

## Tualatin Valley Water District



### BOARD OF COMMISSIONERS

1850 SW 170th AVENUE

BEAVERTON, OR 97006

WEDNESDAY

NOVEMBER 20, 2013

BOARD EXECUTIVE SESSION - 6:00 PM

REGULAR BOARD 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 before the Regular Board meeting at 6 PM, called under ORS 192.660 (2) (h) to consult with legal counsel concerning the legal right and duties of a public body with regard to current litigation or litigation likely to be filed, 192.660 (2) (e) to conduct deliberations by the governing body to negotiate real property transactions, and 192.660 (2) (f) and ORS 192.502 (9) to consider information or records that are exempt from public inspection.

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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 1, 2013.....

5.2 - Regular Meeting Minutes of October 16, 2013 .....

**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.

\*\*\*RECESS REGULAR MEETING\*\*\*

\*\*CONVENE AS LOCAL CONTRACT REVIEW BOARD\*\*

6. RESOLUTION 11-13, AMENDING AND RESTATING LOCAL CONTRACT REVIEW BOARD RULES (MOTION TO ADOPT).....

\*\* CLOSE AS LOCAL CONTRACT REVIEW BOARD\*\*

\*\*\*RECONVENE AS BOARD OF COMMISSIONERS\*\*\*

7. ADJOURNMENT

TUALATIN VALLEY WATER DISTRICT  
REGULAR BOARD MEETING AGENDA ITEM

**MEETING DATE: NOVEMBER 20, 2013**

**TITLE:** RESOLUTION 11-13 AMENDING THE LOCAL CONTRACT REVIEW BOARD RULES

**ITEM:** Acting as the Local Contract Review Board, revised Rules were adopted in November 2012 by Resolution 12-12. Action by the Oregon Legislature in the recently concluded 2013 Regular Session necessitates amendments to the Rules. In recent work sessions, the Board also engaged in a review of consultant selection processes and desires to make amendments. The proposed amendments are summarized.

Effective January 1, 2014, the Legislature amended the definition of small purchases from \$5,000 or under to \$10,000 or under. Reflecting this change requires amendment in various places in the Rules. The specific sections are not reflected in the attached Resolution. The Resolution declares the generic change effective January 1 and directs Staff to make the changes at that time.

The changes with respect to consultant selection apply only to consultant agreements in excess of \$250,000. The changes are contained within Rule Division 300. The attachments include redline and clean versions of proposed Division 300. The proposed changes provide for a definition of "affiliate" and requires disclosure by a consultant/proposer of certain wrongful acts of the proposer or an affiliate of the proposer. The District will then consider that factor in the award decision. Attached is Resolution 11-13 adopting the amendments and redline and clean versions of Division 300 for Board consideration.

**STAFF RECOMMENDATION:** Staff submits these changes as reflective of the Board's direction in the work sessions. Staff recommends discussion and if the Board is satisfied, then adoption of Resolution 11-13.

**BUDGET IMPACT:** None

**ADDITIONAL INFORMATION:** CEO, Mark Knudson, [markk@tvwd.org](mailto:markk@tvwd.org) (503 -848-3027), CFO, Paul Matthews, [paulm@tvwd.org](mailto:paulm@tvwd.org) (503-848-3017)

**ATTACHMENTS:** Resolution 11-13, Division 300 Redline, Division 300 Clean

**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.	N/A		

**BOARD ACTION:**

APPROVED	_____
DENIED	_____



**RESOLUTION 11-13**

**BEFORE THE BOARD OF COMMISSIONERS OF THE TUALATIN VALLEY WATER DISTRICT  
ACTING AS THE LOCAL CONTRACT REVIEW BOARD**

**A RESOLUTION AMENDING THE LOCAL CONTRACT REVIEW BOARD RULES**

WHEREAS, the Board of Commissioners is the Local Contract Review Board (LCRB) for the District and has adopted Rules regarding the purchase of goods and services for the District; and,

WHEREAS, the Board of Commissioners, acting as the LCRB, adopted revised Rules by Resolution 12-12 on November 20, 2012; and,

WHEREAS, the LCRB desires to amend the Rules in various places to incorporate changes to the public contracting laws adopted by the Legislature, effective January, 2014 and to adopt changes to Rule Division 300 regarding consultant selection for contracts in excess of \$250,000; and,

WHEREAS, the Board has considered the proposed amendments and being fully advised,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF TUALATIN VALLEY WATER DISTRICT, ACTING AS THE LOCAL CONTRACT REVIEW BOARD:**

Section 1. Effective January 1, 2014, the provisions of 2013 Oregon Laws Chapter 66 defining small procurements as contracts that are \$10,000 or less shall apply to the Districts Rules and Staff is directed to make such changes to the Rules to make them consistent with the public contracting statutes.

Section 2. Effective November 21, 2013, revised Division 300, attached hereto and incorporated by reference, is hereby adopted and applicable to those solicitations for consultants where the contract is likely to exceed \$250,000 advertised on or after the effective date.

INTRODUCED AND ADOPTED THIS 20<sup>th</sup> DAY OF NOVEMBER, 2013

TUALATIN VALLEY WATER DISTRICT

BY: \_\_\_\_\_  
Richard Burke, President

BY: \_\_\_\_\_  
James Duggan, Secretary

# Local Contract Review Board Rules

Article 1.20.20 Adopted by the TVWD Board of Commissioners with Resolution ~~12-1211-13~~ on November 20, ~~2012~~2013

Previously Adopted by the TVWD Board of Commissioners with Resolution ~~08-0912-12~~ on ~~May 20, 2009~~November 20, 2012

~~Author/Position: Wendy Burns, Purchasing Agent/Contracts Coordinator~~

## **DIVISION 300 – ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES FOR PUBLIC WORKS PROJECTS**

### **300-010 – Definitions (ORS 279C.100)**

The following definitions as well as those definitions listed in Division 100 apply to these Division 300 Rules.

(1) “Affiliate” shall mean a person or legal entity that is affiliated with or a subsidiary of a Proposer wherein the Affiliate controls the Proposer or over whom the Proposer has control. “Control” in this context means an intimate business relationship between the Proposer and the Affiliate in which significant aspects of financial and management control are integrated and it is reasonable to impute knowledge from one to another.

~~(1)~~(2) Architect. A person who is registered and holds a valid certification in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect”, “licensed architect” and “registered architect”.

~~(2)~~(3) Architectural, Engineering, Photogrammetric, Transportation Planning and Land Surveying Services. Professional services that are required to be performed by an architect, engineer, land surveyor, photogrammetrist, or transportation planner.

~~(3)~~(4) Consultant. A professional (or entity that employs such professional) that is qualified to provide architectural, engineering, land surveying, photogrammetric mapping, transportation planning or related services.

~~(4)~~(5) Engineer. A person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all the terms listed in ORS 672.002 (2).

~~(5)~~(6) Land Surveyor. A person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all the terms listed in ORS 672.002 (5).

~~(6)~~(7) Personal Services. The services of a person or persons designated by the District as personal services. “Personal Services” include architectural, engineering, photogrammetric mapping, transportation planning or land surveying procured under ORS 279C.105 or 279C.110 and related services procured under 279C.120.

~~(7)~~(8) Photogrammetric mapping. The evaluation and measuring of land that is limited to the determination of the topography, area, contours and location of planimetric features by using photogrammetric methods or similar remote sensing technology, including but not

# Local Contract Review Board Rules

limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process, as outlined in ORS 672.002.

~~(8)~~(9) **Photogrammetrist.** An individual registered with the Board and holding a valid certificate to practice photogrammetric mapping, as outlined in ORS 672.002.

~~(9)~~(10) **Related Services.** Personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances, hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representative services or land-use planning services.

~~(10)~~(11) **Transportation Planning Services.** Planning services for projects that require compliance with the National Environmental Policy Act, (42 USC 4321 et seq.)

## **300-100 – Application of Division 300 Rules**

These Rules apply to the screening and selection of Consultants to perform architectural, engineering, photogrammetric mapping, transportation planning, land surveying, or related services under contract for public works projects.

## **300-110 - Public Disclosure of Proposal Contents Solicited Under Division 300, Cancellation of Solicitations and Return of Proposals. (ORS 279C.107)**

- (1) Notwithstanding the public records law (ORS 192.410 to 192.505), the District may solicit proposals under this Rule, and
  - (A) The District may open proposals without disclosing contents to competing Proposers, during the process of negotiation, if applicable.
  - (B) The District need not provide proposals for public inspection until after the District executes a contract with the selected Consultant.
  - (C) The District shall withhold from disclosure trade secrets as defined in ORS 192.501, and information submitted in confidence as described in ORS 192.502 contained within a proposal, as long as the information is clearly marked “Confidential”.
- (2) Opening a proposal (solicited under this Rule) during a public bid opening does not make the contents of the proposal subject to disclosure during the public bid opening.
- (3) If a solicitation for services under this Rule is cancelled after proposals are received, the District shall return all proposals and copies of proposals to the Proposer submitting the proposal, keeping a list of returned proposals for the solicitation file.

## **300-120 - Selection Procedure for Direct Appointment for Projects Estimated to Cost Under \$100,000 (ORS 279C.115)**

# Local Contract Review Board Rules

- (1) The District may enter into a contract directly with a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying or related services without following the selection procedures set forth elsewhere in these District Rules if:
  - (A) The District finds that an emergency exists; or
  - (B) The estimated fee to be paid under the contract does not exceed \$100,000; or
  - (C) The architectural, engineering, land surveying or related services to be performed under the contract have been substantially described, planned or otherwise previously studied in an earlier contract with the same Consultant; and the District used a formal selection procedure pursuant to statute or the District's rules at the time the District selected the Consultant for the earlier contract; or
  - (D) Consultant will be assisting the District by providing analysis, testing services, testimony or similar services for a project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal equitable, administrative or otherwise.
  
- (2) If the scope of the anticipated contract is revised during negotiations so that the estimated fee exceeds \$100,000, the District may continue contract negotiations with the Proposer selected under the informal selection procedure. The District shall document, in writing, its determination to continue negotiations without terminating the process and moving to a solicitation process. Determinations shall include, but are not limited to, findings that contracting with that Proposer will:
  - (A) Promote efficient use of the District's resources and result in substantial cost savings to the District; or
  - (B) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract; or
  - (C) Prevent loss to the District or its customers from delaying work in order to satisfy the formal solicitation requirements.

## **300-130 - Selection Process for Consultants to Provide Services for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying for Specific Projects Where the Fee is Estimated to be Below \$250,000 (Informal) (ORS 279C.110)**

When selecting the most qualified Consultants to perform architectural, engineering, land photogrammetric mapping, transportation planning, and land surveying services for contracts not exceeding \$250,000, the District shall apply the following selection procedures.

- (1) The District shall select Consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services only on the basis of the Consultant's qualifications for the type of professional service required, either through a Request for Qualifications Selection for On-Call Engineering Services or through a Request for Proposals or Qualifications for a specific project.

# Local Contract Review Board Rules

- (2) During this process, the District may consider:
  - (A) The candidate's specialized experience, capabilities, technical competence which the candidate may demonstrate via a proposed approach and methodology to meet the project requirements, and
  - (B) Resources committed to perform the work and proportion of time the candidate would spend on the project, including time for specialized services, within the applicable time limits;
  - (C) Record of past performance, including; but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
  - (D) Availability and familiarity with the project locale;
  - (E) Proposed project management techniques;
  - (F) Nondiscrimination in employment practices regarding minority, women, and other protected classes and use of emerging small businesses or historically underutilized businesses;
  - (G) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead prior to selection of a candidate.
- (3) The District shall provide the solicitation to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
  - (A) The District's List of Interested Consultants created and maintained under Rule 300-110;
  - (B) Another contracting agency's list of Consultants created and maintained under OAR-137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
  - (C) All Consultants believed by the District to offer the required architectural, engineering, land surveying, or related services that the District reasonably can identify under the circumstances.
- (4) The District shall review and rank all proposals received according to the criteria set forth in the solicitation, and select the highest ranked Proposers.
- (5) If the District does not cancel the solicitation after it reviews and ranks each Proposer, the District may begin negotiating a contract with the highest ranked Proposer. The District shall negotiate to obtain written agreement on:
  - (A) Consultant's performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to contractor for the architectural, engineering, land surveying or related services required under the



# Local Contract Review Board Rules

contract that is fair and reasonable to the District as determined solely by the District taking into account the value, scope, complexity and nature of the architectural, engineering, land surveying or related services; and

- (C) Any other provisions the District believes to be in the District's or its customer's best interest to negotiate.
- (6) If the District and Proposer are unable for any reason to reach agreement on a contract within a reasonable amount of time, as determined solely by the District, the District shall either, orally or in writing, formally terminate negotiations with the highest ranked Proposer. The District may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (4) of this rule, until negotiations result in a contract. If negotiations with any of the top ranked Proposers do not result in a contract within a reasonable amount of time, the District may end the particular informal solicitation and proceed with a new informal solicitation under Rule 300-130, or proceed with a formal solicitation under Rule 300-140 (Formal Selection Procedure).
- (7) Should the District determine that two or more Proposers are equally qualified, the District shall choose the Proposer with the best fit for the work in question, as long as pricing policies, proposals or other pricing information is not part of the District's determination.
- (8) Notwithstanding the provisions of this section, the District may directly appoint a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

## **300-140 - Selection Process for Consultants to provide services for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying for specific projects where the fee is estimated to be above \$250,000 (Formal). (ORS 279C.110)**

- (1) The District shall select Consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services only on the basis of the Consultant's qualifications for the type of professional service required.
- (2) The District shall give public notice of a Request for Proposal for a project under this section. Public Notice must be advertised in one newspaper of general circulation. In addition, the District may use any other medium reasonably calculated to reach prospective Proposers.
- (3) When looking at a candidate's qualifications, the District may consider:
  - (A) A candidate's specialized experience, capabilities, technical competence which the candidate may demonstrate via a proposed approach and methodology to meet the project requirements, and
  - (B) Resources committed to perform the work and proportion of time the candidate would spend on the project, including time for specialized services, within the applicable time limits.
  - (C) Record of past performance, including but not limited to price and cost data from

# Local Contract Review Board Rules

previous projects, quality of work, ability to meet schedules, cost control and contract administration.

(D) Availability and familiarity with the project locale.

(E) Nondiscrimination in employment practices regarding minority, women, and other protected classes and use of emerging small businesses or historically underutilized businesses;

(F) Proposed project management techniques.

(G) In addition to the requirements of Division 190 of these Rules, a satisfactory record of integrity and honesty.

(1) In determining integrity and honesty, the District will evaluate the record the Proposer and any Affiliate.

(2) At or prior to the time for receipt of proposals, the Proposer shall disclose to District in writing any debarment, criminal conviction, civil penalty from a court or regulatory agency or civil judgment, (“Sanctions”) against Proposer or Affiliate accompanied by an explanation as to why the actions, errors or omissions that form the basis for the Sanctions do not have an adverse impact on the Proposer’s responsibility and ability to perform the work. The Proposer shall also provide documentation of actions taken to assure such problems do not recur.

(3) The District will evaluate the information submitted along with any public records available and may request additional information it believes necessary to evaluate the proposal. Failure to submit requested information may be additional grounds for rejection of the Proposal.

~~(F)~~(4) The disclosure requirement shall be ongoing in nature. If at any time prior to or after award of the contract to Proposer, integrity related circumstances for a Proposer or an Affiliate arises, such circumstances shall be disclosed in writing.

~~(G)~~(H) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead for the solicited services prior to selection of a candidate.

(4) The District may contact any Proposer during the evaluation process with a request for information the District deems reasonably necessary to permit the District to evaluate, rank and select the most qualified Proposer to perform the architectural, engineering, land surveying or related services described in the RFP; and a sample form of the contract.

(5) RFP Evaluation Criteria and Evaluation Committee. The District shall establish evaluation criteria and an RFP Evaluation Committee of at least two individuals to review, score and rank proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the District may include the same members who served on the RFP Evaluation Committee. The District may appoint to the RFP Evaluation Committee any combination of its employees, its attorneys or employees of other public agencies with experience in architecture, engineering, land surveying or related professions. The District shall designate one of its employees, who is also a member of the RFP Evaluation Committee, as the RFP Evaluation Committee chairperson.

## Local Contract Review Board Rules

- (A) No Proposer will be eligible for award of the contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the District's RFP Evaluation Committee for the contract.
  - (B) If the RFP provides for the possibility of Proposer interviews, the RFP Evaluation Committee may elect to interview Proposers if they consider it necessary or desirable. If the RFP Evaluation Committee conducts interviews, it may award up to the number of points indicated in the RFP for the anticipated interviews or rank each interviewed proposer and award to the proposer with the highest rank as determined by evaluation of the interviews.
  - (C) The RFP Evaluation Committee shall provide to the District the results of the scoring and ranking of each Proposer.
- (6) If the District does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a contract with the highest ranked Proposer. The District shall negotiate to obtain written agreement on:
- (A) Consultant's performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to the contractor for the architectural, engineering, land surveying or related services required under the contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity and nature of the architectural, engineering, land surveying or related services; and
  - (C) Any other provisions the District believes to be in the District's and its customers' best interests to negotiate.
- (7) If the District and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable or fair to the District, the District shall terminate negotiations with the selected candidate orally or in writing. The District will then begin negotiating with the next most qualified candidate. This negotiation process may continue in this manner through successive candidates until an agreement is reached or the District terminates the Consultant contracting process. If negotiations with any Proposer do not result in a contract within a reasonable amount of time, as determined solely by the District, the District may end the particular formal solicitation. Nothing in this rule precludes the District from proceeding with a new formal solicitation for the same architectural, engineering, land surveying or related services described in the RFP that failed to result in a contract.
- (8) Should the District determine that two or more Proposers are equally qualified, the District shall choose the Proposer with the best fit for the work in question, as long as pricing policies, proposals or other pricing information is not part of the District's determination.
- (9) **EMERGENCY** - Notwithstanding subsections (1) through (6) of this section, the District may directly appoint a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

### 300-150 List of Interested Consultants; Qualifications, Performance Record and Past

# Local Contract Review Board Rules

## **Experience for On-Call Engineering Services Contracts.**

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services may submit a statement describing their qualifications and related performance information to the District's Engineering Department. The District's Engineering Department will use this information to create a List of Interested Consultants and will periodically update the list. Becoming a prospective Consultant on the District's List of Interested Consultants does not guarantee selection on any District Project.
- (2) The District may also issue and advertise a Request for Qualifications for On-Call Engineering Services periodically for services estimated to cost under \$250,000. However, Consultants may submit qualifications from time to time outside of that process. The District may choose to add them to the List of Interested Consultants in its sole discretion.
- (3) The District may select Consultants based upon past satisfactory performance of work subject to the limitations stated herein.
- (4) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead for the solicited services prior to selection of a candidate.
- (5) The District shall include the following at a minimum in each RFQ:
  - (A) A description of the required Consultant qualifications and categories of services needed for architectural, engineering, photogrammetric mapping, and transportation planning or land surveying services.
  - (B) The deadline, location and instructions for submitting the Statements of Qualifications (via e-mail or paper) with the name and title of the District Representative to whom the Statements will be addressed.
  - (C) A statement affirming that Statements of Qualification submitted after the due date and time will not be accepted.
  - (D) The method for transmittal of addendum.
  - (E) The RFQ evaluation criteria, including weights or points applicable to each criterion.
  - (F) A statement as to whether the District will hold a pre-bid meeting for all interested Consultants to discuss the types of services described in the RFQ. The location, date and time of the meeting shall be included in the RFP and whether attendance is mandatory.
  - (G) Proposer Certifications and Representations form required to be signed by the Proposer affirming all of the ORS 279 requirements regarding resident bidders, debarment, responsibility, equal employment opportunity compliance and other general information.
  - (H) A statement that Proposers responding to the RFQ, do so solely at their expense, and that the District is not responsible for any Proposer's expenses associated with

## Local Contract Review Board Rules

- the RFQ.
- (I) The protest procedure for the solicitation as well as contract award.
  - (J) The name and title of the District Representative who will answer technical questions on the solicitation.
  - (K) A statement that the District may cancel the solicitation, or reject any or all Statements if it determines that it is in the District's interest to do so.
  - (L) All contractual terms and condition upon contract award.
  - (M) A statement that Proposers responding to the RFP do so solely at their expense, and that the District is not responsible for any Proposer expense associated with the RFQ;
  - (N) All contractual terms and condition upon contract award.
  - (O) Reservation of the right to seek clarification of any proposal.
  - (P) Reservation of the right to negotiate a final contract that is in the best interest of the District.
- (6) The District may include a request for some or all of the following in each RFQ:
- (A) A statement describing Consultant's general qualifications and related performance information;
  - (B) A description of Consultant's specialized experience, capabilities and technical qualifications to perform the architectural, engineering, land surveying or related services described in the RFQ including Consultant's available resources and recent, current and projected workloads;
  - (C) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration.
  - (D) Resources committed to perform the work and the proportion of time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits.
  - (E) A statement describing the Consultant's approach to architectural, engineering, land surveying or related services described in the RFQ and design philosophy, if applicable;
  - (F) A statement describing the Consultant's geographic proximity to District headquarters.
  - (G) Any other information that the District deems reasonably necessary to evaluate Consultant's qualifications.
- (7) The District shall establish an RFQ Evaluation Committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The District may appoint to the RFQ Evaluation Committee any combination of its employees, employees of other public agencies or private parties deemed appropriate in the sole discretion of the District. The District shall designate one member of the RFQ

# Local Contract Review Board Rules

Evaluation Committee as the RFQ Evaluation Committee chairperson.

- (8) The District may contact any Proposer during the evaluation process with a request for information the District deems reasonably necessary to permit the District to evaluate, rank and select the most qualified Proposers.
- (9) The District may use any reasonable screening or evaluation methods to establish a short list of qualified Consultants (“short list”), including but not limited to:
  - (A) Requiring Consultants responding to the RFQ to achieve a threshold score before qualifying for placement on the short list;
  - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
  - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole discretion of the District, and were announced as required by the RFQ.
- (10) After the RFQ Evaluation Committee reviews, scores and ranks the responding Consultants, the District shall establish a short list of Consultants for award of a contract as work becomes available.
- (11) No Consultant will be eligible for placement on the short list if such Consultant or any of Consultant's principals, partners or associates are members of the District's RFQ Evaluation Committee.
- (12) If applicable, the District shall provide a copy of the subsequent RFP to each Consultant on the short list.

## **300-160 – Selection Procedure for Related Services. (ORS 279C.120)**

The District may select Consultants to perform related services:

- (1) In accordance with screening and selection procedures adopted under ORS 279C.105;
- (2) On the basis of qualifications of Consultants for the types of related services required, under the requirements of ORS 279C.110; or
- (3) On the basis of price competition, price and performance evaluations, evaluations of the capabilities of the bidders to perform the needed related services followed by negotiations between the parties on the price for those related services.
- (4) Subject to the requirements of subsection 1 of this section, the selection of a related services Consultant under this section may be adjusted to accommodate the District’s scope, schedule and budget for a particular project.

## **300-200 - Ties Among Proposers**

- (1) If the District is selecting a Consultant and determines after the ranking of potential Consultants that two or more of them are equally qualified, the District may select a candidate through any process that the District believes will result in the best value for



# Local Contract Review Board Rules

the District and its customers taking into account scope, complexity and nature of the architectural, engineering, land surveying or related services. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the District and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the District and the selected Proposer shall proceed with negotiations under 300-130 or 300-140 as applicable.

- (2) As part of the procedure for choosing between two or more equally qualified candidates, the District may follow the procedure set forth in District's Rule 210-060 (Preference for Oregon Goods and Services; Nonresident bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

### **300-300 - Protest Procedures for Solicitations and Contract Award.**

- (1) Consultants may submit a written protest to any provision, specification or contract term contained in an solicitation and may request a change in any provision, specification or contract term contained in a solicitation, no later than 2 p.m. on the day which is seven (7) calendar days prior to the date proposals are due unless a different deadline is indicated on the solicitation. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications or contract terms. The District will not consider any protest or request for change that is received at any time after the deadline.
- (2) The District shall provide to all Proposers notice of selection. A qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the District no later than 2:00 p.m. on the seventh (7th) calendar day after the date of the selection notice unless a different deadline is indicated in the solicitation. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the proposals of all higher ranked Proposers failed to meet the requirements of the solicitation or because the higher ranked Proposers otherwise are not qualified to perform the architectural, engineering, land surveying or related services in the solicitation. The District will not consider any protest that is received after the deadline.
- (3) The Chief Executive Officer or the Chief Executive Officer's designee shall resolve all timely submitted protests within a reasonable time following the District's receipt of the protest and once resolved, and shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the solicitation, the District shall revise the solicitation accordingly and shall publish an addendum with the changes in accordance with these rules. The decision by the Chief Executive Officer is the final action by the District.

### **300-400 - Solicitation Cancellation Costs.**

The District may cancel a solicitation, whether formal or informal, or reject all proposals or responses or any combination of the foregoing, without liability at any time after issuing the solicitation, if the District believes it is in the District's interest to do so. Consultants responding to solicitations are responsible for all costs they may incur in connection with submitting

# Local Contract Review Board Rules

proposals and responses to solicitations.

## **300-500 - Effect of Delay, Suspension or Alteration of Project.**

If the District delays, suspends, or alters a project for which it has entered into a contract, and during such period of delay, suspension or alteration, the contract term has expired, the District may re-commence the contract with the same Consultant to provide the services described in the contract if no more than one year has passed from the beginning of the suspension or delay. Such action shall relate back to the date of suspension or delay and establish a new term for performance.

## **300-600 - Contract Amendments.**

The District may amend contracts under this Rule as follows:

- (1) **Direct Appointment:** The District may amend a contract made by direct appointment, if in the District's sole discretion, the amendment is within the scope of the original contract.
- (2) **Contracts issued under informal or formal solicitations:**
  - (A) The District may amend any contract issued through informal or formal selection if the District, in its sole discretion, determines that the amendment is within the scope of services contemplated under the solicitation, or
  - (B) If the amendment is written for work that is closely related to the scope of services and the amendment would promote efficiency, promote best utilization of resources and not materially impact the field of competition for the services described.
- (3) The District may consider potential alternative methods of procuring the services contemplated under the proposed amendment.
- (4) The District may amend any contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state, or local agencies that affect or relate to performance of the original contract.
- (5) All amendments to contracts must be in writing, must be signed by the authorized representative of the District and the Consultant.



# Local Contract Review Board Rules

Article 1.20.20                      Adopted by the TVWD Board of Commissioners with Resolution 11-13  
on November 20, 2013  
Previously Adopted by the TVWD Board of Commissioners with  
Resolution 12-12 on November 20, 2012

## **DIVISION 300 – ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES FOR PUBLIC WORKS PROJECTS**

### **300-010 – Definitions (ORS 279C.100)**

The following definitions as well as those definitions listed in Division 100 apply to these Division 300 Rules.

- (1)     **“Affiliate”** shall mean a person or legal entity that is affiliated with or a subsidiary of a Proposer wherein the Affiliate controls the Proposer or over whom the Proposer has control. “Control” in this context means an intimate business relationship between the Proposer and the Affiliate in which significant aspects of financial and management control are integrated and it is reasonable to impute knowledge from one to another.
- (2)     **Architect.** A person who is registered and holds a valid certification in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect”, “licensed architect” and “registered architect”.
- (3)     **Architectural, Engineering, Photogrammetric, Transportation Planning and Land Surveying Services.** Professional services that are required to be performed by an architect, engineer, land surveyor, photogrammetrist, or transportation planner.
- (4)     **Consultant.** A professional (or entity that employs such professional) that is qualified to provide architectural, engineering, land surveying, photogrammetric mapping, transportation planning or related services.
- (5)     **Engineer.** A person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all the terms listed in ORS 672.002 (2).
- (6)     **Land Surveyor.** A person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all the terms listed in ORS 672.002 (5).
- (7)     **Personal Services.** The services of a person or persons designated by the District as personal services. “Personal Services” include architectural, engineering, photogrammetric mapping, transportation planning or land surveying procured under ORS 279C.105 or 279C.110 and related services procured under 279C.120.
- (8)     **Photogrammetric mapping.** The evaluation and measuring of land that is limited to the determination of the topography, area, contours and location of planimetric features by using photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process, as outlined in ORS 672.002.

# Local Contract Review Board Rules

- (9) **Photogrammetrist.** An individual registered with the Board and holding a valid certificate to practice photogrammetric mapping, as outlined in ORS 672.002.
- (10) **Related Services.** Personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances; hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representative services or land-use planning services.
- (11) **Transportation Planning Services.** Planning services for projects that require compliance with the National Environmental Policy Act, (42 USC 4321 et seq.)

## **300-100 – Application of Division 300 Rules**

These Rules apply to the screening and selection of Consultants to perform architectural, engineering, photogrammetric mapping, transportation planning, land surveying, or related services under contract for public works projects.

## **300-110 - Public Disclosure of Proposal Contents Solicited Under Division 300, Cancellation of Solicitations and Return of Proposals. (ORS 279C.107)**

- (1) Notwithstanding the public records law (ORS 192.410 to 192.505), the District may solicit proposals under this Rule, and
  - (A) The District may open proposals without disclosing contents to competing Proposers, during the process of negotiation, if applicable.
  - (B) The District need not provide proposals for public inspection until after the District executes a contract with the selected Consultant.
  - (C) The District shall withhold from disclosure trade secrets as defined in ORS 192.501, and information submitted in confidence as described in ORS 192.502 contained within a proposal, as long as the information is clearly marked “Confidential”.
- (2) Opening a proposal (solicited under this Rule) during a public bid opening does not make the contents of the proposal subject to disclosure during the public bid opening.
- (3) If a solicitation for services under this Rule is cancelled after proposals are received, the District shall return all proposals and copies of proposals to the Proposer submitting the proposal, keeping a list of returned proposals for the solicitation file.

## **300-120 - Selection Procedure for Direct Appointment for Projects Estimated to Cost Under \$100,000 (ORS 279C.115)**

- (1) The District may enter into a contract directly with a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying or

# Local Contract Review Board Rules

related services without following the selection procedures set forth elsewhere in these District Rules if:

- (A) The District finds that an emergency exists; or
  - (B) The estimated fee to be paid under the contract does not exceed \$100,000; or
  - (C) The architectural, engineering, land surveying or related services to be performed under the contract have been substantially described, planned or otherwise previously studied in an earlier contract with the same Consultant; and the District used a formal selection procedure pursuant to statute or the District's rules at the time the District selected the Consultant for the earlier contract; or
  - (D) Consultant will be assisting the District by providing analysis, testing services, testimony or similar services for a project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal equitable, administrative or otherwise.
- (2) If the scope of the anticipated contract is revised during negotiations so that the estimated fee exceeds \$100,000, the District may continue contract negotiations with the Proposer selected under the informal selection procedure. The District shall document, in writing, its determination to continue negotiations without terminating the process and moving to a solicitation process. Determinations shall include, but are not limited to, findings that contracting with that Proposer will:
- (A) Promote efficient use of the District's resources and result in substantial cost savings to the District; or
  - (B) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract; or
  - (C) Prevent loss to the District or its customers from delaying work in order to satisfy the formal solicitation requirements.

## **300-130 - Selection Process for Consultants to Provide Services for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying for Specific Projects Where the Fee is Estimated to be Below \$250,000 (Informal) (ORS 279C.110)**

When selecting the most qualified Consultants to perform architectural, engineering, land photogrammetric mapping, transportation planning, and land surveying services for contracts not exceeding \$250,000, the District shall apply the following selection procedures.

- (1) The District shall select Consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services only on the basis of the Consultant's qualifications for the type of professional service required, either through a Request for Qualifications Selection for On-Call Engineering Services or through a Request for Proposals or Qualifications for a specific project.

## Local Contract Review Board Rules

- (2) During this process, the District may consider:
  - (A) The candidate's specialized experience, capabilities, technical competence which the candidate may demonstrate via a proposed approach and methodology to meet the project requirements, and
  - (B) Resources committed to perform the work and proportion of time the candidate would spend on the project, including time for specialized services, within the applicable time limits;
  - (C) Record of past performance, including; but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
  - (D) Availability and familiarity with the project locale;
  - (E) Proposed project management techniques;
  - (F) Nondiscrimination in employment practices regarding minority, women, and other protected classes and use of emerging small businesses or historically underutilized businesses;
  - (G) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead prior to selection of a candidate.
- (3) The District shall provide the solicitation to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
  - (A) The District's List of Interested Consultants created and maintained under Rule 300-110;
  - (B) Another contracting agency's list of Consultants created and maintained under OAR-137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
  - (C) All Consultants believed by the District to offer the required architectural, engineering, land surveying, or related services that the District reasonably can identify under the circumstances.
- (4) The District shall review and rank all proposals received according to the criteria set forth in the solicitation, and select the highest ranked Proposers.
- (5) If the District does not cancel the solicitation after it reviews and ranks each Proposer, the District may begin negotiating a contract with the highest ranked Proposer. The District shall negotiate to obtain written agreement on:
  - (A) Consultant's performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to contractor for the architectural, engineering, land surveying or related services required under the

# Local Contract Review Board Rules

contract that is fair and reasonable to the District as determined solely by the District taking into account the value, scope, complexity and nature of the architectural, engineering, land surveying or related services; and

- (C) Any other provisions the District believes to be in the District's or its customer's best interest to negotiate.
- (6) If the District and Proposer are unable for any reason to reach agreement on a contract within a reasonable amount of time, as determined solely by the District, the District shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer. The District may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (4) of this rule, until negotiations result in a contract. If negotiations with any of the top ranked Proposers do not result in a contract within a reasonable amount of time, the District may end the particular informal solicitation and proceed with a new informal solicitation under Rule 300-130, or proceed with a formal solicitation under Rule 300-140 (Formal Selection Procedure).
- (7) Should the District determine that two or more Proposers are equally qualified, the District shall choose the Proposer with the best fit for the work in question, as long as pricing policies, proposals or other pricing information is not part of the District's determination.
- (8) Notwithstanding the provisions of this section, the District may directly appoint a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

## **300-140 - Selection Process for Consultants to provide services for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying for specific projects where the fee is estimated to be above \$250,000 (Formal). (ORS 279C.110)**

- (1) The District shall select Consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services only on the basis of the Consultant's qualifications for the type of professional service required.
- (2) The District shall give public notice of a Request for Proposal for a project under this section. Public Notice must be advertised in one newspaper of general circulation. In addition, the District may use any other medium reasonably calculated to reach prospective Proposers.
- (3) When looking at a candidate's qualifications, the District may consider:
  - (A) A candidate's specialized experience, capabilities, technical competence which the candidate may demonstrate via a proposed approach and methodology to meet the project requirements, and
  - (B) Resources committed to perform the work and proportion of time the candidate would spend on the project, including time for specialized services, within the applicable time limits.
  - (C) Record of past performance, including but not limited to price and cost data from

# Local Contract Review Board Rules

previous projects, quality of work, ability to meet schedules, cost control and contract administration.

- (D) Availability and familiarity with the project locale.
  - (E) Nondiscrimination in employment practices regarding minority, women, and other protected classes and use of emerging small businesses or historically underutilized businesses;
  - (F) Proposed project management techniques.
  - (G) In addition to the requirements of Division 190 of these Rules, a satisfactory record of integrity and honesty.
    - (1) In determining integrity and honesty, the District will evaluate the record the Proposer and any Affiliate.
    - (2) At or prior to the time for receipt of proposals, the Proposer shall disclose to District in writing any debarment, criminal conviction, civil penalty from a court or regulatory agency or civil judgment, (“Sanctions”) against Proposer or Affiliate accompanied by an explanation as to why the actions, errors or omissions that form the basis for the Sanctions do not have an adverse impact on the Proposer’s responsibility and ability to perform the work. The Proposer shall also provide documentation of actions taken to assure such problems do not recur.
    - (3) The District will evaluate the information submitted along with any public records available and may request additional information it believes necessary to evaluate the proposal. Failure to submit requested information may be additional grounds for rejection of the Proposal.
    - (4) The disclosure requirement shall be ongoing in nature. If at any time prior to or after award of the contract to Proposer, integrity related circumstances for a Proposer or an Affiliate arises, such circumstances shall be disclosed in writing.
  - (H) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead for the solicited services prior to selection of a candidate.
- (4) The District may contact any Proposer during the evaluation process with a request for information the District deems reasonably necessary to permit the District to evaluate, rank and select the most qualified Proposer to perform the architectural, engineering, land surveying or related services described in the RFP; and a sample form of the contract.
- (5) RFP Evaluation Criteria and Evaluation Committee. The District shall establish evaluation criteria and an RFP Evaluation Committee of at least two individuals to review, score and rank proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the District may include the same members who served on the RFP Evaluation Committee. The District may appoint to the RFP Evaluation Committee any combination of its employees, its attorneys or employees of other public agencies with experience in architecture, engineering, land surveying or related professions. The District shall designate one of its employees, who is also a member of the RFP Evaluation Committee, as the RFP Evaluation Committee chairperson.

## Local Contract Review Board Rules

- (A) No Proposer will be eligible for award of the contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the District's RFP Evaluation Committee for the contract.
  - (B) If the RFP provides for the possibility of Proposer interviews, the RFP Evaluation Committee may elect to interview Proposers if they consider it necessary or desirable. If the RFP Evaluation Committee conducts interviews, it may award up to the number of points indicated in the RFP for the anticipated interviews or rank each interviewed proposer and award to the proposer with the highest rank as determined by evaluation of the interviews.
  - (C) The RFP Evaluation Committee shall provide to the District the results of the scoring and ranking of each Proposer.
- (6) If the District does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a contract with the highest ranked Proposer. The District shall negotiate to obtain written agreement on:
- (A) Consultant's performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to the contractor for the architectural, engineering, land surveying or related services required under the contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity and nature of the architectural, engineering, land surveying or related services; and
  - (C) Any other provisions the District believes to be in the District's and its customers' best interests to negotiate.
- (7) If the District and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable or fair to the District, the District shall terminate negotiations with the selected candidate orally or in writing. The District will then begin negotiating with the next most qualified candidate. This negotiation process may continue in this manner through successive candidates until an agreement is reached or the District terminates the Consultant contracting process. If negotiations with any Proposer do not result in a contract within a reasonable amount of time, as determined solely by the District, the District may end the particular formal solicitation. Nothing in this rule precludes the District from proceeding with a new formal solicitation for the same architectural, engineering, land surveying or related services described in the RFP that failed to result in a contract.
- (8) Should the District determine that two or more Proposers are equally qualified, the District shall choose the Proposer with the best fit for the work in question, as long as pricing policies, proposals or other pricing information is not part of the District's determination.
- (9) **EMERGENCY** - Notwithstanding subsections (1) through (6) of this section, the District may directly appoint a Consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

### **300-150 List of Interested Consultants; Qualifications, Performance Record and Past**

# Local Contract Review Board Rules

## **Experience for On-Call Engineering Services Contracts.**

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services may submit a statement describing their qualifications and related performance information to the District's Engineering Department. The District's Engineering Department will use this information to create a List of Interested Consultants and will periodically update the list. Becoming a prospective Consultant on the District's List of Interested Consultants does not guarantee selection on any District Project.
- (2) The District may also issue and advertise a Request for Qualifications for On-Call Engineering Services periodically for services estimated to cost under \$250,000. However, Consultants may submit qualifications from time to time outside of that process. The District may choose to add them to the List of Interested Consultants in its sole discretion.
- (3) The District may select Consultants based upon past satisfactory performance of work subject to the limitations stated herein.
- (4) The District may not solicit or use pricing policies or other pricing information such as number of hours proposed for the services required, expenses, hourly rates and overhead for the solicited services prior to selection of a candidate.
- (5) The District shall include the following at a minimum in each RFQ:
  - (A) A description of the required Consultant qualifications and categories of services needed for architectural, engineering, photogrammetric mapping, and transportation planning or land surveying services.
  - (B) The deadline, location and instructions for submitting the Statements of Qualifications (via e-mail or paper) with the name and title of the District Representative to whom the Statements will be addressed.
  - (C) A statement affirming that Statements of Qualification submitted after the due date and time will not be accepted.
  - (D) The method for transmittal of addendum.
  - (E) The RFQ evaluation criteria, including weights or points applicable to each criterion.
  - (F) A statement as to whether the District will hold a pre-bid meeting for all interested Consultants to discuss the types of services described in the RFQ. The location, date and time of the meeting shall be included in the RFP and whether attendance is mandatory.
  - (G) Proposer Certifications and Representations form required to be signed by the Proposer affirming all of the ORS 279 requirements regarding resident bidders, debarment, responsibility, equal employment opportunity compliance and other general information.
  - (H) A statement that Proposers responding to the RFQ, do so solely at their expense, and that the District is not responsible for any Proposer's expenses associated with



## Local Contract Review Board Rules

- the RFQ.
- (I) The protest procedure for the solicitation as well as contract award.
  - (J) The name and title of the District Representative who will answer technical questions on the solicitation.
  - (K) A statement that the District may cancel the solicitation, or reject any or all Statements if it determines that it is in the District's interest to do so.
  - (L) All contractual terms and condition upon contract award.
  - (M) A statement that Proposers responding to the RFP do so solely at their expense, and that the District is not responsible for any Proposer expense associated with the RFQ;
  - (N) All contractual terms and condition upon contract award.
  - (O) Reservation of the right to seek clarification of any proposal.
  - (P) Reservation of the right to negotiate a final contract that is in the best interest of the District.
- (6) The District may include a request for some or all of the following in each RFQ:
- (A) A statement describing Consultant's general qualifications and related performance information;
  - (B) A description of Consultant's specialized experience, capabilities and technical qualifications to perform the architectural, engineering, land surveying or related services described in the RFQ including Consultant's available resources and recent, current and projected workloads;
  - (C) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration.
  - (D) Resources committed to perform the work and the proportion of time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits.
  - (E) A statement describing the Consultant's approach to architectural, engineering, land surveying or related services described in the RFQ and design philosophy, if applicable;
  - (F) A statement describing the Consultant's geographic proximity to District headquarters.
  - (G) Any other information that the District deems reasonably necessary to evaluate Consultant's qualifications.
- (7) The District shall establish an RFQ Evaluation Committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The District may appoint to the RFQ Evaluation Committee any combination of its employees, employees of other public agencies or private parties deemed appropriate in the sole discretion of the District. The District shall designate one member of the RFQ

# Local Contract Review Board Rules

Evaluation Committee as the RFQ Evaluation Committee chairperson.

- (8) The District may contact any Proposer during the evaluation process with a request for information the District deems reasonably necessary to permit the District to evaluate, rank and select the most qualified Proposers.
- (9) The District may use any reasonable screening or evaluation methods to establish a short list of qualified Consultants (“short list”), including but not limited to:
  - (A) Requiring Consultants responding to the RFQ to achieve a threshold score before qualifying for placement on the short list;
  - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
  - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole discretion of the District, and were announced as required by the RFQ.
- (10) After the RFQ Evaluation Committee reviews, scores and ranks the responding Consultants, the District shall establish a short list of Consultants for award of a contract as work becomes available.
- (11) No Consultant will be eligible for placement on the short list if such Consultant or any of Consultant's principals, partners or associates are members of the District's RFQ Evaluation Committee.
- (12) If applicable, the District shall provide a copy of the subsequent RFP to each Consultant on the short list.

## **300-160 – Selection Procedure for Related Services. (ORS 279C.120)**

The District may select Consultants to perform related services:

- (1) In accordance with screening and selection procedures adopted under ORS 279C.105;
- (2) On the basis of qualifications of Consultants for the types of related services required, under the requirements of ORS 279C.110; or
- (3) On the basis of price competition, price and performance evaluations, evaluations of the capabilities of the bidders to perform the needed related services followed by negotiations between the parties on the price for those related services.
- (4) Subject to the requirements of subsection 1 of this section, the selection of a related services Consultant under this section may be adjusted to accommodate the District’s scope, schedule and budget for a particular project.

## **300-200 - Ties Among Proposers**

- (1) If the District is selecting a Consultant and determines after the ranking of potential Consultants that two or more of them are equally qualified, the District may select a candidate through any process that the District believes will result in the best value for

# Local Contract Review Board Rules

the District and its customers taking into account scope, complexity and nature of the architectural, engineering, land surveying or related services. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the District and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the District and the selected Proposer shall proceed with negotiations under 300-130 or 300-140 as applicable.

- (2) As part of the procedure for choosing between two or more equally qualified candidates, the District may follow the procedure set forth in District's Rule 210-060 (Preference for Oregon Goods and Services; Nonresident bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

## **300-300 - Protest Procedures for Solicitations and Contract Award.**

- (1) Consultants may submit a written protest to any provision, specification or contract term contained in an solicitation and may request a change in any provision, specification or contract term contained in a solicitation, no later than 2 p.m. on the day which is seven (7) calendar days prior to the date proposals are due unless a different deadline is indicated on the solicitation. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications or contract terms. The District will not consider any protest or request for change that is received at any time after the deadline.
- (2) The District shall provide to all Proposers notice of selection. A qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the District no later than 2:00 p.m. on the seventh (7th) calendar day after the date of the selection notice unless a different deadline is indicated in the solicitation. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the proposals of all higher ranked Proposers failed to meet the requirements of the solicitation or because the higher ranked Proposers otherwise are not qualified to perform the architectural, engineering, land surveying or related services in the solicitation. The District will not consider any protest that is received after the deadline.
- (3) The Chief Executive Officer or the Chief Executive Officer's designee shall resolve all timely submitted protests within a reasonable time following the District's receipt of the protest and once resolved, and shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the solicitation, the District shall revise the solicitation accordingly and shall publish an addendum with the changes in accordance with these rules. The decision by the Chief Executive Officer is the final action by the District.

## **300-400 - Solicitation Cancellation Costs.**

The District may cancel a solicitation, whether formal or informal, or reject all proposals or responses or any combination of the foregoing, without liability at any time after issuing the solicitation, if the District believes it is in the District's interest to do so. Consultants responding to solicitations are responsible for all costs they may incur in connection with submitting

# Local Contract Review Board Rules

proposals and responses to solicitations.

## **300-500 - Effect of Delay, Suspension or Alteration of Project.**

If the District delays, suspends, or alters a project for which it has entered into a contract, and during such period of delay, suspension or alteration, the contract term has expired, the District may re-commence the contract with the same Consultant to provide the services described in the contract if no more than one year has passed from the beginning of the suspension or delay. Such action shall relate back to the date of suspension or delay and establish a new term for performance.

## **300-600 - Contract Amendments.**

The District may amend contracts under this Rule as follows:

- (1) **Direct Appointment:** The District may amend a contract made by direct appointment, if in the District's sole discretion, the amendment is within the scope of the original contract.
- (2) **Contracts issued under informal or formal solicitations:**
  - (A) The District may amend any contract issued through informal or formal selection if the District, in its sole discretion, determines that the amendment is within the scope of services contemplated under the solicitation, or
  - (B) If the amendment is written for work that is closely related to the scope of services and the amendment would promote efficiency, promote best utilization of resources and not materially impact the field of competition for the services described.
- (3) The District may consider potential alternative methods of procuring the services contemplated under the proposed amendment.
- (4) The District may amend any contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state, or local agencies that affect or relate to performance of the original contract.
- (5) All amendments to contracts must be in writing, must be signed by the authorized representative of the District and the Consultant.