

# Tualatin Valley Water District



**BOARD OF COMMISSIONERS  
1850 SW 170th AVENUE  
BEAVERTON, OR 97006**

**NOVEMBER 20, 2012**

**EXECUTIVE SESSION - 6:00 PM  
REGULAR MEETING - 7:00 PM**

**Listening devices are available upon request  
48 hours prior to the day of the meeting (503-642-1511)  
Streaming live at [www.tvwd.org](http://www.tvwd.org)  
Broadcast by TVCTV (at a later date)**

An Executive Session of the Board is Scheduled at 6:00 PM, called under ORS 192.660 (2) (e), to Conduct Deliberations with Person Designated by the Governing Body to Negotiate Real Property Transactions

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1. CALL TO ORDER – REGULAR MEETING
  2. REPORTS BY THE CHIEF EXECUTIVE OFFICER AND MANAGEMENT STAFF
  3. COMMISSIONER COMMUNICATION
    - 3.1 -Reports of Meetings Attended
    - 3.2 -Topics to be raised by the Commissioners
  4. PUBLIC COMMENT:

This time is set aside for persons wishing to address the Board **on items on the Consent agenda, and matters not on the Business agenda.** Additional public comment will be invited on agenda items as they are presented. Each participant is limited to five minutes, unless an extension is granted by the Board. Should three citizens testify on the same topic, each participant will be limited to three minutes.
- CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Any Board member may request that an item be removed by motion for discussion and separate action.
- ITEMS REMOVED FOR SEPARATE DISCUSSION: Any items requested to be removed from the consent agenda for separate discussion will be considered immediately after the Board of Commissioners have approved those items which do not require discussion.
5. CONSENT AGENDA ITEMS
    - 5.1- Work Session Minutes of October 2, 2012.....
    - 5.2- Regular Meeting Minutes of October 24, 2012.....

BUSINESS AGENDA ITEMS:

Time will be set aside for public comment for each business item. Each participant is limited to five minutes unless the Board grants an extension, or the agenda item is noted for a specific amount of time for public comment.

6. BUDGET COMMITTEE APPOINTMENTS (MOTION TO APPOINT).....

\*\*\*RECESS REGULAR MEETING\*\*\*  
\*\*CONVENE AS LOCAL CONTRACT REVIEW BOARD \*\*

7. RESOLUTION 12-12, AMENDING LOCAL CONTRACT REVIEW BOARD RULES  
(MOTION TO ADOPT) .....

\*\*CLOSE AS LOCAL CONTRACT REVIEW BOARD\*\*  
\*\*\*RECONVENE AS BOARD OF COMMISSIONERS\*\*\*

8. RESOLUTION 13-12 DECLARING PUBLIC NEED (MOTION) .....

9. ADJOURNMENT

**TUALATIN VALLEY WATER DISTRICT  
BOARD AGENDA ITEM**

**MEETING DATE: NOVEMBER 20, 2012**

**TITLE: APPOINTMENT OF CITIZEN BUDGET COMMITTEE MEMBERS**

**ITEM:** The terms for two of the five Board-appointed citizen members of the District’s Budget Committee expire January 2013. In addition, one committee member, Ms. Linda Latta, resigned mid-term as a result of moving out of the District. All members of the TVWD’s Budget Committee must be electors of the District.

The two members whose terms will expire have expressed interest in being reappointed. The one vacancy is for the unexpired term that ends January, 2015. The District advertised the vacancy on the TVWD website and Beaverton Valley Times, and issued a press release. Four applications were received. Interviews were conducted on November 1, 2012 by Commissioner Richard Burke, Commissioner Marilyn McWilliams, and Chief Financial Officer Paul Matthews. All four candidates participated in the interviews and demonstrated a strong interest in serving on the Budget Committee. Commissioners Burke and McWilliams will report to the full Board on their recommendation to appoint Mr. Andrew Carlstrom to the Budget Committee for the vacant unexpired term.

Oregon Local Budget Law specifies budget committee terms of four years for a biennial budget. In addition, Oregon Local Budget Law specifies that any vacant unexpired position on a budget committee is to be filled by appointment for the duration of the current term.

The recommendation for the Budget Committee appointments and terms are as follows:

- Dr. Todd Sanders (term expires January, 2017)
- Mr. Mike Whiteley (term expires January, 2017)
- Mr. Andrew Carlstrom – appointment to unexpired term (term expires January, 2015)

The remaining two members of the Budget Committee – Mr. Craig Hopkins and Mr. John Velehradsky are still within their current terms, which expire January, 2015.

**STAFF RECOMMENDATION:** Staff recommends the Board move to approve the recommended Budget Committee appointments. Filling all five citizen positions on the Budget Committee is necessary for the upcoming 2013-15 biennial budget development process.

**BUDGET IMPACT:** No fiscal impact. Budget Committee appointments are required for compliance under Oregon Local Budget Law.

**ATTACHMENTS:** None

**ADDITIONAL INFORMATION:** Paul Matthews, [paulm@tvwd.org](mailto:paulm@tvwd.org), (503) 848-3017, Tod Burton, [Todb@tvwd.org](mailto:Todb@tvwd.org), (503) 848-3040

**APPROVING MANAGERS INITIALS:**

CHIEF FINANCIAL OFFICER	_____	HUMAN RESOURCES	N/A
FIELD OPERATIONS	N/A	INTERGOV. RELATIONS	N/A
FINANCIAL SERVICES	_____	SUPPORT SERVICES	N/A
ENGINEERING SERVICES	N/A		

BOARD ACTION:

APPROVED \_\_\_\_\_  
DENIED \_\_\_\_\_

**TUALATIN VALLEY WATER DISTRICT  
REGULAR BOARD MEETING AGENDA ITEM**

**MEETING DATE: NOVEMBER 20, 2012**

**TITLE: RESOLUTION 12-12; A RESOLUTION AMENDING AND RESTATING THE DISTRICT'S LOCAL CONTRACT REVIEW BOARD RULES**

**ITEM:** The Oregon legislature made significant revisions to ORS 279C.100 through ORS 279C.125, covering Architectural, Engineering, Land Surveying, and Related Services. To comply with these revisions, staff recommends revising our Local Contract Review Board (LCRB) Division 300 Rules under the same title. Staff also recommends revisions to LCRB Division 100 and 200 rules, Procurement Rules for Goods and Services. Also, staff recommends some minor changes to LCRB Division 400, Public Contracting Rules for Construction. The attached memorandum highlights the proposed changes to the rules.

**STAFF RECOMMENDATION:** Staff recommends the Board adopt Resolution 12-12 to amend and restate the District's Local Contract Review Board Rules.

**BUDGET IMPACT:** None

**ADDITIONAL INFORMATION:** Paul Matthews, CFO, 503-848-3017, paulm@tvwd.org  
Wendy Burns, Purchasing Agent, 503-848-3055, wendy@tvwd.org

**ATTACHMENTS:** Memorandum highlighting proposed revisions to the LCRB Rules, and Resolution 12-12 – Resolution Amending and Restating the District's Local Contract Review Board Rules.

APPROVING MANAGERS INITIAL:

CHIEF EXECUTIVE OFFICER	_____	HUMAN RESOURCES	<u>NA</u>
FIELD OPERATIONS	<u>NA</u>	INTERGOV. RELATIONS	<u>NA</u>
FINANCIAL SERVICES	_____	CUSTOMER SERVICES	<u>NA</u>
ENGINEERING SERV.	<u>NA</u>		

**BOARD ACTION:**

APPROVED \_\_\_\_\_

DENIED \_\_\_\_\_

## ***DIVISION 100 - INTRODUCTION AND DEFINITIONS***

### **Purpose and Statutory Authority**

**100-000** - These rules prescribe Public Contract procedures for Tualatin Valley Water District (District) pursuant to the authority granted to the District by ORS Chapter 279A.065 and by Resolution 14-84. The Model Rules adopted by the Attorney General do not apply to District procurement. However, the District may use the Model Rules as a guidance document for interpretation or implementation of District rules. If there is a conflict between these Rules and Oregon Revised Statutes ORS 279A, ORS 279B and ORS 279C, the provisions of state law shall control. The Public Contracting Officer (PCO) shall have all authority to administer and implement these Rules.

### **100-010 - Application of Federal Law**

Notwithstanding any provision of Oregon law and these rules, applicable federal laws and regulations shall govern in any case in which federal funds are involved and such federal laws and regulations conflict with or require additional conditions in Public Contracts not authorized by Oregon law or these rules.

### **100-020 – Definitions**

The following definitions apply to these rules, unless the context requires otherwise:

- (1) **Addenda to the Solicitation Documents:** Addenda are additions or deletions to, material changes in, or general interest explanations of the District's Solicitation Documents.

Addenda shall be labeled as such and distributed to all interested persons on the list of proposers/bidders and shall be communicated electronically or by post.

- (2) **Bid:** A competitive offer or proposal, which is binding on the responsible bidder, in which price, delivery (or project completion) and conformance with specifications and the requirements of the Invitation to Bid will be the predominant award criteria. A bid may be formal or informal. For ORS 279B governed goods and services purchases, Formal bids shall be in writing for contracts that exceed \$150,000. Informal bids may be received in writing or electronically as determined by the Public Contracting Officer for contracts less than \$150,000.

For public improvement projects governed by ORS 279C, Informal Written Bids may be obtained on projects whose estimated value is under \$100,000. For public improvement projects whose estimated value is greater than \$100,000. Formal Written Bids must be obtained via a written solicitation. Solicitations for Formal Bids must be advertised as required by ORS 279C.360.

- (3) **Bidder:** An individual, firm or corporation who submits a bid in response to the District's solicitation.
- (4) **Bidding Period:** The span of time between the date of issuance of the solicitation and closing of the solicitation, i.e. the time and date set as the deadline for submitting bids. For informal solicitations under \$150,000, a minimum seven (7) calendar day bidding period shall be provided, unless a shorter time period is deemed necessary in the-District's interest for a particular procurement and will not substantially affect competition. For Competitive Sealed bids, not less than fourteen (14) calendar days shall be provided, unless a shorter time

is deemed necessary in the District's interest for a particular procurement and will not substantially affect competition. For Requests for Proposals, not less than thirty (30) days shall be provided unless a shorter time is deemed necessary in the District's interest for a particular procurement and will not substantially affect competition.

- (5) **Board:** Means the Board of Commissioners of Tualatin Valley Water District acting as the Local Contract Review Board for the District.
- (6) **Class Special and Contract Specific Procurements:** Contracting procedures that allow for a Public Contract to be entered into using alternative procurement methods rather than through competitive bidding process.
- A "class special procurement" is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.
- A "contract specific procurement" is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.
- (7) **Closing/Due Date:** The date and time announced in the **District's** solicitation (e.g., **Invitation to Bid** or **Request for Proposals**) as the deadline for submitting bids or proposals.
- (8) **Competitive Bidding:** A price-based selection process typically used for procurements above \$150,000, as provided in ORS 279B.055 and public improvement contracting above \$100,000 as provided in ORS 279C.365, that involves an advertised public notice, issuance of a written Solicitation Document inviting interested persons or firms to submit written, signed, and sealed bids, that are received by the District and publicly opened at the designated time and place, and a contract awarded (if one is awarded) to the lowest responsive, responsible bidder
- (9) **Competitive Quotes:** Bids submitted to the District by competing bidders in response to a request for quotes issued by the District. The Request for Quotes may be accomplished by advertisement and/or by the District initiating a request to vendors to submit a bid. The solicitation and the bid may be in writing, or submitted electronically as prescribed by these rules. Competitive quotes are required for purchases whose value is estimated between \$5,000 and \$150,000 per ORS 279B.070 and between \$5,000 and \$100,000 per ORS 279C.335 (c) (d).
- (10) **Construction Manager/General Contractor (CMGC):** A method of Public Improvement Contracting utilizing a construction manager to perform value engineering, act as general contractor, coordinate and manage the building process, provide general contractor expertise, establish a guaranteed maximum price for construction and be a member of the construction team with the District, architect/engineers and other consultants as the District and/or the project may require.
- (11) **Contract:** The written agreement, including the District's scope of work or specifications and the accepted portions of a bid or proposal, between the District and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the District may use "Contract" as meaning a purchase order, price agreement, or other contract document in addition to the District's Solicitation Document and the accepted portions of a bid or proposal. If the contract is for a public improvement, the contract may consist of the District's Solicitation Document, including any addenda, the general and special conditions governing the work, the accepted portions of the bid or proposal, the performance and payment bond (if required), plans, technical

specifications, approved shop drawings, and any contract amendments, including approved change orders.

- (12) **Contractor:** The individual, firm or corporation awarded the Public Contract to furnish the District the goods, services or work procured in the District's solicitation.
- (13) **Cost:** This term includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation and training.
- (14) **Contract Price:** The total of the awarded bid or proposal amount, including any approved alternates, and any fully executed change orders or amendments.
- (15) **Days:** Calendar days, including weekdays, weekends and holidays, unless otherwise specified.
- (16) **Design/Build:** Means a method of Public Contracting where the responsibility for project team participation with the District, project design, value engineering, management of the design and construction process, general contractor expertise, a guaranteed maximum price and construction is vested in a single entity, through one contract with the District.
- (17) **Descriptive Literature:** Materials submitted by bidders or proposers to provide information concerning the products available in response to the District's solicitation.
- (18) **Disabled Individuals:** An individual who, because of the nature of the individual's disabilities, is not able to participate fully in competitive employment and for whom specialized employment opportunities must be provided.
- (19) **District:** Tualatin Valley Water District or TVWD.
- (20) **District Staff:** All employees and agents of Tualatin Valley Water District.
- (21) **Electronic:** Submission of data, on Invitations to Bid, Requests for Proposals, Requests for Qualifications, Bids, Proposals and Statements of Qualifications that are transmitted electronically, via e-mail or facsimile as permitted by the District and these Rules.
- (22) **Emergency Procurement:** A procurement made directly with a supplier, contractor or consultant without competitive bidding due to circumstances that could not have been reasonably foreseen and that require the prompt purchase of goods or services in order to avoid a substantial risk of loss, damage, interruption of service or a substantial threat to property, public health, welfare or safety.
- (23) **Guaranteed Maximum Price:** Means the price provided to the District by the contractor that includes all costs of the work, as defined in the contract documents, excepting material changes in the scope of work. This pricing mechanism is most often used in Construction Manager/General Contractor or Design/Build contracts where the guaranteed maximum price is provided early in the design to assist the District in determining whether or not the project scope is within the District's budget, allowing for design changes to be made at the preliminary design phase rather than after significant design work has been completed.
- (24) **Foreign Contractor:** One who is not domiciled in or registered to do business in the State of Oregon and considered a non-resident bidder in accordance with ORS 279A.120.
- (25) **Formal Bid, Competitive Sealed Bid, Competitive Sealed Proposal:** Where the procurement for goods and services is anticipated to be more than \$150,000 the bid, proposal or quote shall be in writing, signed, and sealed as required by ORS 279B.



- (26) **Informal Bid, Proposal or Quote, Invitation to Bid:** When the price of the procurement is anticipated to be between \$5,000 and \$150,000 the public contracting officer may use, written or electronic solicitation methods as appropriate in order to provide a fair opportunity to potential bidders or proposers. Informal bids shall be solicited in such a fashion and in such form that the bidder is bound to his/her proposal or bid as required by ORS 279B.
- (27) **Invitation to Competitive Sealed Bid (formal) (over \$150,000):** A solicitation ~~of~~ for competitive, written, signed and sealed bids in which specification, price and delivery (or project completion) are the predominant award criteria. Informal bids (under \$150,000) shall be solicited in a competitive fashion and in such form that the bidder is bound to his/her proposal if accepted. Solicitation Documents may be issued via paper or in electronic form.
- (28) **Nonresident Bidder:** A bidder who does not have an Oregon business address and for which no unemployment or income taxes have been paid to the State of Oregon during the 12 months preceding the submission of their bid, does not have a business address in Oregon and has stated that bidder is not a resident bidder in the bid.
- (29) **Notice:** Notice of a formal solicitation shall be in accordance with ORS 279. In addition, The Board has authorized notice to be published on the District's website as allowed by ORS 279.
- (30) **Novation:** A novation substitutes a new party and discharges one of the original parties to a contract by agreement of all three parties. A new contract is created with the same terms as the original one but only the parties are changed.
- (31) **Opening:** The date, time and place announced in the District's solicitation for the public opening of written, sealed bids or proposals.
- (32) **Personal Property:** Everything subject to ownership that is not real property, mobile homes or tax foreclosed property and has exchangeable value.
- (33) **Personal Service Contracts:** The type of contracts defined in 110-130 and 300-010. Services that are performed by an independent contractor in a professional capacity such as special legal services, medical or therapeutic services, occupational health and safety consultant, information technology consultants and other professional consultants, consultants with expertise in financial, occupational, architectural, engineering, photogrammetric mapping, transportation planning or land surveying services. Personal services also include artistic services or services of a specialized, creative and research oriented nature, or educational training. The determination to use this exemption shall be made by the PCO or his designee.
- (34) **Price Agreement:** A Public Contract awarded through the competitive process for the procurement of goods or services at an agreed upon price with:
- (a) No guarantee of a minimum purchase, and,
  - (b) An initial order combined with a continuing obligation upon the awarded bidder to provide the goods and/or services for a specified contract term.
- (35) **Prequalification of Bidder, Proposer or Supplier:** A process followed by the District, in advance of issuance of Solicitation Documents, to determine the qualifications of prospective bidders, proposers or suppliers to perform Public Contracts.
- (36) **Proposal:** A competitive offer, binding on the proposer and submitted in response to a Request for Proposals, where proposal evaluation and contract award is based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the solicitation.

Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

- (37) **Proposal Period:** The span of time between the date of issuance of the Request for Proposals and closing, i.e., the time and date set as the deadline for submitting proposals.
- (38) **Proposer:** A responsible person who submits a proposal in response to the District's Request for Proposals.
- (39) **Public Agency or Public Entity:** Any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into Public Contracts.
- (40) **Public Bid Opening:** For all procurements above \$150,000, sealed paper bids must be submitted, but not opened until the date and time due for public bid opening. The PCO or his designee may accept electronically submitted proposals until the advertised date and time and then may distribute the electronic proposals to the evaluation team after said date and time.
- (41) **Public Contracting Officer: (PCO):** The Chief Executive Officer of the District or his designee.
- (42) **Public Improvement:** Any construction of improvements on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement, or projects where no public funds are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection. Contracts for Public Procurements shall be issued according to Division 400 of these Rules.
- (43) **QRF:** Qualified Rehabilitative Facility (QRF) is a nonprofit corporation operating to provide individual with disabilities (as defined by ORS 279.835), with services, and enables them to maximize their opportunities for employment. The State of Oregon requires public agencies to employ individuals hired by QRFs for particular services or purchase goods offered by QRFs.
- (44) **Resident Bidder:** A bidder with an Oregon business address and for which unemployment or income taxes have been paid to the State of Oregon during the 12 months preceding the submission of their bid, has a business address in Oregon and has stated that bidder is a "resident bidder" in the bid.
- (45) **Responsive and Responsible Bidder:** A bidder who has substantially complied with the material requirements of the bidding process as required by the solicitation or bidding instructions as outlined in ORS 279B.110 and has met the standards of responsibility as outlined in ORS 279B.110.
- (46) **Request for Proposal:** The formal solicitation of written, competitive proposals, or bids, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria. Informal proposals shall be solicited in a competitive fashion and in such form that the proposer is bound to his/her proposal if accepted.
- (47) **Requirements Contract:** An agreement in which the vendor agrees to supply some or all of the purchaser's requirements that arise for an item or items within a specified time period
- (48) **Rules:** Rules of the Local Contract Review Board, Tualatin Valley Water District, Washington County, Oregon, and may be amended from time to time.

- (49) **Solicitation: An Invitation to Bid, Request for Proposals, or Request for Statements of Qualifications**, and includes all documents, whether attached or incorporated by reference, utilized for soliciting bids, proposals or **Statements of Qualifications**.
- (50) **Specification/Scope of Work:** Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications/Scopes of Work generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications/Scopes of Work may be incorporated by reference and/or through attachment to the contract.
- (51) **Telecommunication Services:** Includes the lease, rental or purchase of the network transmission facilities, services, products, or central office services from the local telephone company or inter-exchange carrier, needed to communicate voice, data, text, images or video over a distance using electrical, electronic, satellite or light wave transmission media. It may or may not include acquisition or telephone network switching, PABX/PBX, customer premise station equipment, or purchase of customer premise wire or cable.
- (52) **Written:** Refers to documents that are produced on paper or in electronic form.

**DIVISION 110 - STATUTORY PUBLIC CONTRACT BIDDING EXCEPTIONS AND EXEMPTIONS**

**110-010 – Statutory Public Contract Bidding Exceptions and Exemptions**

All Public Contracts shall be based upon competitive bids or proposals except:

- (1) Contracts made with other public agencies or the federal government
- (2) Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals (QRFs).
- (3) Emergency procurements
- (4) Sole-source procurements
- (5) Small procurements (under \$5,000)
- (6) Class-special procurements
- (7) Contract specific procurements
- (8) Grants
- (9) Professional expert or witness consulting
- (10) Acquisition or disposal of real property
- (11) Sole source expenditures where rates are set by law or ordinance for purposes of source selection
- (12) Energy Savings Performance Contracts (exempt under ORS 279C.335)
- (13) Contracts or other documents entered into, issued or established in connection with:
  - (a) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any

associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited.

- (b) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities of programs authorized by law.
- (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 279.

(14) Contracts for employee benefit plans. Any other Public Contracting of a public body specifically exempted from the code by another provision of law.

(15) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(16) Affirmative Action Contracts

Public Contracts may be let without competitive bidding and regardless of dollar value if the letting of the contract is pursuant to a specific affirmative action plan separately adopted by the District. Affirmative Action is a program designed to eliminate the effects of past and present discrimination, intended or unintended, and to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, religion, national origin, age, gender, marital status, or physical or mental disabilities, including, but not limited to, personnel practices of contractors, “set-aside” programs and minority business enterprises. Nothing herein shall constitute a specific affirmative action plan.

## **DIVISION 120 - PROCUREMENT CLASSIFICATIONS**

### **120-010 - Classes of Procurements**

#### **(1) Special Procurements**

1) Special procurements cover two procedures where competitive bidding is not required: “Class-Special Procurements” and “Contract-Specific Procurements”.

A) Class-Special Procurements consist of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

B) Contract-Specific Procurements consist of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.

C) To seek approval of a Special Procurement, a written request must be submitted to the Board that describes the proposed contracting procedure, the goods or services to be acquired, and the circumstances that justify the use of a special procurement whereby:

i) The special procurement is unlikely to encourage favoritism in the awarding of a Public Contract or substantially diminishes competition for Public Contracts, and

ii) Results in substantial cost savings to the District or to the public, or

- iii) Substantially promotes the public interest in a manner that could not be realized through competitive bidding methods.
- 2) Public notice of the approval process for the special procurement must be given.
- 3) If the contract is awarded through a special procurement, the District shall award to the bidder whose bid is most advantageous to the District.
- 4) When the Board approves a Class-Special Procurement, the District may award contracts to acquire goods or services within that class without making a subsequent request to the Board.
- 5) Examples of Board approved Class-Special Procurements (formerly Exemptions) are:
  - Equipment repair and overhaul under \$75,000.
  - Contracts for price regulated items.
  - Laboratory and medical supplies.
  - Documents, goods and services protected by intellectual property law, including but not limited to computer software, computer software maintenance, copyrighted materials and periodicals.
  - Purchases of used personal property under \$75,000.
  - Advertising contracts.
  - Investment contracts - The District invests public funds pursuant to the Investment Policy Guidelines reviewed and adopted by the Board of Commissioners in January of each calendar year.
  - Telecommunication systems and service contracts.
  - Personal Service Contracts where the value is estimated to be under \$150,000, and where services are performed by an independent contractor in a professional capacity such as special legal services, medical or therapeutic services, occupational health and safety consultant, information technology consultants and other professional consultants, consultants with expertise in financial, occupational, architectural, engineering, photogrammetric mapping, transportation planning or land surveying services. Personal services also include artistic services or services of a specialized, creative and research oriented nature, or educational training. The determination to use this exemption shall be made by the PCO or his designee.
  - District Legal Counsel.
  - A Public Improvement Project where:
    - a) A private contractor working for another public agency or on a private development project and is required to make improvements, which impact the District's water system.
 

This may include alterations to the District's system that would not otherwise occur at that time but for this project. In these cases, the schedule does not permit time to put the project out to bid and the District cannot provide the work force to complete the work. For example, the site may involve new construction where another government entity would not allow street cuts for the next five years once the paving is complete, or the addition of a District contractor

would impair the public agency or private entity's ability to complete the job; or

b) It is more economic and efficient to perform the District's portion of the work by inclusion of the public agency's or private entity's contractor.

- Maintenance, repair and operations goods and services needed during the course of the day and purchased against annual purchase orders.

(2) **Small Procurements (ORS 279B.065 and ORS 279C.335(c))**

When the amount of the contract does not exceed \$5,000, the District may obtain written, electronic or competitive quotes or may select a vendor/contractor through direct appointment. Amendments over the \$5,000 amount shall not exceed an additional \$1,000 for a total of \$6,000, unless the Amendment is approved by a department manager. This amendment limit does not apply to price agreements as they are term agreements and not individual purchases.

A procurement may not be artificially divided or fragmented so as so constitute a Small Procurement to avoid application of these Rules or ORS 279B.

(3) **Intermediate Procurements (ORS 279B.070)**

When the amount of the contract is more than \$5,000 but less than \$150,000, the District will use good faith efforts to obtain three informally solicited, competitive quotes ~~or by~~ electronically or on paper. For procurements exceeding \$25,000 and not involving a purchase for vehicle fuel, a written solicitation shall be issued according to these Rules. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available; a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

Cumulative amendments for intermediate procurements shall not exceed twenty-five percent of the original contract price, unless approved by the department manager and submitted to the Purchasing Agent/Inventory Controller for amendment of the Purchase Order or Contract. This amendment limit does not apply to price agreements as they are term agreements and not individual purchases.

A procurement may not be artificially fragmented to avoid application of these Rules or ORS 279B.

(4) **Emergency Procurements**

The PCO or his designee may make or authorize others to make Emergency Procurements for goods or services in an emergency. The District shall document the nature of the emergency and describe the method used for the selection of the particular contractor within 2-5 days following the emergency incident. The emergency documentation shall be kept on file with the contract, purchase order, or invoice covering the costs of the emergency.

(5) **Sole Source Procurements**

The District may award a contract for goods or services without competition where the PCO determines in writing that the goods or services, or class of goods or services, are available from only one source.

a) The sole source determination must be based on written findings that may include:

- i) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
- ii) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- iii) That the goods or services are for use in a pilot or experimental project; or
- iv) Other finding that supports the conclusion that the goods or services are available from only one source.

Where practicable, the District shall negotiate with the sole source to obtain contract terms advantageous to the District.

**120-020 - Intermediate Procurements (Informal) - Requests for Proposals (RFP) and Invitations to Bid (ITB) Under \$150,000**

The District may, at its discretion, use RFP or ITB competitive procurement methods for intermediate procurements greater than \$5,000 and less than \$150,000 subject to the following conditions:

- (1) Minimum contractual requirements are stated clearly in the Solicitation Document.
- (2) For purchases above \$25,000 and not involving the purchase of fuel: Solicitation documents shall be provided to all bidders and shall include an Invitation to Bid or Request for Proposal letter, a scope of work or specification, an example of the purchase order or contract and the Bidder/Proposer Certifications and Representations form.
- (3) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the RFP Solicitation Document. Criteria used to identify the proposal that best meets the District's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency expansion potential and proposer capability.
- (4) The Solicitation Document clearly states all complaint processes and remedies available.

**120-030 - Competitive Sealed Bidding (ORS 279B.055), Required for Purchases Above \$150,000.**

The District may solicit and award a Public Contract for goods, or goods and services, or may award multiple Public Contracts for goods or services when specified in the Invitation to Bid, by competitive sealed bidding.

- (1) The Invitation to Bid must include:
  - a) Time and date bids are due and the place at which the bids must be submitted. At the sole discretion of the District, bids may be submitted and received electronically.
  - b) The name and title of the person designated for the receipt of bids and the person designated by the District as the contact person for the procurement, if different.
  - c) A procurement description.
  - d) The time, date and place that prequalification applications, if any, must be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120.
  - e) A statement that the District may cancel the procurement or reject any or all bids in accordance with ORS 279B.100.

- f) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710.
- g) All contractual terms and conditions to the procurement.
- h) Notice of any pre-bid conference with time, date and location, and whether attendance is mandatory.
- i) A provision that provides that statements made by the District's representatives at the time of the conference are not binding upon the District unless confirmed by written addendum. The form and instructions for submission of bids and any other special information.
- j) A statement that each bidder must identify whether they are a resident bidder as defined by ORS 279A.120 (1).
- k) Contractor's certification of non-discrimination in obtaining required subcontractors in accordance with ORS 279A.110 (4).
- l) How the District will notify bidders of addenda and how the District will make addenda available.

- (2) The District may require bid security if it determines that bid security is reasonably necessary or prudent in protecting the interests of the District. All bid security will be returned to the bidders upon execution of the contract.

The District shall retain the bid security if a bidder who is awarded the contract fails to execute the contract promptly and properly. For purposes of this paragraph, prompt and proper execution of the contract includes all action by a bidder that is necessary to the formation of a contract in accordance with the Invitation to Bid, including the posting of performance security and the submission of proof of insurance as required by the Invitation to Bid.

- (3) The District shall give public notice of an Invitation to Bid under this section. Public notice is intended to foster competition among prospective bidders. The District shall make the Invitation to Bid available to prospective bidders. Public notice must be published at least once in one newspaper of general circulation. In addition to these modes of publication, the District may use any other medium reasonably calculated to reach prospective bidders or proposers.

- (4) The District shall open bids publicly at the time, date and place designated in the Invitation to Bid. When authorized by, and in accordance with, rules adopted under ORS 279A.065, bids may be submitted, received and opened through electronic means.

The amount of a bid, the name of the bidder and other relevant information as may be specified by rule adopted under ORS 279A.065 shall be recorded by the District. The record shall be open to public inspection.

Notwithstanding any requirement to make bids open to public inspection after the District's issuance of Notice of Intent to Award a Contract, the District may withhold from disclosure to the public, any trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence as described by ORS 192.502, that are contained in the bid.

- (5) The District shall evaluate all bids that are received before the time and date indicated for bid opening in the Invitation to Bid. The District shall evaluate the bids based on the requirements set forth in the Invitation to Bid. The requirements may include, in addition to the information described above:



- a) Criteria to determine minimum acceptability, such as inspection, testing, quality and suitability for intended use.
- b) Criteria that affect the bid price include, but are not limited to: discounts, transportation costs, total cost of ownership or operation of a product over its life.

The Invitation to Bid shall set forth the evaluation criteria to be used along with any characteristics from a qualified products list, where applicable. Criteria not listed in the Invitation to Bid or a qualified products list shall not be applied during bid evaluation.

- (6) No bids received after the time and date indicated on the Invitation to Bid shall be considered and shall not be accepted.
- (7) The District shall for the purpose of evaluating bids, apply any applicable preferences described in ORS 279A.120, 279A.125, ORS 282.210, and ORS 279A.128.
  - a) 279A.120 covers preference for Oregon goods and services and non-resident bidders.
  - b) ORS 279A.125 covers preference for goods manufactured with recycled products
  - c) ORS 282.210 requires printing services, binding and stationery work to be performed within the State of Oregon.
  - d) Per ORS 279A.128, the District may give a preference to a bidder or proposer for goods fabricated or processed or services that are performed entirely within the state of Oregon if the cost of those goods or services does not exceed more than ten percent (10%) of goods or services fabricated, processed or performed outside the state of Oregon. If more than one bidder or proposer qualifies for this preference, a further preference may be given to a qualifying bidder or proposer that resides in or is headquartered in this state. If the District wishes to use this preference, the preference must be included as part of the evaluation criteria listed in the solicitation.
- (8) All decisions to permit the correction or withdrawal of bids or to cancel an award or a contract based upon bid mistakes shall be supported by a written determination by the District covering the reasons for the actions taken.
- (9) Cancellation of invitations to bid, rejection of bids or delay of award may be issued when the cancellation, rejection or delay is in the best interest of the District or the public. The reasons for the rejection, cancellation or delay must be made part of the procurement file. The District is not liable for any costs or expenses to proposers or bidders caused by or resulting from the cancellation or rejections.
- (10) A Notice of Intent to Award shall be sent or transmitted to each bidder seven (7) days prior to award and the District may post the Notice of Intent to Award electronically or otherwise.
- (11) If a contract is awarded, the District shall award the contract to the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements; or, when the Invitation to Bid specifies or authorizes the award of multiple contracts to responsible bidders; those bids must substantially comply with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements and who qualify for award under the terms of the Invitation to Bid.
- (12) The successful bidder shall promptly execute a contract, which includes all action necessary to implement the formation of a contract in accordance with the Invitation to Bid, including any performance security and proof of insurance required by the ITB.
- (13) The District may issue a request for information (RFI), a request for interest or other preliminary documents to obtain information useful in the preparation of an Invitation to Bid.

### **120-040 - Multi-Step Solicitations for Procurements above \$150,000.**

When the District considers it impractical to prepare a procurement description to support an award based on price, the District may issue a multi-step solicitations for goods/and or services requesting the submission of un-priced submittals, and later issue a Request for Proposals limited to the bidders whom the District has determined to be eligible to submit a priced offer under the evaluation criteria set forth in the initial solicitation.

- (1) **Phased Process:** Multi-step solicitations are a phased process where proposers are pre-qualified in Request for Qualifications or providing information for products or services to be prequalified. The District's evaluation team selects the most highly qualified consultants or products and the selected proposers/bidders are invited to provide a priced proposal. A Contract/Purchase Order is then awarded to the lowest responsive and responsible proposer.
- (2) **NOTE:** This process does not apply to On-Call Consultant Services Contracts where Requests for Qualifications are used and then selection is made for the purpose of selecting several qualified consultants/contractors to provide on-call services as needed for intermediate level procurements. See Division 300 for Rules on Selection of Architectural, Engineering and Related Services Solicitations and Contracts.
- (3) **Public Notice:** Whenever multi-step solicitations are used, public notice for the first phase shall be given. Public notice is not required for the subsequent phases.
- (4) **Procedures in multi-step bidding, generally:**
  - a) **Solicitation Protest:** Prior to the closing of Phase 1, the District shall provide an opportunity to protest the solicitation under ORS 279B.405.
  - b) **Exclusion Protest:** The District shall provide an opportunity for a bidder to protest exclusion from the second round of multi-step sealed solicitations pursuant to ORS 279B.410.
  - c) **Award Protest:** The District shall provide an opportunity for bidders/proposers selected for the second round of the multi-step solicitations to protest its intent to award a contract pursuant to ORS 279B.410.
- (5) **Form:** Multi-step solicitations shall be initiated by the issuance of RFP in the form and manner required for requests for competitive sealed proposals as specified in these Rules.

### **120-050 - Competitive Sealed Proposals- Procurements Above \$150,000 (ORS 279B.060)**

- (1) The District may solicit and award a Public Contract for goods or services, or may award multiple Public Contracts for goods or services when specified in the solicitation via Request for Proposal (RFP)

The RFPs must include:

- a) The Time and Date by which sealed proposals must be received, and
- b) A place at which the proposals must be submitted, and
- c) Whether the proposals can be submitted electronically, and
- d) The name and title of the person designated for receipt of proposals, and
- e) The person designated by the District as the contact person for the procurement, if different, and

- f) A procurement description, and
  - g) A time, date and place that prequalification applications, if any, must be filed and the classes of work, if any, for which the proposers must be prequalified, in accordance with ORS 279B.120, and
  - h) A statement that the District may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100, and
  - i) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required, under ORS 468A.710, and
  - j) Provide the evaluation criteria, including how criteria are weighted, a discussion of the evaluation or selection process and how the proposer selection award is to be made, and
  - k) All contractual terms and conditions applicable to the procurement.
- (2) Requests for Proposals may also include:
- a) Identification of contractual terms or conditions the District reserves in the RFP for negotiations with proposers.
  - b) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the RFP.
  - c) Contain or incorporate the form and content of the contract that the District will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers.
  - d) Announce the method of contractor selection, which may include but is not limited to:
    - 1) Negotiation with the highest ranked proposer
    - 2) Competitive negotiations.
    - 3) Multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods authorized by rules adopted under ORS 279A.065.
  - e) Contain a description of the manner in which proposals will be evaluated, including the relative importance of price and any other evaluation factors used to rate the proposals in the first tier of competition. If more than one tier of competitive evaluation is used, a description of the process under which the proposals will be evaluated in the subsequent tiers.
- (3) The District may require proposal security in any form deemed prudent as supported by ORS 279B.060.
- a) The District shall return the proposal security to all proposers upon execution of the contract, or
  - b) The District shall retain proposal security if a proposer who is awarded a contract fails to execute the contract promptly and properly. Prompt and proper execution of the contract includes all action by a proposer necessary to the formation of a contract in accordance with the RFP, including the posting of performance security and the submission of proof of insurance when required by the RFP. If contract negotiations or competitive negotiations are conducted, the failure, prior to award of the District

and a proposer to reach agreement does not constitute grounds for the retention of proposal security.

- (4) Public Notice of the RFP shall be given in the same manner as provided for public notice as required by ORS 279B.060.
- (5) Proposals may be opened in a manner to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation, but the District shall record and make available the identity of all proposers as part of the District's public records from and after the opening of the proposals.

Proposals are not required to be open for public inspection until after the Notice of Intent to Award a contract is issued. The fact that proposals are opened at a meeting does not make their contents subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals.

Notwithstanding any requirement to make proposals open to public inspection after the District's issuance of Notice of Intent to Award a Contract, the District may withhold from disclosure to the public materials included in a proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 and 502.

- (6) If an RFP is canceled under ORS 279B.100 after proposals are received, the District may return the proposals to the proposer making the proposal. The District shall keep a list of returned proposals in the file for solicitation.
- (7) As provided for in the RFP or in written addenda issued, the District may conduct site tours, demonstrations, individual or group discussions and other informational activities with proposers before or after the opening of the 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.
- (8) 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) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or otherwise eliminate from consideration a class of lower ranked proposers.
  - g) A multi-step Request for Proposals requesting the submission of un-priced technical submittals, and then later issuing a Request for Proposals limited to the proposers whose technical submittals were determined to be qualified under the criteria set forth in the RFP.

- h) Any combination of methods described above, as authorized or prescribed by rules adopted under ORS 270A.065.
- (9) 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.
- (10) After the opening of proposals, the District may issue or electronically post an addendum to the Request for Proposals 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 issue or electronically post an addendum to all proposers who are eligible to compete under the addendum.

The District shall issue or post the addendum at least five (5) 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 competition in accordance with rules adopted under ORS 279A.065.
- (11) The cancellation of RFPs and the rejection of proposals must be in accordance with ORS 279B.100.
- (12) In the RFP, the District shall describe the methods by which the District will 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.
- (13) The District shall issue or electronically post the Notice of Intent to Award to each proposer who was evaluated in the final competitive tier.
- (14) 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 upon the evaluation process and evaluation criteria described in the RFP, any applicable preferences and where applicable, the outcome of any negotiations authorized by the Request for Proposal. Other factors may not be used in the evaluation. When the RFP specifies or authorizes the award of multiple Public Contracts, the District shall award Public Contracts to responsible proposers who qualify for the award of a contract under the terms of the Request for Proposal.
- (15) 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 preparation of an RFP.

### **DIVISION 130 - COOPERATIVE PROCUREMENTS**

Joint Cooperative and Permissive Cooperative Procurements shall comply with ORS 279A.200, ORS 279A.205, ORS 279A.210, ORS 279A.215, ORS 279A.220 and ORS 279A.225.

### **DIVISION 140 - PURCHASES OF USED PERSONAL PROPERTY**

The District may purchase used personal property for \$75,000 or less without competitive bidding or quote if the District has determined that the direct purchase without competitive bidding will result in cost savings and will not diminish competition or encourage favoritism or the item is not readily available and time is of the essence. If the purchase is in excess of \$75,000, the District will seek three competitive quotes unless the District determines that three quotes cannot be obtained or the District's purchase without quotes will result in cost savings and will not diminish competition or

encourage favoritism or the item is not readily available and time is of the essence. In all cases, a written record must be made of the attempt to obtain quotes or locate the item.

## **DIVISION 150 - PERSONAL SERVICE CONTRACTS AND INSURANCE AGENT OF RECORD CONTRACTS**

Personal Service Contracts whose value is under \$150,000 are exempt from going out for request for informal competitive proposals. Personal Service Contracts whose value is estimated to be greater than \$150,000 must use the Competitive Sealed proposal process outlined in Rule 120-050, unless the type of service in question qualifies as another exempted procurement, such as those listed in Section 120-010, Paragraph (5).

### **(1) The following are Personal Service Contracts:**

- (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of: an accountant, attorney providing special legal services, physician or dentist, therapist, psychologist, passenger aircraft pilot, aerial photographer, timber cruiser, communication or telemetry consultant or information technology consultant, a consultant for the services listed in Division 300 of these Rules, financial consultant, occupational health and safety consultant.
- (b) Contracts for services requiring special skills, such as an artist in the performing of fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.
- (c) Contracts for services of a specialized, creative and research-oriented noncommercial nature.
- (d) Contracts for educational training or informational resource referral services.
- (e) Personal Service Contracts provided by Consultants for services listed in Division 300 of these Rules where the contract dollar value is estimated to be below \$250,000.

### **(2) The following examples are not Personal Service Contracts:**

- (a) Contracts, even though in a professional capacity, if predominately for a product, e.g. a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product.
- (b) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
- (c) Contracts for trade-related activities considered to be labor and material contracts.
- (d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

### **(3) Insurance Agent of Record Contracts**

Contracts for insurance agent of record contracts must be let by formal competitive proposal as outlined in these rules and the term for the award contract may not exceed five (5) years, including all extensions.

**DIVISION 160 - CONTRACT AMENDMENTS FOR GOODS AND SERVICE  
CONTRACTS (INCLUDING CHANGE ORDERS AND EXTRA WORK)**

Any Public Contract amendment for additional work or product, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract dollar value may be made without competitive bidding subject to the following conditions:

- (1) The original contract was let by (i) competitive bidding or alternative procurement process; or (ii) unit prices or additive alternates were provided which established the cost for additional work; or
- (2) For small procurements under \$5,000; the amount of the aggregate costs resulting from all amendments shall not exceed \$1,000., unless the amendment is approved by the department manager
- (3) For intermediate procurements from \$5,000 to \$150,000, the amount of the aggregate costs from all amendments shall not exceed 25% of the original contract value, unless the amendment is approved by the department manager.
- (4) The amendment is within the scope of the services contemplated under the RFP and that amendment will not materially impact the field of competition for the services described in the RFP.
- (5) With respect to the rules on amendments, Public Contract amendments do not include amendments to intergovernmental agreements, and contracts with other state agencies or the federal government.
- (6) Renegotiated Contracts. The District may renegotiate the terms and conditions, including the contract price and/or contract term of a contract without additional competition and amend a contract if it is advantageous to the District subject to the following conditions:
  - (a) The amended contract is within the scope of the Solicitation Document, or if there was no Solicitation, the amended contract is within the scope of the original contract, or the purchase was approved as a special procurement; and
  - (b) A determination by the District that the renegotiated contract is at least as favorable as the original contract, and
  - (c) The renegotiated contract will not have a total term greater than five years from original contract execution.
  - (d) If a contractor offers a lower price in exchange for a change in terms or conditions that was expressly rejected in the original solicitation, the amended contract may be structured with this requested changed term as an optional, but not as a mandatory contract term.

If the amendment is the result of a cooperative procurement, the amended contract may not materially change the terms, conditions or pricing of the original contract.

**DIVISION 170 - PRICE AGREEMENTS**

- (1) The District may enter into price agreements whereby it is agreed to purchase requirements for an anticipated need at a predetermined price providing the following conditions are complied with:
  - (a) The price agreement must be let by a competitive bidding process; and
  - (b) The term of the price agreement including renewals does not exceed five years.

- (2) When the price of goods or services has been established by a price agreement pursuant to this section, the District may purchase the goods or services without subsequent competitive bidding within the terms of the price agreement.

## **DIVISION 180 - BRAND NAME SPECIFICATIONS AND QUALIFIED PRODUCTS LISTS**

### **180-010 - Brand Name or Equal Specification; Brand Name Specification (ORS 279B.215)**

- (1) A brand name or equal specification may be used where it is advantageous to the District, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed.

The District will determine what constitutes a product that is equal or superior to the product specified and this determination is final.

The District may also specify one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed.

- (2) A brand name specification may be prepared and used only if the District determines for a solicitation or a class of solicitation that only the identified brand name specification will meet the District's needs based on one or more of the following written determinations:
  - 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 efficient utilization of existing goods requires the acquisition of compatible goods or services.
- (3) Use of a brand name specification may be subject to review as provided in ORS 279B.400 covering protests.

### **180-020 - Qualified Products Lists (ORS 279B.115)**

- (1) The District may develop and maintain a qualified products list 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) In the initial development of any qualified products lists, the District shall give public notice, in accordance with ORS 279B.055 (4) 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) 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 to 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 to 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) The inclusion of goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.129 and 279B.125 of any prospective contractor, seller or supplier of goods on the qualified products list.

**DIVISION 190 - RESPONSIBILITY OF BIDDERS AND PROPOSERS;  
PREQUALIFICATION OF PROSPECTIVE BIDDERS AND PROPOSERS;  
APPLICATION FOR PREQUALIFICATION DEBARMENT OF  
PROSPECTIVE BIDDERS AND PROPOSERS**

**190-010 - Responsibility of Bidders and Proposers (Qualifications) (ORS 279B.110)**

- (1) The District shall prepare a written determination of non-responsibility of a bidder or proposer if the bidder or proposer does not meet the standards of responsibility.
- (2) In determining whether a bidder or proposer has met the standards of responsibility, the District shall consider whether a bidder or proposer has:
  - a) The appropriate financial, material, equipment, facility, 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 paragraph.
  - 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 paragraph.
  - 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 upon any available information or may find the bidder or proposer non-responsible; and
  - f) The bidder or proposer has not been debarred by the District.
- (3) The District may refuse to disclose outside of the District confidential information furnished by a bidder or a proposer under this section, when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and the District has authority under ORS 192.410 to 192.505 to withhold the identified information from disclosure.

**190-020 - Prequalification of Prospective Bidders and Proposers (ORS 279B.120)**

- (1) The District may prequalify prospective bidders or proposers to submit bids or proposals for Public Contracts to provide particular types of goods and services. This method of submitting prequalification applications, the information required in order to be prequalified

and the forms to be used for submitting prequalification information shall be determined by the District unless otherwise prescribed by rule adopted by the LCRB.

- (2) The District shall, in response to the receipt of a prequalification application submitted under the above paragraph, notify the prospective bidder or proposer whether they are qualified based on the standards of responsibility listed in ORS 279B.110 (2), 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 must specify which of the standards of responsibility listed in ORS 279B.110 (2) 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 this application.
- (3) If the District subsequently discovers that a prospective bidder or proposer that prequalified under Subsections (1) and (2) of this section 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.

### **190-030 - Application for Prequalification (ORS 279B.125)**

- (1) 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 ORS 279B.120 (1). Upon receipt of the 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 thirty (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 ORS 279B.110 (2). The District shall promptly notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified.
- (2) The District finds that a prospective bidder or proposer is qualified, the notice must 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 must specify reasons given under ORS 279B.120 for not prequalifying the prospective bidder or proposer and inform the prospective bidder or proposer of the right to a hearing under ORS 279B.425. To be entitled to a hearing under ORS 279B.425, a prospective bidder or proposer shall within three (3) business days after receipt of the notice, notify the District that the prospective bidder or proposer demands a hearing under ORS 279B.425.
- (3) 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 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 must specify the reasons given under ORS 279B.120 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 ORS 279B.425. To be entitled to a hearing under ORS 279B.425, a prospective bidder or proposer shall, within three (3) business days after receipt of the notice, notify the District that the prospective bidder or

proposer demands a hearing under ORS 279B.425. 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.

**190-040 - Debarment of Prospective Bidders and Proposers (ORS 279B.130)**

- (1a) The District may debar a prospective bidder or proposer from consideration for award of a contract for the reasons listed in Subsection (2) of this section after providing the prospective bidder or proposer with notice and a reasonable opportunity to be heard.
- (1b) The District may not debar a prospective bidder or proposer under this section for more than three (3) years.
- (2) A prospective bidder or proposer may be debarred from consideration for award of a contract 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 such 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.
    - i) The prospective bidder or proposer has committed a violation of a contract provision and debarment for such a violation was listed in the contract terms and conditions as a potential penalty. A violation may include but is not limited to failure to perform the terms of a contract or 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.
    - ii) The prospective bidder or proposer does not carry workers' compensation or unemployment insurance as required by statute.
- (3) The District shall issue a written decision to debar a prospective bidder or proposer under this section. The decision must:
  - a) State the reasons for the action taken; and
  - b) Inform the debarred prospective bidder or proposer of the appeal rights of the prospective bidder or proposer under ORS 279B.425.
- (4) A copy of the decision issued under Subsection (3) of this section must be mailed or otherwise furnished immediately to the debarred prospective bidder or proposer.
- (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three (3) business days after receipt of notice of debarment, notify the District that the prospective bidder or proposer appeals the debarment as provided in ORS 279B.425.

**DIVISION 200 - PROPERTY DISPOSITION**

### **200-010 - Sale of Surplus Property**

Upon declaration of surplus property, the District may dispose of property, real or personal, which may include but not be limited to oral auctions, sealed bid proposals or negotiated price sales. The PCO may declare an item as surplus if the value is under \$25,000. Otherwise, the Board shall make such declaration. All sales shall be to the highest bidder, except as provided in 140-030. All sales shall be AS IS - WHERE IS.

### **200-020 - Auction Sales of Personal Property**

Personal property may be sold at auction if the District determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive bid. The District may sell personal property through a commercially recognized third party liquidator if the District has determined that such sale will result in increased net revenue and the selection of the liquidator was conducted by a competitive selection process.

### **200-030 - Sealed Bid Proposals**

Personal property may be sold by written, sealed competitive bid.

### **200-040 - Negotiated Sales of Personal Property**

The District may negotiate sale of personal property, including recyclable or reclaimed materials if the District has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

- (1) Is documented by the District to be clearly in the public interest;
- (2) The District determines that this is the most efficient and cost effective method for disposing of the property.
- (3) The value of the property to be sold.
- (4) The District shall maintain a record of all sales.

### **200-050 - Donations of Personal Property**

- (1) The District may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities:
  - (a) Another public agency; or
  - (b) Any shelter or workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any public agency;
  - (c) Any recognized nonprofit activity that is certified to receive federal or state surplus property.
- (2) The District may donate or sell, without competitive bids, surplus personal property to recognized private nonprofit social or health service activities, subject to the following conditions:
  - (a) A determination has been made that the property is not needed for other District purposes;
  - (b) If the property has a current market value of \$5,000 or more, the donation or sale shall:

- (i) Be documented by the District to be clearly in the public interest;
  - (ii) The District determines this is the most efficient and cost-effective method for disposing of the property.
- (3) The District shall maintain a record of all transfers, donations or sales authorized by Sections (1) and (2) of this rule.

### **200-060 - Sale of Real Property**

The Board shall make all decisions regarding the declaration of real property as surplus and determine the method of disposition on a case-by-case basis.

## **DIVISION 210 - PUBLIC PROCUREMENT RULES**

### **210-010 - Preparation of Solicitation Documents**

- (1) Unless these Rules provide otherwise, the Solicitation Documents shall include the following:
  - (a) Instructions and information to bidders or proposers concerning the bid or proposal submission requirements, including the time and date set for opening of bids or proposals, the address of the office to which bids or proposals are to be delivered, and any other special information, e.g., whether bids or proposals may be submitted electronically.
  - (b) Where applicable, the purchase description, specifications, delivery or performance schedule, inspection and acceptance requirements, and special evaluation factors;
  - (c) The contract terms and conditions, including warranty and bonding or other bid security requirements, as applicable; and
  - (d) All addenda issued by the District.
- (2) The District is authorized to determine the terms and conditions of solicitation and contract, provided such terms and conditions are not contrary to statutory or regulatory requirements.
- (3) The District shall establish terms and conditions applicable to Public Contracts as prescribed by ORS Chapter 279.

### **210-020 - Life Cycle Costing**

Life Cycle Costing may be used as part of the cost analysis in RFPs at the discretion of the department manager and if used, should be listed as part of the evaluation criteria in the RFP.

### **210-030 - Bidder Integrity Procedure for Pipe, Fitting and Hydrant Purchases**

- (1) On pipe, fitting and hydrant purchases exceeding \$25,000, as part of the determination of bidder responsibility and in addition to all other requirements, the District shall research the OSHA and EPA websites determine if the apparent low bidder's factory source has a record of OSHA and/or EPA violations. If low bidder's factory has no OSHA or EPA violations, a notice of award shall be made.
- (2) If the factory in question has OSHA and/or EPA violations, that bidder shall be contacted in writing with a request to provide with a letter outlining how the violation(s) in question are being resolved. Upon receipt of their response, an award will either be given or denied to the apparent low bidder. If the apparent low bidder's award is denied, this process will be applied to second low bidder, and so on.

- (3) If an award is denied to an apparent bidder due to unresolved factory OSHA/EPA violations, a letter will be issued outlining the reason(s) for the loss of award to the bidder, the factory and where applicable, the factory's parent company.

**210-040 - Preference for Oregon Goods and Services (ORS 279A.128), Non-resident Bidders (ORS 279A.120)**

- (1) The District may give a preference to a bidder or proposer for goods fabricated or processed or services that are performed entirely within the state of Oregon if the cost of those goods or services does not exceed more than ten percent (10%) of goods or services fabricated, processed or performed outside the state of Oregon. If more than one bidder or proposer qualifies for this preference, a further preference may be given to a qualifying bidder or proposer that resides in or is headquartered in this state. If the District wishes to use this preference, the preference must be included as part of the evaluation criteria in the solicitation.
- (2) The District shall add a percent increase to the bid of a non-resident bidder equal to the percent if any, of the preference given to that bidder in the state in which the bidder resides.
- (3) For any purchases exceeding \$10,000, the bidder shall report this purchase to the Oregon Department of Revenue on forms provided by the Oregon Dept. of Revenue. Final payment to the bidder shall not be made until these forms have been sent to the Dept. of Revenue.
- (4) Purchases of items made with recyclable or reusable goods: Where economically feasible, the District shall purchase goods that may be recycled or reused when discarded.

**210-050 - Bids, Proposals or Quotes Are Offers**

- (1) The bid, proposal or quote is the bidder's or proposal's offer to enter into a contract which, if the bid or proposal is accepted for award by the District, binds the bidder or proposer to a contract and the terms and conditions contained in the solicitation unless the bid or proposal is withdrawn in accordance with 210-080 prior to the time of bid or proposal opening.
- (2) The bid or proposal shall be a complete offer and fully responsible to the Invitation to Bid or the Request for Proposals, unless bidders or proposers are specifically authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.
- (3) Unless expressly authorized by the Invitation to Bid or the Request for Proposals, bidders or proposers shall not make their bids or proposals contingent upon the District's acceptance of specifications or contract terms that conflict with or are in addition to those advertised in the Invitation to Bid or Request for Proposals.

**210-060 - Electronic Bids and Proposals**

**(Bids Received by Facsimile or E-Mail).**

- (1) The District may authorize the submission of bids or proposals by electronic means
- (2) If electronic bids or proposals are authorized, the District will include the following items as necessary in the **Solicitation Document**:
  - (a) Bidders or proposers may submit electronic bids or proposals in response to this solicitation. The entire response must arrive at the place and by the time specified in the Solicitation Document.
  - (b) Electronic bids or proposals that fail to furnish required representations or information, or that reject or take exception to any of the terms, conditions, and provisions of the solicitation, may be rejected and excluded from consideration.

- (c) Electronic bids or proposals must contain the required signatures
- (3) If the bidder or proposer chooses to submit an electronic bid or proposal, the District will not be responsible for any failure attributable to the transmission or receipt of the electronic bid or proposal including, but not limited to, the following:
  - (a) Receipt of garbled or incomplete bid or proposal documents.
  - (b) Availability or condition of the receiving electronic equipment.
  - (c) Incompatibility between the sending and receiving equipment.
  - (d) Delay in transmission or receipt or receipt of bid or proposal documents.
  - (e) Failure of the bidder or proposer to properly identify the bid or proposal documents.
  - (f) Illegibility of bid or proposal documents.
  - (g) Security and confidentiality of bid or proposal data.

#### **210-070 - Addenda to Solicitation Documents**

- (1) Changes to Solicitation Documents shall be accomplished by addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, as specified in the Solicitation Documents, either with the bid or proposal closing.
- (2) Addenda shall be sent to all prospective bidders or proposers known to have obtained the Solicitation Documents. Addenda may be sent electronically.
- (3) Addenda shall be issued within a reasonable time to allow prospective bidders or proposers to consider the addenda in preparing their bids or proposals, but in no case less than 24 hours before the bid or proposal closing time.
- (4) The District may extend the bid or proposal closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by addenda. The District shall notify prospective bidders or proposers of the new closing date and time in the addendum electronically or on paper.

#### **210-080 - Pre-Opening Modification or Withdrawal of Bids or Proposals**

- (1) **Modifications:** Once submitted, bids or proposals may be modified in writing prior to the time and date set for bid or proposal closing. Any modifications shall be prepared on the bidder's or proposal's letterhead, signed by an authorized representative of the bidder or proposer, state that the new document supersedes or modifies the prior bid or proposal and be submitted in a sealed envelope, appropriately marked. The District may accept electronic modifications, if it has authorized the submittal of electronic documents in the Solicitation Documents. To ensure the integrity of the bidding process, the envelope or electronically transmitted document containing any modifications to a bid or proposal shall be marked as follows:
  - (a) Bid (or proposal) Modification
  - (b) Solicitation Number or Other Identification
- (2) **Withdrawals:**
  - (a) Bids or proposals may be withdrawn by written notification on the bidder's or proposal's letterhead, signed by an authorized representative of the bidder or proposer, and received prior to the time and date set for bid or proposal closing. Bids

or proposals also may be withdrawn in person, prior to the scheduled bid or proposal closing, upon presentation of appropriate identification.

- (b) Unopened bids or proposals withdrawn under Subsection (a) of this section, may be released to the bidder or proposer after voiding any date and time stamp used;
- (c) Requests to withdraw mailed bids or proposals shall be marked as follows:
  - (i) Bid (or proposal) Withdrawal
  - (ii) Solicitation Number or Other Identification

### **210-090 - Mistakes in Bids or Proposals**

- (1) **General.** Clarification or withdrawal of a bid or proposal because of an inadvertent, nonjudgmental mistake in the bid or proposal requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. Except as provided in this rule, if the mistake is attributable to an error in judgment, the bid or proposal may not be corrected. Bid or proposal correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the District or the fair treatment of other bidders or proposers.
- (2) **Mistakes discovered after bid or proposal closing but before award.** This subsection prescribes procedures to be applied in situations where nonjudgmental mistakes in bids or proposals are discovered after the time and date set for bid or proposal closing but before award:
  - (a) **Minor informalities.** Minor informalities are matters of form rather than substance that are evident from the bid or proposal documents, or are insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders, proposers or the District; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.
  - (b) **Mistakes where intended correct bid or proposal is evident.** If the mistake and the intended correct bid or proposal item are clearly evident on the face of the bid form or proposal document, or can be substantiated from accompanying documents, the District may accept the bid or proposal. Examples of mistakes that may be clearly evident on the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations.
  - (c) **Mistakes where intended correct bid or proposal is not evident.** The District shall not accept a bid or proposal in which a mistake is clearly evident on the face of the bid form or proposal document but the intended correct bid or proposal is not clearly evident or cannot be substantiated from accompanying documents.

### **210-100 - Availability of Award Decision**

- (1) A signed purchase order, price agreement, or other contract document(s), as applicable, shall be sent to the successful bidder or proposer.
- (2) Unsuccessful bidders or proposers may be notified that a contract has been awarded.
- (3) Completed bid and proposal files shall be available for public review at the District.

### **210-110 - Protest of Contractor Selection or Contract Award**



- (1) **Purpose.** The purpose of this rule is to require adversely affected or aggrieved bidders or proposers on the District solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the District's contractor selection or contract award decision.
- (2) **Notification of Intent to Award.** The District's written notification of intent to award a purchase order or contract, hereinafter referred to collectively as the "award documents", shall constitute a final decision of the District to award the contract or proceed with the purchase if no written protest of the contractor selection or contract award is filed with the District within seven (7) calendar days following issuance of the Notice of Intent to Award or a shorter protest period as provided in the District's solicitation. If a protest of contractor selection or contract award is timely filed by an actual aggrieved bidder or proposer, the award documents shall constitute a final decision of the District only upon issuance to the protesting bidder or proposer of a written decision denying the protest and affirming the selection or the award. Notification of Intent to Award does not apply to contracts awarded as small procurements because a protest period does not apply.
- (3) **Right to Protest.** Any actual bidder or proposer who is adversely affected or aggrieved by the District's award of the contract shall have seven (7) calendar days or a shorter protest period as provided in the District's solicitation after issuance of the award documents to submit a written protest of the award to the District. The written protest shall specify the grounds upon which the protest is based. In order to be an adversely affected or aggrieved bidder or proposer with a right to submit a written protest, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsive, responsible bidder or best proposer. The protester must claim that all lower bidders or higher-scored proposers are ineligible for award (i) because their bids or proposals were non-responsive or non-responsive or (ii) as a result of the District committing a material violation of a solicitation provision or of an applicable procurement statute or administrative rule, the protester was unfairly evaluated and would have, but for such material violation, been the lowest bidder or the highest-ranked proposer. The District shall not entertain a protest submitted after the time period established in the rule or such different period as may be provided in the District's solicitation.
- (4) **Authority to Resolve Protests.** The PCO, or such person's designee, shall have the authority to settle or resolve a written protest submitted in accordance with the requirements of Section (3) of this rule.
- (5) **Decision.** If the protest is not settled or resolved by mutual agreement, the PCO, or such person's designee, shall promptly issue a written decision on the protest. An aggrieved person may file a written appeal to the Board of Commissioners within seven (7) calendar days of the PCO's decision. The Board may choose to hold a hearing or appoint a hearings officer or let the PCO's decision stand. The written determination under any of the foregoing will be the District's final action. Judicial review of this decision will be available where provided for in statute.

**TUALATIN VALLEY WATER DISTRICT  
REGULAR BOARD MEETING AGENDA ITEM**

**MEETING DATE: NOVEMBER 20, 2012**

**TITLE: RESOLUTION 13-12, DECLARING PUBLIC NEED TO ACQUIRE AN INTEREST IN REAL PROPERTY BY EXTINGUISHING A RESTRICTION APPLICABLE TO PROPERTY OWNED BY TUALATIN VALLEY WATER DISTRICT AND AUTHORIZING THE ACQUISITION AND EXTINGUISHMENT THROUGH CONDEMNATION**

**ITEM:** The Tualatin Valley Water District (TVWD) owns property at 1730 SW 87<sup>th</sup> Avenue, also known as Lot 24 of Tualatin View Sites No. 2. The property was acquired for construction of the Rosander Pump Station Project and other water system facilities. Article 1.6 of the Declaration of Restrictions for the platted lots restricted use of parcels to residential.

TVWD has negotiated and acquired an amendment to the Restrictions from all subject property records. The amendment to the Restrictions permit the pump station and water system facilities on Lot 24.

TVWD has made efforts to negotiate with owners of Lot 25, and Staff believes that continued discussions may be successful. However, TVWD is coming to a point in the schedule that action needs to be taken. In the absence of obtaining a signed amendment to the Restrictions as all the other property owners have done, TVWD is faced with declaring public need as a first step toward condemnation. It does not mean that TVWD is irrevocably committed, but it is a necessary initial step.

**STAFF RECOMMENDATION:** Staff recommends that Resolution 13-12 be adopted to declare public need and to authorize the District to proceed to acquire the property interest described if negotiations are unsuccessful.

**BUDGET IMPACT:** The funds are budgeted and appropriated.

**ADDITIONAL INFORMATION:** Mark Knudson, Chief Engineer, [markk@tvwd.org](mailto:markk@tvwd.org)  
503-848-3027

**ATTACHMENTS:** Resolution 13-12

**APPROVING MANAGERS INITIAL:**

CHIEF EXECUTIVE OFFICER	_____	HUMAN RESOURCES	N/A
FIELD OPERATIONS	N/A	INTERGOV. RELATIONS	N/A
FINANCIAL SERVICES	_____	CUSTOMER SERVICES	N/A
ENGINEERING SERV.	_____		

**BOARD ACTION:**

APPROVED	_____
DENIED	_____

# Tualatin Valley Water District



## A RESOLUTION DECLARING PUBLIC NEED TO ACQUIRE AN INTEREST IN REAL PROPERTY BY EXTINGUISHING A RESTRICTION APPLICABLE TO PROPERTY OWNED BY TUALATIN VALLEY WATER DISTRICT AND AUTHORIZING THE ACQUISITION AND EXTINGUISHMENT THROUGH CONDEMNATION

WHEREAS, this matter came before the Board of Commissioners of Tualatin Valley Water District (Board) at its regular meeting on November 20, 2012; and

WHEREAS, Tualatin Valley Water District (District) owns property located at 1730 SW 87th Avenue also known as Lot 24, Tualatin View Sites No. 2, Washington County, Oregon, which it has acquired for the location and construction of the Rosander Pump Station Project (Project) and all water system facilities related thereto; and,

WHEREAS, Tualatin View Sites No. 2 has recorded Declarations of Restrictions (Restrictions) applicable to those properties within said plat which are recorded July 3, 1953 in Book 346, Page 442, Deed Records of Washington County, Oregon; and,

WHEREAS, the Restrictions burden and benefit all properties within Tualatin View Sites No. 2 and Article 1.6 prohibits any building other than a single family residential home on any lot subject to the Restrictions except that a duplex is permitted on Lot 24, the District's parcel; and,

WHEREAS, the District has obtained and recorded a First Amendment to Declarations of Restrictions for Tualatin View Sites No. 2 signed by all property owners owning lots within said plat, except from the owners of Lot 25. The First Amendment provides that the Rosander Pump Station Project and all water system related facilities are permitted uses on Lot 24; and,

WHEREAS, the Board, having reviewed and considered the Project finds it necessary to acquire the property right of Lot 25 to enforce the Restrictions against the District so as to prevent the District from implementing the Project: and,

WHEREAS, it appears to the Board that, after investigation of alternatives regarding the provision of the most economic and efficient method of service delivery, the greatest public benefit is achieved through construction of the Project on Lot 24 and extinguishment of Article 1.6 of the Restrictions as it applies to Lot 24; and,

WHEREAS, in order for the District to efficiently provide services to this citizens, it is necessary and in the public's interest to acquire and extinguish the right of the owners of Lot 25 to enforce Article 1.6 of the Restriction's against the District's Lot 24 so that the Project can be built; and,

WHEREAS, the District has authority under ORS. 264.240 to acquire the property interest described herein by negotiated purchase or by condemnation; and,

WHEREAS, The District finds that the proposed acquisition is planned to be accomplished in a manner which is the most compatible with the greatest public good and causes the least private injury, and being fully advised,

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TUALATIN VALLEY WATER DISTRICT:**

Section 1. That the above recitals shall form an integral part of this Resolution and shall have the same force and effect as if they were adopted as resolutions.

Section 2. It is necessary for the continued public health, safety and economic welfare of the District that the property interest described be acquired by the District: to acquire and extinguish the

right of the owners of Lot 25, TUALATIN VIEW SITES NO. 2, a duly recorded subdivision in Washington County, Oregon, commonly known as 1760 SW 87th Avenue, to enforce Article 1.6 to prevent use of Lot 24 by the District for the Project and water system facilities.

Section 3. That the District and its attorneys are authorized to retain appraisers, negotiators, and other consultants and attempt to agree with the owners and other persons of interest in Lot 25 as to the compensation, if any, to be paid for the acquisition of such property right and in the event no satisfactory agreement can be reached, then the attorneys of the District are directed and authorized to commence and prosecute to final determination such proceedings as may be necessary to acquire and extinguish the property interest.

Section 4. That upon the trial of any suit or actions instituted to acquire the property interest, the attorneys acting for the District are authorized to make such stipulation, agreement or admission as in their judgment may be for the best interest of the District and to take possession of the property at such time as appropriate in their judgment without necessity of further Board approval.

INTRODUCED AND ADOPTED this 20<sup>th</sup> day of November, 2012

TUALATIN VALLEY WATER DISTRICT

By \_\_\_\_\_  
Dick Schmidt, President

By \_\_\_\_\_  
Jim Doane, Secretary