

RESOLUTION:2015- 03

RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES

WHEREAS, THE BOARD OF THE JACKSON COUNTY LIBRARY DISTRICT FINDS:

- A. The Jackson County Library District (the "District") is an Oregon Special District, subject to Oregon's public contracting laws; and
- B. The Jackson County Library District's Board of Directors serves as the District's Local Contract Review Board ("LCRB"); and
- C. ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that:
 - a. Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and
 - b. Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

BE IT RESOLVED:

- 1. That, except as otherwise provided herein, the District hereby adopts the provisions of ORS 279A, 279B, and 279C ("Oregon's Public Contracting Code"), and the Attorney General's Model Public Contracting Rules ("Model Rules") as the contracting rules for the District, as such Model Rules and Oregon's Public Contracting Code now exist or are later modified.
- 2. That the District affirmatively adopts the public contracting rules described in Exhibit A, which is attached to the Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules.
- 3. That the District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Rules adopted in Exhibit A are consistent with current law.
- 4. That the Personal Services Policy approved by the District on July 23, 2014 is hereby replaced.

The above resolution statement was approved by the Board of the Jackson County Library District and declared adopted this 2nd day of April, 2015.

By:

Attest:



 Board President/Presiding Officer



 Recording Secretary

Board Vote:

Monica Weyhe	<u>Yes</u>
Maureen Swift	<u>Yes</u>
Susan Kiefer	<u>Yes</u>
Jill B. Turner	<u>Yes</u>
Carol Doty	<u>Yes</u>

EXHIBIT A

PUBLIC CONTRACTING RULES AND PROCEDURES

A. Personal Services

(1) **Definition.** “Personal Services” shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to architects, engineers, surveyors, photogrammetrists, transportation planners, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The Board President or his/her designee shall have the authority to determine whether a particular service is a “personal service” under this definition.

Personal service contracts do not require a competitive bidding process. When screening or selecting a personal service contractor, the District will consider qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment. The selection is based primarily on these factors rather than price.

(2) **Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.** These personal services contracts shall be awarded according to the procedures described in ORS 279B.070. However, by separate resolution, the Local Contract Review Board may authorize certain personal services contracts, or a class of personal services contracts, to be exempted from competitive proposal requirements according to the requirements of ORS 279B.085. Contracts exempted from competitive proposal processes may be awarded by direct appointment. Personal services contracts existing on the effective date of these Rules may be extended by direct appointment.

(3) **Contracts for Architectural, Engineering and Surveying Services and Related Services.** Unless otherwise provided in this Section, contracts for Architectural, Engineering and Surveying Services and Related Services shall be awarded according to ORS 279C.110(3). A contract for Architectural, Engineering, and Surveying Services may be entered into by direct appointment if such contract is estimated not to exceed \$100,000 in a calendar year, or if the project described in the contract consists of work that has been substantially described, planned, or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

B. Delegation

(1) Except when otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the District’s Board of Directors.

(2) Unless otherwise limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Board President or his/her designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080 and 279C.320(1).

C. Special Procurements and Exemption from Competitive Bidding Requirements

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

(2) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

The following classes of contract are hereby declared to be exempt from the public bidding requirements:

- a. A contract or class of contracts exempt by Statute or Rule under: ORS 279A.025, 279B.085 and 279C.335; or other statute, administrative rule, other applicable law or judicial action, unless otherwise limited by these Rules.
- b. A contract or class of contracts made exempt by the Board under ORS 279A.025 and 279C.335 and these Rules.
- c. An emergency contract made exempt under these Rules (see “Emergency Contracts”).
- d. Contracts made with other public agencies or the federal government, or with professional associations representing public agencies or the federal government.
- e. Contracts for the purchase of materials where competitive bids for the same materials have been obtained by other public agencies or the federal government, or with professional associations representing public agencies or the federal government, and the contract is to be awarded to the party to whom the original contract was awarded so long as the price of the materials is the same or lower than that in the original contract (see “Cooperative Procurements”).
- f. Contracts which are predominantly for personal services. Such contracts may include a contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, and other supplemental materials required for providing the services (see “Personal Services”).
- g. Contracts for the purchase of goods and materials where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.
- h. Contracts for the purpose of investment of public funds, the borrowing of funds, or for banking services.
- i. Contracts for licenses and maintenance of computer hardware, computer software, and telecommunications products (including cable, video and television products).
- j. Contracts for purchase or acquisition of computer hardware, computer software, and telecommunications products and services (including cable, video and television products and services.)
- k. Contracts for purchase where there is only one seller or price of a product of the quality required that is available within a reasonable purchase area.
- l. Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment.
- m. Contracts for the purchase of food or food supplies.

- n. Contracts under a certain dollar amount (see “Small Procurements” and “Intermediate Procurements”).
- o. Contracts for the purchase of goods or services made exempt for state agencies under OAR Chapter 125, unless otherwise limited by these Rules.
- p. Purchase of items or services of an artistic nature.
- q. Contracts for periodicals, including journals, magazines, and similar publications.
- r. Contracts for the purchase of gasoline, diesel fuel, heating oil, and lubricants.
- s. Contracts for removal, cleanup or transport of hazardous materials. “Hazardous materials” include any material or substance which may pose a present or future threat to human health or the environment.
- t. Contracts for insurance.
- u. Contracts for purchase or lease of office photocopiers.
- v. Contracts for purchase of used motor vehicles, including but not limited to used heavy construction equipment.
- w. Contracts for the purchase of copyrighted materials.
- x. Contracts for the purchase of advertising, including legal advertising intended for the purpose of giving public notice.
- y. Contracts for the purchase of all utilities including, but not limited to, electric power, gas, water, and sewage, as well as internet, telephone, telecommunications, data transmission and cable television services.

D. Emergency Contracts

(1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”

(2) The Board President or his/her designee shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.

(3) Emergency contracts may be awarded as follows:

- a. Goods and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and section B, "Delegation," of these Rules.
- b. Public Improvements. The District hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

E. Small Procurements (Under\$ 10,000).

(1) Public contracts under \$10,000 are not subject to competitive bidding requirements. The Board President or his/her designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.

(2) The District may amend a public contract awarded as a small procurement beyond the\$10,000 limit in accordance with OAR 137-047-0800.

F. Intermediate Procurements

(1) A contract for procurement of goods and services estimated to cost between \$10,000 and \$150,000 in a calendar year, or a contract for a public improvement that is estimated to cost between \$10,000 and \$150,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.

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

G. Purchases from Federal Catalogs

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

H. Purchasing Through Government Agency Contracts (Cooperative Procurements)

Whenever feasible, the District may purchase from contracts available through governmental agencies, which includes, but is not limited to State, City, County, and Special Districts. Contracts between agencies utilizing an existing solicitation or current requirement, requires that:

(1) The original contract meets competitive procurement requirements.

(2) The original contract identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements, and

(3) No material change is made in the terms, conditions or prices of the contract from the original contract.

I. Disposal of Surplus Property

(1) "Surplus Property" is defined as any personal property of the District that has been determined by the Board President or his/her designee as being of no use or value to the District.

(2) The Board President or his/her designee may dispose of surplus property as follows:

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

- (3) Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large, including, but not limited to, the following:
- a. Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property.
 - b. Donation. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.
 - c. Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

J. Appeals of Prequalification Decisions and Debarment Decisions

- (1) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the LCRB:
- a. Notices shall be submitted in writing to the Board President. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
 - b. Upon opening of the hearing, the Board President or his/her designee shall explain the District's decision being appealed and the justification thereof. The Appellant shall then be heard. Time for the Appellant's testimony shall be established by the Board President. The Appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board President.
 - c. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board President. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the Appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board President shall close the hearing.
 - d. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

K. Electronic Advertising

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