a death certificate can replace a letter from the other parent.

d. All US-citizen students participating in an international field trip must carry passports and a letter from their parents/guardians giving permission for the trip, in addition to the district's permission form. The letter must include the student's complete name and date of birth, current address, and permission for the trip.

e. Students in the US with permanent resident status (green cards) must carry that card with them and present it when crossing any international border. They must also carry written parent / guardian permission for the trip in addition to the district's permission form.

f. Students who are foreign nationals or foreign exchange students must carry with them all the original paper-work they needed to enter the United States initially.

g. The school must contact the US Immigration office and the embassy or consulate of the country of travel to determine if additional documents are needed. Staff may contact the Risk Management Department for assistance.

IX. Off-Campus Presentations

In addition to the regular work in the classroom and performances before school groups, participation by student groups in certain kinds of community events may provide worthwhile educational experiences for students in school choirs, bands, etc. In order to assure that such participation in events outside the school will be both enriching for the students and avoid involvement of the school in inappropriate kinds of activities, the

following guidelines shall be followed:

1. Limitations on Appearances

School performing groups shall not make presentations in events which are considered to be political or commercial in nature.

2. Approval Procedures

Off-campus performances and presentations must be approved at the discretion of the principal within the framework of the above limitations whether during or after school hours.

X. Activities Not Considered Field Trips

1. Outdoor School

Outdoor School is a multi-day environmental education program for sixth-grade students and high school student camp counselors operated by Multnomah Education Service District. Portland Public School students and employees are under the supervision of the MESD and are to follow the procedures and policies of the MESD when participating in Outdoor School.

2. School-to-Work Activities including work experience, job shadowing, mentorships and internships Refer to 6.50.071-AD.

3. School Club Activities

Travel with religious, political or sports clubs is not a District sponsored field trip. Students or staff who choose to travel with these clubs do so at their own risk. Refer to Administrative Directive 4.40.050-AD.

4. Travel Study Programs

Travel Study programs are activities involving student travel which are planned, marketed and conducted by organizations other than Portland Public Schools. They are generally short-term trips, less than one semester, for individuals or groups of students, and planned to occur during non-school time (summer and other school breaks). These

trips do not qualify as field trips.

a. Any information about Travel Study Programs from District staff must include a clear disclaimer (see Administrative Directive 6.50.012-AD) that the program is not sponsored by the District.

b. The District has no responsibility in the planning or conduct of travel study trips. Students, parents and any District staff involved do so at their own risk.

c. Any credit extended for participation in a Travel Study program must meet the criteria noted in Section III of this Administrative Directive.

d. Refer to Administrative Directive 6.50.012-AD Travel Study Programs.

Policy Implemented: 6.50.010-P

History: Adpt. 6/71; Amd. 3/75; Amd. 9/77; Amd. 7/80; Amd. 10/83 ed.; Amd. 1/89; Amd. 11/7/97; Amd. 4/98 ed.; Amd. 9/01/02 (Incorporates material from 6.50.010-AD, 6.50.011-AD, 6.50.012-AD, 6.50.040-AD, 6.50.050-AD, and 6.50.060-AD) Amd. 8-15-05, Amd. 5-18-06, Amd. 10- 4-06 Amd 1-07 Amd 9-13, Amd 10/16

Administrative Directive

6.50.012-AD Travel Study Programs

While recognizing that valuable opportunities for participation in travel study programs by Portland Public School students are numerous and can enhance the student educational experience, Portland Public Schools does not fund, sponsor or endorse any such programs. The purpose of this Administrative Directive is to establish the limitations of District facilitation of travel study programs as a service to our students and parents.

(1) **Definition**. For the purposes of this Administrative Directive, travel study programs

(a) Are activities involving student travel which are planned, marketed and conducted by organizations other than Portland Public Schools;

(b) Are generally short-term trips, less than one semester, for individuals or groups of students;

(c) Planned to occur generally during non-school time (summer and other school breaks);

(d) May be national or international in scope;

(e) May involve Portland Public School staff as participants or leaders.

(2) **Limitations on Communication about Travel Study Programs**

(a) Distribution of information by travel study programs (including those led by Portland Public Schools staff) must follow distribution guidelines as stated in Board Policy 3.30.035-P Distribution of Materials and Information to Students and Administrative Directive 3.30.038-AD.

(b) Portland Public School employees who participate in travel study programs are not acting in their capacity as District employees and do so at their own risk. If a District employee incurs an injury in any way in the facilitation or

implementation of a travel study program, the employee would not be covered by workmen's compensation since the injury occurred while the employee was not acting in the capacity as a District employee.

(c) Participation in travel study programs shall not be a requirement of any PPS course or curriculum.

(d) Students participating in travel study programs do so at their own risk.

(e) Planning and promotion of travel study programs shall not occur during school hours

(i) School hours means hours that students are in class, at lunch or recess or any other non-instructional time during the school day.

(f) District employees may not engage in fund-raising or collection of money for a travel study program during school hours.

(g) Students wishing to fund-raise for their participation in travel study programs must obtain permission from the school principal.

(h) Travel study organizations must use the Civic Use of Buildings (CUB) procedures for informational/planning meetings after the school day.

(i) Principals may, at their discretion, facilitate communication about travel study programs to inform students and families about opportunities. However, venues where such communication takes place must prominently display the disclaimer below in Section (3) of this Administrative Directive.

(3) **Disclaimer Requirements**. Any information about travel study programs from District staff must include the following disclaimer: (a) "Portland Public Schools does not fund, sponsor, or endorse this travel study program. The District is not responsible for conducting or supervising this trip. Portland Public School employees who participate in travel study programs are not acting in their capacity

as District employees and do so at their own risk. Students participating in travel study programs do so at their own risk."

(b) Any information distributed about travel study programs cannot contain the name of the Portland Public School District or any Portland Public school.

(4) **Credit for Travel Study**. Elective, non-academic credit, not to exceed one (1) unit, for participation in a travel study program may be granted, provided that:

(a) A written plan of goals and activities is submitted and approved prior to the trip, and a final report is presented revealing that the student has achieved those goals;

(b) The principal or designee has approved the plan and reviewed the final report.

Approved by

Vicki L. Phillips 10-3-2005

6.50.021-AD Foreign Travel – Study Programs

Travel-study programs provide experiential learning opportunities for students and further district goals for intercultural understanding. Travel-study programs announced through the schools shall be either actually "conducted" by the district or "facilitated" by the district. Facilitated travel-study programs are those announced through the district but not conducted or supervised by any arm of the district. In order that Portland students traveling with programs conducted or facilitated by the district travel in relative safety and receive the educational/social benefits meeting the district goals, the school must carefully investigate, plan, organize, coordinate, and monitor all aspects of each foreign travel-study trip. To receive endorsement and approval, a travel-study program must comply with this directive.

(1) Travel-study programs in which a student or groups of students take trips outside of the continental United States because the district had conducted or facilitated the trip shall be governed by this directive.

(2) There are only two types of travel-study programs: (a) travel "facilitated" by the district,; and (b) travel "conducted" by the district.

(a) District-Facilitated Trips

(A) Those trips in which the foreign travel-study program is conducted by a travel-study organization or another public body may be "facilitated" by the district. Prior to any activity which involves students in a district-facilitated travel-study proposal or provides information about any travel-study program, the initiating staff will obtain planning approval from the Director of Student Achievement and the Superintendent's Office and then the staff may proceed according to the district Field Trip Manual to facilitate students' participation in the travel-study program.

(B) Parents must be notified that the district's function in "facilitating" a trip is merely to aid parents in making the arrangements and making family decisions about their students' participation and the district is not responsible for conducting or supervising the trip even if district personnel travel with the group. The Staff Attorney will provide an appropriate form of release for use by the school.

(b) District-Conducted Trips

(A) Responsibility. The district must take full responsibility for all aspects of each trip in which any member of its staff involves students in a foreign travel experience.

(B) Timely Planning and Approval

(i) Prior to any activity involving students in a travel proposal or providing students information about it, the initiating staff will involve the principal in order to obtain planning approval and guidance. Proposals for a trip shall be submitted to the principal and shall include travel details, an outline of educational objectives to be achieved by participants, and provide a clear description of responsibilities of supervisor personnel. The principal then requests and receives planning approval from the Director of Instruction and the Superintendent's Office.

(ii) Staff may then proceed according to the district's Field Trip Manual. Ordinarily, foreign travel-study trips will be fully planned and approved at least 90 days prior to the departure date.

(C) Forms. Sample forms for describing the event, for obtaining travel budget approval, for obtaining approvals of parents and principal, for obtaining medical information, for obtaining/verifying insurance coverage, and for securing transportation arrangements may be obtained from the Staff Attorney's Office.

(D) Supervision. When a travel-study program is conducted by any arm of the district, general supervision of the trip by certificated licensed personnel also holding first aid certification is mandatory, though parents, aides, etc., may be utilized in auxiliary roles. It is mandatory that more than one adult, including one administrator, accompany each district-conducted foreign travel-study group. The ratio of supervision will be commensurate with the age and needs of the students and the circumstances of the trip.

(E) Parental Permission. Parental permission shall be required for all student participants and a form of release is required for all participants who are not district staff. Parents shall be provided with detailed information about the trip and the district's source for that information. When information about a specific aspect of the trip is not available, parents shall be so informed. The form of parent permission shall be approved by the Staff Attorney General Counsel.

(3) General Rules — Facilitated and Conducted Trips

(a) Promotion of Foreign Travel-Study Groups

(A) School Staff. Staff members are prohibited from using their positions to promote or encourage participation in specific travel programs not

conducted pursuant to these directives or, if pursuant to these directives, without prior approval of the principal. Participation by students shall be voluntary. To avoid possible conflicts of interest, there will be a complete separation of student recruitment from the selection of adult supervisors. Procedures for travel-study programs in the school shall be controlled and processed by the principal.

(B) Outside Organizations. Promotion of travel-study programs in the school by organizations outside the school shall be permitted only at the request of the principal and upon approval by the Director of Student Achievement and the Superintendent. Caution must be used so that staff action does not promote a trip unless it has been fully approved to be facilitated or conducted by the school.

(b) District Employee Remuneration. District employee travel expenses only may be paid from funds raised for a trip. Employee expense/cost shall not govern the level of supervision necessary for a trip.

(c) Publicity. All publicity about foreign travel-study programs must be approved by the Superintendent's Office. Where applicable, the school shall use a district-approved travel agency.

(d) Travel-Study Groups During School Time

(A) Use of school time for travel-study programs is discouraged and travel-study experiences shall be on weekends or in the summer, winter, or spring vacations. Only in exceptional circumstance will travel during school time be authorized.

(B) Upon favorable recommendation of the building principal, the Director of Student Achievement may upon extraordinary circumstances authorized an absence from school for up to five school days and, in very exceptional cases, an absence for up to 20 school days.

(e) Credit for Travel-Study. Individual credit may be awarded for travel-study experiences provided:

(A) A written plan of goals and activities, i.e., such as understanding the history and culture of a country, is submitted by staff and approved prior to the trip and a final report of sufficient quality is presented revealing that the student has achieved those goals;

(B) The goals and activities of the travel-study program must relate specifically to the curriculum appropriate for the student's study program. No study credit may be awarded for programs of fewer than 30 days in duration.

(f) Financial Considerations

(A) Finances for a trip may be provided by individual students through family responsibility and/or by fundraising events consistent with district policies and administrative directives

(B) Students shall not be excluded because of inability to pay when a foreign travel-study trip forms part of the regular educational program of the school. Provisions shall be made for students desiring to participate in the trip whose parents cannot afford all or part of the cost.

(g) Orientation. Orientation sessions must be provided to the student and parents prior to departure. This is to be accompanied by appropriate instructional elements taught in the course before and after the trip.

(h) Emergency Contact Information. Arrangements, detailed to provide adequate contact information, must be a matter of record at the school and in the Department of Public Information and Communications including the names, addresses, and telephone numbers of those persons who can inform the school and Superintendent's Office regarding the whereabouts of the travel-study group and how the group may be reached at all times.

(i) Program Evaluation. Every program arranged or conducted by any arm of the district must be evaluated in writing by both students and the teacher/advisor in order to accommodate further evaluation/selection processes of the district.

Policy Implemented: 6.50.020-P

History: Adpt. 6/71; Amd. 8/73; Amd. 4/74; Amd. 10/83 ed.; Amd 9/84; Amd. 1/89; Amd. 5/98

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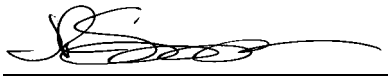
Approved:



Superintendent

9/01/02 .

Date

October 2025 DRAFT Field Trip Policy

Our Commitment to Off-Campus Learning

At Portland Public Schools, we believe deeply in the power of learning beyond our campuses. These experiences enrich education and create lasting memories for our students. We are committed to making these valuable opportunities accessible and inclusive for all children in our school community. When planning off-campus activities, we prioritize educational value, student safety, appropriate supervision, and inclusive practices that welcome all students.

District-Sponsored Activities

Learning activities outside the classroom can be a vital part of a well-rounded education. Off-campus experiences should be carefully designed, curriculum-supported experiences that extend beyond the regular school day or campus and support meaningful educational objectives. At the same time, students remaining on campus must continue to receive quality, curriculum-based instruction.

Approval Process

- **Single-Day Trips**: School principals can approve field trips that take place during one school day other than wilderness day trips, which require approval by Risk Management.
- **Multi-Day Trips**: For experiences lasting more than one day, both Risk Management and the Senior Director of Schools must approve the activity.
- **Overnight and International Trips**: These trips require advance, initial approval from the Senior Director of Schools before completing the detailed trip forms for approval by Risk Management.
- **Planning Resources**: For timelines, procedures, and requirements, please visit the Risk Management website: https://www.pps.net/Page/21807.

Creating Inclusive Experiences

When planning off-campus activities, staff should consider the following to ensure that all students can safely and meaningfully participate:

- Financial accessibility for all families
- Potential barriers or risks based on race, religion, culture, gender, sexual identity, or immigration status

- Accommodations for students with special needs, including those with IEPs or Section 504 plans

Safety and Conduct Expectations

- **Substance-Free Environment**: To ensure safety, adults participating in any District field trip may not consume alcohol or recreational drugs.
- **Behavior Guidelines**: Students, staff, and volunteers are expected to follow District policies, including the Professional Conduct Policy-5.10.064-P and the Student Responsibilities, Rights, and Discipline Handbook, while representing our schools. These expectations should be reviewed before all extended off-campus activities.
- **Safety First**: All field trips requiring Risk Management approval must have approval before departure. If a trip takes place without Risk Management approval, the Senior Director of Schools and principal will be notified.

Non-School Sponsored Activities

Sometimes it can be difficult to tell the difference between school-sponsored and non-school-sponsored activities.

If a trip is not sponsored by PPS, then:

- No PPS funds may be used
- No PPS staff may support the activity in their capacity as PPS employees
- No PPS resources (emails, logos, buses, etc.) may be used to communicate about the trip.

Anyone leading non-PPS-sponsored trips must clearly inform parents/guardians that the trip is not affiliated with PPS and that parents/guardians assume all liability with the decision to have their child(ren) participate.

Travel Study Programs

Travel study programs are a kind of non-PPS-sponsored trip organized by outside companies. We do not fund, sponsor, or endorse these external programs.

When sharing information about these programs:

- All materials must include this disclaimer: "Portland Public Schools does not fund, sponsor, or endorse this travel study program. The District is not responsible for conducting or supervising this trip. Portland Public School

employees who participate in travel study programs are not acting in their capacity as District employees and do so at their own risk. Students participating in travel study programs do so at their own risk."

- Materials cannot use the name of Portland Public Schools or any PPS school
- Information cannot be distributed through PPS email without school administrator approval and proper disclaimers
- Organizations must follow Civic Use of Buildings procedures [insert policy link] for holding informational meetings about travel study programs after school hours

PORTLAND PUBLIC SCHOOLS
PURCHASING & CONTRACTING
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STAFF REPORT

Date: October 10, 2025

To: Policy Committee

From: Emily Courtnage, Director of Purchasing & Contracting

Subject: Updates to Public Contracting Rules

In 2010, Portland Public Schools developed and adopted a substantial and comprehensive revision to its Public Contracting Rules. These rules were updated in 2012, 2016, 2019, and 2024 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").

In late 2023, staff introduced to the Policy Committee an update to the District's 2019 Public Contracting Rules to reflect 2023 legislative changes to the Public Contracting Code as well as improve internal alignment, efficiency, and effectiveness. The Policy Committee forwarded most of the Rules updates and revisions to the full Board, which approved them in February 2024. However, the Policy Committee deferred consideration of a few of the proposed updates – those that touched on Board delegation or review - and recommended that these updates be brought back to the Committee at a later time. Those remaining proposed updates for the Policy Committee's consideration are detailed below.

I. Raise Board Approval Threshold from $150,000 to $250,000 for Revenue and Expenditure Contracts (PPS 45-0200(4)(b)(A) to Reflect Change om Buying Power and Align with Formal Procurement Thresholds

Staff recommends increasing the Board's delegation of authority to the Superintendent or designee to approve and sign contracts from those that exceed $150,000 to those that exceed $250,000 for several reasons:

First, this change will keep the Board contract approval threshold in alignment with the $250,000 formal procurement threshold for Goods, Services, and Personal Services adopted in 2024. The Board approval threshold is at the Board's sole discretion, but was chosen fifteen years ago to align with the formal procurement threshold for Goods, Services, and Personal Services for ease of administration.

Second, the Board contract approval threshold for expenditure contracts has not changed since 2010.[1]

Finally, staff conducted an informal survey of eleven other local public agencies and school districts and found that nearly all (1) align their Board approval thresholds to the Goods and Services formal procurement threshold of $250,000 (2) already have a higher Board approval threshold ($300,000 to $500,000), or (3) delegate unlimited contracting authority to executive leaders. The Board approval thresholds at several other large school districts in Oregon are as follows:

- **Beaverton SD:** Contracts above $250,000 must be approved by the Board
- **Salem-Keizer SD**: All contracting authority is delegated to Superintendent or designee
- **Hillsboro SD:** Contracts above $150,000 must be approved by the Board; looking to raise threshold to $250,000 by end of calendar year
- **North Clackamas SD:** Contracts above $250,000 must be approved by the Board

II. Remove Administratively Burdensome Mandate That Does Not Align with the Oregon Public Contracting Code or Attorney General's Model Rules: Amendment Reporting Requirement (PPS 47-0800(4), 48-0320(5)), 49-0910(5))

In 2016, the Board adopted amendment caps for Goods and Services, Architectural, Engineering, and Related Services, and Construction contracts that prohibited 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. In 2019, based on staff reports of numerous adverse and unintended results, such as delay of important construction or maintenance projects, the Board removed these amendment caps but substituted in a reporting requirement. This more limited reporting requirement applied only to contracts for which (a) the original contract price exceeded $500,000, (b) amendments caused the new contract price to exceed 125% of the original contract price, and (c) the amendments were not explicitly contemplated and allowed for in a formal solicitation process and resulting contract (as in the case, for example, of a Request for Proposals for a contract for one year with options to renew for up to five additional years). The Rule directs staff to report any such amendments to the Board after the fact.

Staff recommends removing the reporting requirement for several reasons: (1) The rule is not required by or in included in the Oregon Public Contracting Code or the Attorney General's Model Rules; (2) in the several years since the rule has been in place, staff has reported only a small handful of applicable amendments that fit the criteria; (3) the Bond Accountability Committee already closely monitors increases to our bond-funded contracts; and (4) the reporting requirement is informational only, after the amendment is signed, and thus has no effect on the contract scope or the District's contracting practices.

III. New or Revised Rules Delegating Authority to the Superintendent

a. Delegate Contracts Paid from Fee-Based Revenues (PPS 46-0200(4)(b)(G))

Staff recommends that the Board delegate contracting authority to the Superintendent or designee for any contracts paid entirely from fee-based revenues, such as student fees, assessed and collected for specific purposes. The Board has a lesser oversight responsibility over non-District funds that still require a District contract to administer.

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[1] Per the US Bureau of Labor Statistics' CPI Inflation Calculator (https://www.bls.gov/data/inflation_calculator.htm), the buying power of $150,000 in January 2010 is equivalent to $224,270 in August 2025.

b. Bring Offer of Judgment Rule (PPS 46-0200(6)) into Alignment with Board Policy on Liability Claims

In an existing rule (PPS 46-0200(4)(b)(F)), the Board has delegated authority to the Superintendent or designee to make an offer of judgment in the course of litigation when the Superintendent and general counsel determine that such offer is in the best interests of the District. However, PPS 46-0200(6) requires that the general counsel draft a privileged memo to the Board explaining the legal basis for the offer of judgment if such offer exceeds $25,000. Staff recommends raising the dollar threshold at which a privileged memo is required from $25,000 to $75,000. This revision will bring the rule in alignment with the revised Board Policy on Liability Claims, 8.60.021-P, which requires that settlement agreements of $75,000 or above be submitted to the Board for approval.

ATTACHMENTS

A. Redline of 2024 Public Contracting Rules

PORTLAND PUBLIC SCHOOLS

20252024 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 $250,000~~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~~

~~(F)~~**(G)** The contract is paid entirely from fee-based revenues (such as student fees) assessed and collected for specific purposes; or

~~(G)~~**(H)** 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 $75,000~~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

[1] The only District officials required to file a statement of economic interest are the Superintendent and the chief financial officer.

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.

(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**.~~

~~**(c)** 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

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

DRAFT REVISED POLICY/10.16.2025

Board Policy 5.50.020-P: Defense and Indemnification of District Employees and Board Members

1. Purpose and Scope

The District recognizes that employees and Board members may face legal claims arising from their official duties. This policy establishes the District's commitment to defend and indemnify employees and Board members against qualifying claims and legal actions.

2. Covered Persons

This policy applies to current and former employees of the District, and current and former Board members.

3. Covered Actions

Subject to the limitations in this policy or applicable law, the District will provide defense and indemnification for:

a. any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of official duties, to the fullest extent provided by the Oregon Tort Claims Act, ORS 30.260 to 30.300.

b. Federal enforcement actions, including but not limited to federal agency or Department of Justice investigations and proceedings, arising out of an alleged act or omission occurring in the performance of official duties.

4. Notice Requirements

Any covered person seeking assistance under this policy must promptly notify both the Office of the Superintendent and the Office of General Counsel when:

a. A covered action may be or has been commenced against them;

b. They receive notice of any investigation or inquiry; or

c. They become aware of circumstances that may reasonably lead to a covered action

Failure to provide timely notice may result in denial of defense and/or indemnification.

5. Defense and Indemnification

The District may provide liability insurance in amounts it determines to be appropriate for covered actions.

The District or its insurer will retain qualified counsel, in its sole discretion, to defend covered actions and may advance reasonable attorney fees and costs at a maximum rate determined by the District.

Defense and indemnification under this policy is conditioned on the covered person's full cooperation with the defense of the covered action. Non-cooperation may result in termination of defense and/or indemnification.

The District has authority to settle claims against covered persons for whom it is providing indemnification. A covered person may reject the settlement of a claim that would be approved by the District and for which the District would pay any settlement amounts, but such rejection shall terminate the District's defense and indemnification obligations under this policy.

6. District In-House Attorneys

a. For claims brought by governmental entities or professional licensing authorities against District in-house attorneys, expenses may be advanced or reimbursed if the District determines the claim arose from official duties. Any advancement or reimbursement constitutes part of the in-house attorney's official compensation package for purposes of ORS chapter 244.

b. Board Approval: Expenses exceeding $25,000 per claim require Board approval.

c. Advance Payment Conditions: Expenses may be paid in advance if:

    i. The District determines the attorney acted in good faith and reasonably believed the conduct was in the District's best interests

    ii. The attorney enters a written agreement to repay advances if ultimately not entitled to indemnification

d. Counsel Selection: When the District pays defense expenses, the District has exclusive authority to select counsel but will consult with the in-house attorney regarding settlement terms affecting the in-house attorneys legal rights or licensing status.

e. Cooperation Requirement: In-house attorneys must cooperate fully with the District. Non-cooperation may result in termination of defense and/or indemnification.

7. Limitations and Exclusions

The District, in its reasonable determination, will not provide defense or indemnification for:

a. Gross negligence
b. Malfeasance in office
c. Willful or wanton neglect of duty
d. Criminal conduct
e. Actions initiated by the District against, or actions brought by, a Covered Person
f. Personal matters or claims unrelated to official duties
g. Actions where defense or indemnification is prohibited by law

8. Definitions

"Claim" means any threatened, pending, or completed investigation, action, suit, or proceeding, except one brought by the District.

"Official duties" means actions taken within the scope of employment or Board service, in good faith, and for a District purpose.

9. Reservation of Rights and Non-Exclusivity

a. The District may provide defense and/or indemnification under a reservation of rights and may terminate coverage if circumstances warrant.

b. This policy does not limit other defense or indemnification rights available under statute, agreement, insurance, or District action.

Legal Reference: ORS 30.260 – 30.300 [20]

History: Adopted 6/1971; Amended 6/14/1984; 11/2021; [Current Amendment Date]

Board Policy 5.50.020-P

Liability of Employees of the District

1. Defense in Civil Actions. Because the nature of the services required of employees of the District may expose them to claims arising from the performance of their duties, the District may provide liability insurance in amounts as may be determined from to time for actions brought against its employees and/or the District, as described below.

2. Notice of Claims. Any current or former employee seeking assistance under this policy shall promptly notify the Office of the Superintendent and the General Counsel that a civil or regulatory action may be or has been brought against them in their official or individual capacity related to their work or any injury on or damage to District property.

3. The District shall provide employees with the defense authorized by the Oregon Tort Claims Act.

4. This assistance in litigation shall apply in litigation arising out of performance of the employee's professional duties whether or not the employee has left the employment of the District at the time the action brought.

5. Expenses Incurred by a District in-house attorney when Claim is by a Governmental Entity or Professional Licensing Authority.

    a. Expenses incurred by District in-house attorney who is an employee of the District ("in-house attorney") in the defense of a Claim brought by a governmental entity or a professional licensing authority may be advanced or reimbursed by the District, if the District, in its sole discretion, determines that the Claim arouse out of the in-house attorney's performance of official duties. Any expenses advanced or reimbursed in excess of $25,000 per Claim must be approved by the Board of Education. Such advancement or reimbursement constitutes part of the in-house attorney's official compensation package for purposes of ORS Chapter 244. The District may decline to reimburse an in-house attorney for any expenses incurred prior to the District's written commitment to provide such payment. The in-house attorney must promptly notify the Office of the Superintendent and the General Counsel that any such claims have been brought against them.

b. Expenses shall be paid by the District in advance of the final disposition of a Claim at the written request of the in-house attorney if:

    i. The District determines, in its sole discretion, that the conduct of such in-house attorney was in good faith and that the in-house attorney reasonably believed that such conduct was in the best interests of the District; and

    ii. The in-house attorney enters into a written agreement with the District to repay such advance to the extent it is ultimately determined by the District, in its sole discretion, that such in-house attorney is not entitled to be indemnified by the District under this section or under any other indemnification rights granted by the District to such in-house attorney.

c. If the District pay expenses in defense of a claim, the General Counsel shall have the exclusive authority to select counsel and to defend against any Claim. The General Counsel will consult with the in-house attorney regarding any term of a settlement agreement that affects the legal rights or licensing status of the in-house attorney. Authority to settle claims against General Counsel is delegated to the Superintendent or the Superintendent's designee.

d. The District shall not pay for expenses under this section in the case of misconduct or gross negligence or any act or omission that may constitute criminal conduct, as determined by the District in its sole discretion.

e. The District may choose to advance or reimburse expenses to an in-house attorney under a reservation of rights. An in-house attorney shall cooperate fully with the District. If the District determines, in its sole discretion, the in-house attorney has not so cooperated or has otherwise acted to prejudice the defense of the Claim, the District may at any time terminate its obligation to advance or reimburse expenses or proceed under a reservation of rights.

f. The term “Claim” means any threatened, pending, or completed investigation, action, suit, or proceeding except one brought, made, or initiated by the District.

g. This section shall not be deemed exclusive of any other rights to which an in-house attorney may be entitled under any statute, agreement, insurance policy, general or specific action of the District, other otherwise. Any repeal of this section shall be prospective only, and no repeal or modification shall adversely affect the rights under this section in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Claim.

Legal reference: ORS 30.260 – 30.3000

History: Adopted 6/1971; Amended 6/14/1984; 11/2021

Board Policy 7.20.010-P

Districtwide Advocacy and Fundraising

Parent and community-based organizations and individuals make important contributions to support PPS school communities and programs, as well as students and staff. Elements of that support include advocacy in support of PPS schools and fundraising to pay for a wide variety of activities and projects. This policy is designed to foster a spirit of community and shared purpose and facilitate collective impact on behalf of PPS students. Given our common mission and vision, the District encourages parents and community groups to advocate, fundraise and support improving the educational experience districtwide in alignment with our racial equity and social justice values.

Local School Foundations and school or program fundraising:

An inclusive districtwide foundation, designated by the Board of Education, shall serve as the districtwide advocacy and fundraising entity and serve as the fiscal agent for the Local School Foundations (LSFs).

Fundraising for Staff and Contracted Staff:

Effective July 1, 2024, donations for staff positions may be collected only by the designated districtwide foundation in a single, combined fund account. Donations shall be accepted from Local School Foundations, Independent School Foundations, nonprofits, corporations/businesses and individuals. A formula for the distribution of any funding to individual schools shall be developed in advance of the school year by a Parent Advisory Committee, shared with school administrators for feedback, and a recommendation made to the Board of Education for its approval.

Donations for staff positions collected by Local School Foundations between July 1, 2023 and June 30, 2024, plus any carryover balances held in the associated grant accounts S0083, shall be expended in the 2024-2025 school year for staffing positions per donors' intent.

Registration and Reporting

All groups affiliated with PPS and individual schools or programs that fundraise $20,000 or more in aggregated funds in a school year for PPS school-related activities are encouraged to register with the District by September 30 in the following school year, sharing their officer names and contact information,

Board Policy 7.20.010-P

Districtwide Advocacy and Fundraising

The Board of Education shall receive annually a report at the end of the District's fiscal year sharing the districtwide foundation's donations, expenditures, and major projects.

Other Requirements

Entities that fundraise to support individual schools shall:

- Provide ways for all members from the benefitting school or program who wish to participate in a fundraising event or activity to have an avenue to participate.
- Shall not communicate, share, or maintain expected per-family or per-student fundraising targets.
- Include and inform the broader school community about fundraising decision-making processes, especially including families for whom the educational equity programs are meant to benefit.
- Adhere to District policies, administrative directives, and other requirements.

Other Provisions

For purposes of this policy, District and contracted staff includes all manner of contracted positions if the position compensation exceeds $15,000 in a school year.

The designated district foundation shall have a Board of Directors of sufficient size given PPS's enrollment, and members should have diverse experience to support the activities of the foundation.

Legal Reference: ORS 332.107

History: Adopted 6/71; Amended 9/9/02; BA 2422; Amd 5/2024