Local Contract Review Board Rules

Revision Date (s)

Adopted by the TVWD Board of Commissioners with Resolution 11-13 on November 20, 2013

Adopted by the TVWD Board of Commissioners with Resolution 12-12 on November 20, 2012

Article 1.20.10 DIVISIONS 100 AND 200 - LOCAL CONTRACT REVIEW BOARD RULES (LCRBR) - INTRODUCTION, PROPERTY DISPOSITION AND PUBLIC PROCUREMENT RULES

1.20.20 DIVISION 300 - LOCAL CONTRACT REVIEW BOARD RULES (LCRBR) - ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES FOR PUBLIC WORKS PROJECTS

1.20.30 DIVISION 400 - LOCAL CONTRACT REVIEW BOARD RULES (LCRBR) - PUBLIC CONTRACTING RULES FOR CONSTRUCTION
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 PCO 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.
Local Contract Review Board Rules

(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) 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.

(B) 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 $10,000 and $150,000 per ORS 279B.070 and between $10,000 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 $10,000 and $150,000 the PCO 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.
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.

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.

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.

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.

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.

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.

Rules: Rules of the Local Contract Review Board, Tualatin Valley Water District, Washington County, Oregon, and may be amended from time to time.

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.

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 $10,000)
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.
(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

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

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

ii) 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.

(B) 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.

(C) Public notice of the approval process for the special procurement must be given.

(D) If the contract is awarded through a special procurement, the District shall award to the bidder whose bid is most advantageous to the District.

(E) 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.

(F) Examples of Board approved Class-Special Procurements (formerly Exemptions) are:

i) Equipment repair and overhaul under $75,000.
ii) Contracts for price regulated items.

iii) Laboratory and medical supplies.

iv) Documents, goods and services protected by intellectual property law, including but not limited to computer software, computer software maintenance, copyrighted materials and periodicals.

v) Purchases of used personal property under $75,000.

vi) Advertising contracts.

vii) 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.

viii) Telecommunication systems and service contracts.

ix) 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.

x) District Legal Counsel.

xi) 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 economical and efficient to perform the District’s portion of the work by inclusion of the public agency’s or private entity’s contractor.

xii) 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 $10,000, the District may obtain written, electronic or competitive quotes or may select a vendor/contractor through direct appointment. Amendments over the $10,000 amount shall not exceed an additional $1,000 for a total of $11,000, 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 $10,000 but less than $150,000, the District will use good faith efforts to obtain three informally solicited, competitive quotes 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 (25%) 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.

(B) 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 $10,000 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
Local Contract Review Board Rules

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.

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.

(2) 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.

(3) 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.
Local Contract Review Board Rules

(4) 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:
   i) Negotiation with the highest ranked proposer.
   ii) Competitive negotiations.
   iii) 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 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
Local Contract Review Board Rules

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 $10,000; 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 $10,000 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 (5) 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
Local Contract Review Board Rules

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 is 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; or
   (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.
Local Contract Review Board Rules

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”,

Article 1.20.10  Page 30 of 31
November 2013 - Division 100-Introduction and Definitions; Division 200-Property Disposition and 210 Public
Procurement Rules
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.
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.** 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.

(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 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.

(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 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 previous projects, quality of work, ability to meet schedules, cost control and contract administration.
Local Contract Review Board Rules

(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.

(4) In addition to the requirements of Division 190 of these Rules, the District shall review Proposer’s satisfactory record of integrity and honesty.
(A) In determining integrity and honesty, the District will evaluate the record the Proposer and any Affiliate.
(B) 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.
(C) 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.
(D) 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.

(5) 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.

(6) 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.

(7) 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.
(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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 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 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 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 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 a 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 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.
Article 1.20.30 | 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

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

DIVISION 400 - PUBLIC CONTRACTING RULES FOR CONSTRUCTION

400-010 - Application

(1) District Rules, Division 400, apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not public improvements.

(2) District Rules, Division 400, address matters covered in ORS Chapter 279C (with the exception of architectural, engineering, land surveying and related services, all of which are addressed in District Rules, Division 300).

(3) District Rules, Division 400, apply to the contracts described in Section (1) above which are first advertised, but if not advertised then entered into, on or after May 20, 2009.

400-020 – Definitions: In addition to definitions listed in Division 100-020, the following definitions apply:

Amendment: For purposes of a Public Improvement Contract, means a written modification to the terms and conditions of a Public Improvement Contract, other than a change order, within the general scope of the original procurement that requires mutual agreement between the District and the contractor.

Award: The District’s decision as to the Bidder or Proposer with whom the District will enter into a contract.

Change Order: A written order issued by the District to the contractor requiring a change in the work within the general scope of a Public Contract or Public Improvement Contract and issued under its changes provisions in administering the contract. It includes the District’s written change directives as well as changes reflected in a writing executed by the parties to the contract; and, if applicable, adjusting the contract price or contract time for the changed work.

Code: The Public Contracting Code, ORS chapters 279A, 279B and 279C.

Contract Price: The total maximum payments that the District is required to make under a contract.

Construction Manager/General Contractor: "CMGC" means a form of procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating, and subcontracting services; establish a guaranteed maximum price to complete the contract work; act as general contractor; hold all subcontracts, self-perform portions of the work as may be allowed by the contracting agency under the CM/GC contract; coordinate and manage the building processes; provide general contractor expertise; and act as a member of the project team along with the contracting agency,
Local Contract Review Board Rules

architect/engineers and other consultants. CM/GC also refers to a contractor under this form of contract, sometimes known as the "Construction Manager at Risk".

**Cost Estimate:** For purposes of the District’s Rules, Division 400, the District’s most recent pre-bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional or District staff, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

**Disqualification:** The preclusion, by disqualification, debarment or suspension, of a person from contracting with the District in accordance with any applicable statutes and rules. Disqualification includes conduct disqualification, Business Enterprise Certification “BEC” disqualification, or discrimination disqualification.

**Foreign Contractor:** A contractor that is not domiciled in or registered to do business in the state of Oregon.

**Good Cause:** For purposes of substituting an undisclosed first tier subcontractor in a Public Improvement Contract, means “good cause” is defined by rule by the Construction Contractors Board, which reflects the least-cost policy for public improvements, and includes but is not limited to the financial instability of a subcontractor. Otherwise, “good cause” means any rational basis as determined in the sole discretion of the District, in accordance with the Public Contracting Code and the District’s Rules.

**Labor Dispute:** Includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

**Lowest Responsive and Responsible Bidder:** The lowest bidder who:

1. Has substantially complied with all prescribed Public Contracting procedures and requirements; and has submitted a bid that complies with all the requirements of the solicitation.

2. Has met the applicable standards of responsibility;

3. Has not been debarred or disqualified by the District; and

4. If the advertised contract is a Public Improvement Contract, is not on the list created by the Construction Contractors Board under ORS 701.227 or on the list created by the Bureau of Labor and Industries for the State of Oregon, per ORS 279A.010 (1)(p).

5. May be any individual, partnership, corporation, limited liability company, limited liability partnership, joint venture or other entity.

**Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. Public Contract does not include grants. [See ORS 279A.010 (1)(x)]
Public Contracting:  Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or price agreements.  [See ORS 279A.010 (1)(y)]

Public Contracting Code or Code:  Refers to ORS chapters 279A, 279B and 279C.  [See ORS 279A.010 (1)(z)]

Public Improvement:  A project for construction, reconstruction or major renovation on real property by or for the District.  Public improvement does not include:

1. Projects for which no District funds are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

2. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Public Improvement Contract:  A Public Contract for a public improvement.  Public Improvement Contracts do not include a Public Contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.  [See ORS 279A.010 (1)(bb)]

Public Works:  Includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency, including the District, to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by a public agency.  [See ORS 279C.800 (5)]

Retainage:  The difference between the amount earned by a contractor on a Public Contract and the amount paid on the contract by the contracting agency.  (See ORS 279C.550)

400-030 - Competitive Bidding Requirement

All Public Improvement Contracts entered into by the District and subject to the Public Contracting Code shall be based upon competitive bids, except for the following that are not subject to competitive bids:

1. Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855;

2. To the extent exempted or otherwise required or allowed by the Code or District Rules;

3. As otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions;

4. Contracts for goods or services if the value of the contract is less than $5,000;

5. Contracts not to exceed $100,000, made under competitive quotes;

6. As exempted by ORS 279A.030 on federal law overrides or by ORS 279A.100 on affirmative action; or

7. Pursuant to Rules 400-200 to 400-208, which authorize the use of Alternative Contracting Methods under certain circumstances.
400-040 - Contracts for Construction Other than Public Improvements

Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than emergency contracts regulated under ORS 279C.335 (5) and Rule 400-080, and Division 100, may be procured as general trade services under the provisions of ORS Chapter 279B. The District shall determine whether such Public Contracts are public works contracts subject to the provisions of ORS 279C.800 to 279C.870; and if they are public works contracts, the District shall comply with those provisions. The District may also impose requirements that the District considers to be in the public interest, including bonding and insurance requirements typically imposed on Public Improvement Contracts.

400-050 - Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration: Pursuant to ORS 279A-010 (z)(B) and this Rule 400-050, the District may declare that emergency circumstances exist that require prompt execution of a contract otherwise subject to District Rules, Division 400 and Division 100, including Rules for emergency construction or repair work. The declaration shall be made at an administrative level consistent with both of the following procedures:

(A) With the Chief Executive Officer’s or his designee’s approval, a Public Contract may be awarded as an Emergency Procurement pursuant to the requirements of ORS 279C.335 (5). When an Emergency Procurement is authorized, the procurement may be made without competition, depending upon the circumstances. Such circumstances may be, but are not limited to, the District moving forward as quickly as possible to prevent interruption to services, restoration of services, prevention of loss to the District persons or property, protection of the quality of services, or other circumstances necessary to responsibly carry out the District’s services to its customers; and

(B) The District shall prepare a written declaration that describes the circumstances creating the emergency as that term is defined at ORS 279A.010 (1)(f) Division 120 of these Rules and the anticipated harm from failure to enter into an emergency contract. The written emergency declaration shall be prepared within 2-5 days following the emergency. The emergency declaration shall thereafter be kept on file with the contract or purchase order.

(2) Contract Award: Any contract awarded under this rule must be awarded within sixty (60) days after declaration of the emergency, unless an extension is granted by the District.

(3) Contract Scope: Although no dollar limitation applies to emergency contracts, the scope of the contract must be limited to work that is necessary and appropriate to remedy the conditions creating the emergency as described in the declaration.

(4) Contract Modification: Emergency contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related emergency circumstances.
(5) **Excusing Bonds:** Pursuant to ORS 279C.380 (4) and this Rule 400-080, the Chief Executive Officer or his designee may waive one or both of the requirements of furnishing a performance bond and payment bond for the emergency contract. After making such an emergency declaration waiving the performance and/or payment bond, the bonding requirements are excused.

### 400-060 - Intermediate Procurements; Competitive Quotes and Amendments

(1) The District may award Public Improvement Contracts, estimated by the District not to exceed $100,000, in accordance with intermediate procurement procedures for competitive quotes established by this rule, except to the extent certain classes of contracts have been exempted by the District pursuant to ORS 279C.335 and these District Rules, Divisions 100, 200, 300 and 400, a procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this Rule 400-090 or to circumvent competitive bidding requirements.

(2) **Selection Criteria:** A written request for quotes shall include the selection criteria to be utilized in selecting a contractor; and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes:** The District shall utilize written requests for quotes whenever reasonably practicable for intermediate procurements.

(4) **Number of Quotes; Record Required:** The District shall seek at least three informally solicited competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but the District shall make a written record of the effort made to obtain those quotes.

(5) **Award:** If awarded, the District shall award the contract to the prospective contractor whose quote will best serve the interests of the District, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If award is not made to the prospective contractor offering the lowest price, the District shall make a written record of the basis for award.

(6) **Price Increases:** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of award by Change Order or Amendment within the following limitations:

- **(A)** Up to an aggregate contract price increase of 25% over the original contract amount as determined to be warranted for additional related work by the affected department manager and the purchasing agent, or solely by the Chief Executive Officer;

- **(B)** The Chief Executive Officer in his or her sole judgment and at his or her sole discretion shall have authority to review and approve contract amendments for any dollar amount believed to be in the best interest of the District and its customers for additional related work.
Amendments: Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in Section 6(A) and 6(B) are specifically authorized by ORS 279A.065 and 279A.070. Accordingly, such amendments are not considered new procurements and do not require competitive bidding.

FORMAL PROCUREMENT RULES

400-100 - Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Documents: Pursuant to ORS 279C.365 and this rule, the Solicitation Documents shall include the following:

(A) Required General Information:

i) The public improvement project, as well as identification of the character of the work, and applicable plans, specifications and other contract documents;

ii) Notice of any pre-bid conference as follows:
   a) The time, date and location of any pre-bid conference;
   b) Whether attendance at the conference will be mandatory or voluntary; and
   c) That statements made by District employees, representatives, and agents at the conference are not binding upon the District unless confirmed by written addendum, in the form required by the District.

iii) The deadline for submitting mandatory prequalification applications and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

iv) The name and title of the District’s authorized person designated for receipt of bids and contact person (if different);

v) Instructions and information concerning the form and submission of bids, including the address of the office to which bids must be delivered, any bid or proposal security requirements, and any other required information or special information, e.g., whether bids may be submitted by electronic means. See Rule 400-110 regarding electronic bids or proposals and Rule 400-111 regarding electronic procurement.

vi) The time, date and place of opening;

vii) The time and date of closing after which the District will not accept bids, which time shall be not less than five (5) days after the date of the last publication of the advertisement. The date of the last publication for publication of the advertisement is the date of the last advertisement. If the District is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the District shall designate a time of closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370 (1)(b), Rule 400-116. Timing issues relating to addenda are governed by Rule 400-104.
viii) The office where the Specifications for the work may be reviewed;
   a) A statement that each bidder to an ITB must identify whether the
      bidder is a "resident bidder," as defined in ORS 279A.120.

ix) If the contract resulting from a solicitation will be a contract for a public
    work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40
    U.S.C. 276a);

x) A statement that no bid will be received or considered by the District
    unless the bid contains a statement by the bidder as a part of its bid that,
    "Contractor agrees to be bound by and will comply with the provisions of
    ORS 279C.840 or 40 U.S.C. 276a"; whichever is applicable”;

xi) A statement that the District will not receive or consider a bid for a Public
    Improvement Contract unless the bidder is registered with the
    Construction Contractors Board, or is licensed by the State Landscape
    Contractors Board, as required by; Rule 400-103; ORS 279C.365 (1)(k);

xii) A statement whether a contractor or a subcontractor under the contract
    must be licensed under ORS 468A.720 regarding asbestos abatement
    projects;

xiii) A statement that the contractor must provide certification of
     nondiscrimination in obtaining required subcontractors in accordance with
     ORS 279A.110 (4); Rule 400-124 (3).

xiv) How the District will notify bidders of addenda and how the District will
     make addenda available, as set forth in Rule 400-105.

xv) When applicable, instructions and forms regarding first-tier subcontractor
    disclosure requirements, as set forth in Rule 400-116.

xvi) A statement setting forth the requirements of ORS 279C.525 for
     Solicitation Documents including:
     a) Reference to specific federal, state and local statutes, ordinances,
        rules or regulations relating to the prevention of environmental
        pollution and the preservation of natural resources which must be
        complied with by the contractor in executing the Public
        Improvement Contract.
     b) Reference to known conditions at the construction site that may
        require the successful bidder to comply with the referenced federal,
        state and local statutes, ordinances, rules or regulations relating to
        the prevention of environmental pollution and the preservation of
        natural resources.
     c) Providing that the provisions in ORS 279C.525 will be applicable
        to the contract.

xvii) A statement, at the option of the District, pursuant to ORS 279C.525 (8),
     by which the District may allocate all or a portion of the known
     environmental and natural resource risks to a contractor by listing such
environmental and natural resource risks with specificity in the Solicitation Documents; and

xviii) A statement pursuant to 279C.380 (3) that the performance and payment bonds must be payable to the District or specified contracting agency or to the public agency or agencies for whose benefit the contract was awarded.

(B) **Required Evaluation Process Information:**

i) A statement that the District may reject any bid not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all bids upon the District's finding that it is in the District’s or the public’s best interest to do so;

ii) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;

iii) Evaluation criteria, including the relative value applicable to each criterion, that the District will use to determine the responsible bidder with the lowest responsive bid (where award is based solely on price) or the responsible proposer or proposers with the best responsive proposal or proposals (where use of competitive proposals is authorized under ORS 279C.335, Rule 400-106), along with the process the District will use to determine acceptability of the work. Additional evaluation criteria which may apply are as follows:

a) If the Solicitation Document is an Invitation to Bid, the District shall set forth any known special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the District has available concerning future use;

b) If the Solicitation Document is a Request for Proposal, the District shall refer to the additional requirements of Rule 400-205.

(C) **Contract Provisions:**

The District shall include in the contract all contract terms and conditions, including, but not limited to, warranties, insurance and bonding requirements that it considers appropriate for the public improvement project, and as required by law. The District shall also include in the contract all of the following contract provisions:

i) A condition, pursuant to ORS 279.C505 (1), that the contractor shall:

a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract;
b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;

c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished;

d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;

ii) A condition requiring that the contractor must demonstrate that an employee drug-testing program is in place [ORS 279C.505 (2)]. The District’s requirements are set forth below.

(D) The District’s Drug Testing Requirements

A contract award for a public improvement shall not be final until the prospective contractor certifies to the District that it has a drug-testing program in place for their employees that includes, at a minimum, the following:

i) A written employee drug-testing policy,

ii) Required drug testing for all new subject employees or alternatively, required testing of all subject employees every 12 months on a random selection basis, and

iii) Required testing of a subject employee when the contractor has reasonable cause to believe the subject employee is under the influence of drugs.

a) A drug-testing program that meets the above requirements will be deemed a "qualifying employee drug-testing program." For the purposes of this rule, an employee is a "subject employee" only if that employee will be working on the public improvement project job site.

b) The contractor shall represent and warrant to the District in the Public Improvement Contract that the qualifying employee drug-testing program is in place at the time of contract execution and will continue in full force and effect for the duration of the contract. Further, the District's performance obligation (which includes without limitation, the District's obligation to make payment) is contingent on contractor's compliance with this representation and warranty.

(E) The Public Improvement Contract shall contain contractor's covenant that it will require each subcontractor providing labor for the project to:

i) Demonstrate to the contractor that it has a qualifying employee drug-testing program for the subcontractor's subject employees, and represent and warrant to the contractor that the qualifying employee drug-testing program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
ii) Require that the subcontractor's subject employees participate in the contractor's qualifying employee drug-testing program for the duration of the subcontract.

(F) If the contract calls for demolition, a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective, pursuant to ORS 279C.510 (1);

(G) If the contract calls for lawn or landscape maintenance, a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective, pursuant to ORS 279C.510 (2);

(H) A clause or condition, pursuant to ORS 279C.515, requiring that if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the Public Contract as the claim becomes due, the proper officer or officers representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract;

(I) A clause or condition, pursuant to ORS 279C.515 (2), requiring that if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Public Improvement Contract within thirty (30) days after receipt of payment from the District or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580 and requiring that the interest shall be calculated as provided in ORS 279C.515 (2) and may not be waived;

(J) A clause or condition, pursuant to ORS 279C.515 (3), requiring that if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Public Improvement Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580;

(K) A condition, pursuant to ORS 279C.520 (1) requiring that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

ia) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five (5) consecutive days, Monday through Friday; or
ib) For all overtime in excess of ten (10) hours in any one day or 40 hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and

ii) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(L) In the case of contracts for personal services as described in ORS 279A.055, a provision pursuant to ORS 279C.520 (3) requiring that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;

(M) A provision pursuant to ORS 279C.520 (5)(a) requiring that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;

(N) A provision pursuant to ORS 279C.525 referencing specific federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources which must be complied with by the contractor in executing the Public Improvement Contract, and providing that the provisions in ORS 279C.525 are applicable to the contract;

(O) A condition, pursuant to ORS 279C.530 (1), requiring that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services;

(P) A clause or condition pursuant to ORS 279C.530 (2), substantially as follows: "All employers, including contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.”

(Q) For public works contracts, a provision stating the existing prevailing rate of wage that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, pursuant to ORS 279C.830 (1);
For public works contracts, a provision that the workers performing work on the public works contract shall be paid not less than the specified prevailing minimum hourly rate of wage, pursuant to ORS 279C.830 (1);

A provision requiring retainage, pursuant to ORS 279C.550 to 279C.570;

A clause pursuant to ORS 279C.580 (3) requiring the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for purpose of performing a construction contract:

i) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the contractor by the District; and

ii) An interest penalty clause that obligates the contractor, if payment is not made within thirty (30) days after receipt of payment from the District, to pay to the first tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (A) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the District or contractor when payment was due. The interest penalty shall be:

a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

b) Computed at the rate specified in ORS 279C.515 (2).

A clause pursuant to ORS 279C.580 (4) requiring the contractor to include in each of the contractor’s subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of Subsection (R) of this section in each of the first-tier subcontractor’s subcontracts and to require each of the first-tier subcontractor’s subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

A provision requiring notice of claim, pursuant to ORS 279C.605; A provision requiring the contractor’s certification of compliance with the Oregon tax laws; and

A provision requiring the contractor's certification that all subcontractors performing work described in ORS 701.005 (2); i.e., construction work will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.
(X) A provision requiring the contractor to comply with all state and federal laws and regulations, including the Public Contracting Code, and requiring the contractor to comply with the District’s Local Contract Review Board Rules, including, but not limited to, requiring that the contractor comply with:

i) The payment of claims requirements of ORS 279C.515,

ii) The hours of labor requirements of ORS 279C.520,

iii) Federal, state and local statutes, ordinances, rules and regulations pertaining to environmental pollution and natural resources preservation, and the environmental pollution and natural resources preservation requirements of ORS 279C.525,

iv) Condition concerning payment for medical care and providing Workers’ Compensation as required by ORS 279C.530,

v) The maximum hours, holidays and overtime laws and regulations of ORS 279C.540,

vi) The time limitation claim requirements of ORS 279C.545,

vii) The prevailing wage rate requirements of ORS 279C.800 to 279C.870,

viii) The prompt payment policy, progress payments and rate of interest requirements of ORS 279C.570,

ix) The requirements of ORS 279C.580 pertaining to the contractor’s relations with subcontractors, and

x) The payment bond requirements of ORS 279C.600 to 279C.610.

(2) **Assignment or Transfer Contract Language.** Unless otherwise provided in the contract, the contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the contract, either in whole or in part, without the District's prior written consent. Unless otherwise agreed by the District in writing, such consent shall not relieve the contractor of any obligations under the contract. Any assignee or transferee shall be considered the agent of the contractor and be bound to abide by all provisions of the contract. If the District consents in writing to an assignment, sale, disposal or transfer of the contractor's rights or delegation of contractor's duties, the contractor and its surety, if any, shall remain liable to District for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the District otherwise agrees in writing.

400-101 - Notice and Advertising Requirements; Posting

(1) **Notice; Distribution Fee:** The District shall furnish a notice as set forth below in Subsections (A) and (B). The notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the public improvement project or work. The notice may contain any other appropriate information. The District may charge a fee or require a deposit for the Solicitation Document. The District may furnish notice using any method it has, in its sole judgment, determined to foster and promote competition, including, but not limited to:
Local Contract Review Board Rules

(A) Mailing, faxing, emailing or mailing a postcard notice of the availability of Solicitation Documents to persons that have expressed an interest in the District's procurements. However, the District shall not be liable for any human, mechanical, or electronic failure or error that may cause the notice to fail to reach the intended recipient; the documents to fail to reach the recipients.

(B) Posting notice on the District's internet web site. The District’s notice responsibility extends only to the posting, and it is the responsibility of interested persons to check the electronic site periodically for posted solicitation and other related information.

(2) Advertising: Pursuant to ORS 279C.360 and this Rule 400-101, the District shall advertise every solicitation for competitive bids or competitive proposals for a Public Improvement Contract, unless the District has exempted the solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335, or unless another exemption, such as intermediate procurement, is applicable.

(A) Unless the District publishes by electronic advertisement as permitted under Subsection 2(B), the District shall publish the advertisement for bids at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in any additional issues and publications selected by the District.

(B) The District may publish by electronic advertisement if:
   i) The District published a notice that it may publish advertisements for bids by electronic advertisement. The District shall publish such notice weekly, for no less than four consecutive weeks, in at least one newspaper of general circulation in the area where the business office of the District is located and in as many additional issues and publications as the District may determine to be necessary or desirable to provide notice to potential bidders, prior to the establishment of the electronic site or prior to use of the electronic site for electronic advertisement, if the site is already established. The District’s notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where it will publish future electronic advertisements or alternatively, the web location where the District will publish information on accessing the electronic advertisement via a Telnet application;

   ii) The District posts in its business office a notice that the District will publish advertisements for bids by electronic advertisement. The notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the District publishes electronic advertisements or alternatively, the Web location where it publishes information on accessing the electronic advertisement via a Telnet application; and

   iii) The District determines electronic advertisement is likely to be cost effective.
(C) In addition to the District’s publication required under Subsection 2(A) or 2(B), the District shall also publish an advertisement for bids in at least one trade newspaper of general statewide circulation if the contract is for a public improvement with an estimated cost in excess of $125,000.

(D) All advertisements for bids shall set forth:

i) The public improvement project, which may include a general description of the project;

ii) The office where contract terms, conditions and specifications may be reviewed;

iii) If prequalification is a requirement, the date that persons must file applications for prequalification under ORS 279C.430, and the class or classes of work for which persons must be prequalified;

iv) The scheduled closing, which shall not be less than five (5) days after the date of the last required newspaper publication, if the advertisement is published as required in 2(A) or 2(C) of this section, and which shall not be less than five (5) days after the date of the first posting to the District's electronic or internet Web site, if the advertisement is published as required in 2(B) of this section;

v) The name, title and address of the District’s representative authorized to receive bids;

vi) The date, time and place of the scheduled opening; and

vii) If applicable, that the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act [40 U.S.C. 276(a)].

(3) **Posting Advertisement for Bids:** The District may post a copy of each advertisement for bids at the District’s purchasing office. A bidder may obtain a copy of the advertisement for bids upon request, for which the District may charge a reasonable fee.

**400-102 - Prequalification of Bidders**

(1) **Prequalification:** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(A) **Mandatory Prequalification:** The District will indicate in the Solicitation Documents if it will require mandatory prequalification. Mandatory prequalification occurs when the District conditions a person's submission of a bid upon the person's prequalification. The District shall not consider a bid from a person that is not prequalified if the District required prequalification, unless the person is known by the District, in the District’s sole judgment, to be qualified for the work. Nevertheless, the District shall not be required to consider prequalification of any bidder after the date and time required for submission of prequalification information, regardless of past working experience or information known about the bidder. The District shall require use of a form prescribed by the District’s purchasing office to be used by the bidder for mandatory or permitted prequalification.
(B) **Permissive Prequalification:** The District may prequalify a person for its solicitation list on forms prescribed by the District’s purchasing office, but in permissive prequalification, the District shall not limit distribution of a solicitation to that list.

(2) **Prequalification Presumed:** If a bidder is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform particular types of work, the bidder shall be rebuttably presumed to be qualified to perform similar work for the District.

(3) **Standards for Prequalification:** A person may prequalify by demonstrating to the District’s satisfaction:

(A) That the bidder is not on the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a Public Improvement Contract;

(B) That the person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the person is capable of meeting all contractual responsibilities;

(C) The person's record of performance;

(D) The person’s record of integrity;

(E) The person is qualified to contract with the District, pursuant to the District’s Local Contract Review Board Rules regarding standards of responsibility; and,

(F) That the person has supplied all necessary information as to the inquiry regarding items (A) through (E), and does not fail to supply information requested by the District relating to such items.

(4) **Notice of Denial:** If a person fails to prequalify for a mandatory prequalification, the District shall notify the person, specify the reasons under Section (3) of this rule and inform the person of the person's right to a hearing under ORS 279C.445 and 279C.450.

400-103 - Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts:** The District shall not consider a person's bid to do work as a contractor, as defined in ORS 701.005 (2), unless the person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the bid is made.

(2) **Landscape Contracts:** The District shall not consider a person's bid to do work as a landscape contractor as defined in ORS 671.520 (2), unless the person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the bid is made.

(3) **Non-complying Entities:** The District shall deem a bid nonresponsive if it is received from a person that fails to comply with this rule and shall reject the bid as stated in ORS 279C.365 (1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.
400-104 - Pre-Bid Conferences

(1) **Purpose:** The District may hold pre-bid conferences with prospective bidders prior to closing, to explain the procurement requirements, obtain information or to conduct site inspections.

(2) **Required Attendance:** The District may require attendance at the pre-bid conference as a condition for making a bid. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of a bidding person is present.

(3) **Scheduled Time:** If the District holds a pre-bid conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the closing to the District’s Local Contract Review Board Rules 400-104 that allow bidders to consider information provided at that conference, as determined in the sole discretion of the District.

(4) **Statements Not Binding:** Statements made by District employees, representatives, and agents at the pre-bid conference do not change the Solicitation Document unless they confirm such statements with a written addendum to the Solicitation Document.

(5) **Announcement:** The District must set forth notice of any pre-bid conference in the Solicitation Document in accordance with Rule 400-100.

400-105 - Addenda to Solicitation Documents

(1) **Issuance; Receipt:** The District may change a Solicitation Document only by written addenda. A bidder shall provide written acknowledgement of receipt of all issued addenda with its bid, unless the District otherwise specifies in the addenda or in the Solicitation Document.

(2) **Notice and Distribution:** The District shall notify prospective bidders of addenda consistent with the standards of notice set forth in this Rule. The Solicitation Document shall specify how the District will provide notice of addenda and how it will make the addenda available, in accordance with the District Rules 400-105. For example, the document could state: “The District will not mail notice of addenda, but will publish notice of any addenda on the District's Web site. Addenda may be downloaded off of the Web site or conveyed via e-mail to all known bidders.”

(3) **Timelines; Extensions:** The District shall issue addenda within a reasonable time to allow prospective bidders to consider the addenda in preparing their bids. The District may extend the closing if it determines prospective bidders need additional time to review and respond to addenda. Except to the extent required by public interest, the District shall not issue addenda less than 24 hours before the closing unless the addenda also extends the closing.

(4) **Request for Change or Protest:** Unless a different deadline is set forth in the addendum, a bidder may submit a written request for change or protest to the addendum, as provided in this Rule, by the close of the next business day after issuance of the addendum, or up to the last day allowed to submit a request for change or protest under this Rule whichever date is later. The District shall consider only a bidder's request for
change or protest to items within the scope of the addendum; the District shall not consider a request for change or protest to matters not added to, or modified by, the addendum, unless the bidder submits the request for change or protest before the deadline for the District’s receipt of request for change or protests as set forth in Rule 400-106 (2) and (3).

400-106 - Request for Clarification or Change; Solicitation Protests

(1) **Clarification:** Prior to the deadline for submitting a written request for change or protest, a bidder may request that the District clarify any provision of the Solicitation Document. The District's clarification to a bidder, whether orally or in writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by written addendum.

(2) **Request for Change**

(A) **Delivery:** A bidder may request an electronic or written request to change to the specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, a bidder must deliver the written request for change to the District not less than ten (10) days prior to closing.

(B) **Content of Request for Change:**

i) A bidder's written request for change shall include a statement of the requested change(s) to the contract terms and conditions, including any specifications, together with the reason for the requested change.

ii) A bidder shall mark its request for change as follows:

a) A Solicitation Specification Request for Change or a Contract Provision Request for Change; and

b) Solicitation document number (or other identification as specified in the Solicitation Document).

(3) **Protest**

(A) **Delivery:** A bidder may protest specifications or contract terms and conditions. Unless otherwise specified in the Solicitation Document, a bidder must deliver a written protest on those matters to the District not less than ten (10) days prior to closing.

(B) **Content of Protest:**

i) A bidder's written protest shall include:

a) A detailed statement of the legal and factual grounds for the protest;

b) A description of the resulting prejudice to the bidder; and

c) A statement of the desired changes to the contract terms and conditions, including any specifications.

ii) A bidder shall mark its protest as follows:

a) “Solicitation Specification Protest” or a “Contract Provision Protest”; and
b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(4) **District’s Response:** The District shall not consider a bidder's request for change or protest after the deadline established for submitting such request or protest. The District shall provide notice to the applicable person if it entirely rejects a protest. If the District agrees with the person's request or protest, in whole or in part, the District shall either issue an addendum reflecting its determination or cancel the solicitation under Rule 400-107.

(5) **Extension of Closing:** If the District receives a written request for change or protest from a bidder in accordance with this rule, the District may extend closing if the District determines, in its sole judgment, an extension is necessary to consider the request or protest; and issue an addendum, if any, to the Solicitation Document.

**400-107 - Cancellation of Solicitation Document**

(1) **Cancellation in the Public Interest:** The District may cancel a solicitation if the District finds that cancellation is in the District’s or the public interest. The District's reasons for cancellation shall be made part of the solicitation file.

(2) **Notice of Cancellation:** If the District cancels a solicitation prior to opening, the District shall provide Notice of cancellation in accordance with Rule 400-101 (1). Such notice of cancellation shall:
   (A) Identify the solicitation;
   (B) Briefly explain the reason for cancellation; and
   (C) If appropriate, explain that an opportunity will be given to compete on any re-solicitation of the project.

(3) **Disposition of Offers**
   (A) **Prior to Bid Opening:** If the District cancels a solicitation prior to bid opening, it shall return all bids it received to bidders unopened, provided the bidder submitted its bid in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District may open the bid to determine its source and then return it to the bidder.
   (B) **After Bid Opening:** If the District rejects all bids or cancels a solicitation after opening, it shall retain all such bids as part of the District's solicitation file.

**400-108 - Bid Submissions**

(1) **Bid and Acceptance:** The bid or proposal is the bidder's or proposer's bid to enter into a contract.
   (A) In competitive bidding, the bid is always a "firm offer," i.e., the bid shall be held open by the bidder for the District’s acceptance for the period specified in Rule 400-121. The District's award of the contract to a bidder constitutes acceptance of the bid and binds the bidder to the contract.
(B) In competitive proposals, the Solicitation Document shall describe whether bids are to be made and considered as firm bids that may be accepted without negotiation, as in the case of competitive bidding, or whether bids are subject to discussion, negotiation or otherwise are not to be considered as final offers. Rule 400-205 on Requests for Proposals and Rule 400-109 on Bid or Proposal Security.

(C) All bids made to the District under ORS 279C.335 or 279C.400 must be made in writing, must be filed with the person designated for receipt of bids by the District, and must be opened publicly by the District immediately after the deadline for submission of bids, unless otherwise provided in the Code or these District Rules, Division 400.

(2) **Responsive Bid:** The District may award a contract only to a responsible bidder with a responsive bid.

(3) **Contingent Bids:** Except to the extent that a proposer is authorized to propose certain terms and conditions pursuant to Rule 400-205, a proposer shall not make a bid contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Bidder's Acknowledgement:** By signing and returning the bid, the bidder acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 400-205, the bidder's bid includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in writing.

(5) **Instructions:** A bidder shall submit and sign its bid in accordance with the Solicitation Document. A bidder shall initial and submit any correction or erasure to its bid prior to the opening in accordance with the requirements for submitting a bid under Solicitation Document. The bid must be signed on behalf of the bidder by someone with authority to bind the bidder.

(6) **Forms:** A bidder shall submit its bid on the form(s) provided in the Solicitation Document, unless a bidder is otherwise instructed in the Solicitation Document.

(7) **Documents:** A bidder shall provide the District with all documents and descriptive literature required under the Solicitation Document.

(8) **Electronic Submissions:** Bidders may submit electronic bids or proposals as allowed in the Solicitation documents.

(9) **Product Samples and Descriptive Literature:** The District may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The District will dispose of Product Samples, or return or make available for return of Product Samples to the bidder in accordance with the Solicitation Document.
Local Contract Review Board Rules

(10) **Identification of Bids:**

   (A) To ensure proper identification and handling, bids shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable.

   (B) The District is not responsible for bids submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) **Receipt of Bids:** The bidder is responsible for ensuring that the District receives its bid at the required delivery point prior to the closing, regardless of the method used to submit or transmit the bid.

400-109 - Bid or Proposal Security

(1) **Requirement for Bid Security:** Unless the District has otherwise exempted a solicitation or class of solicitations from bid or proposal security pursuant to ORS 279C.390, it shall require security for its solicitations for Public Improvements. The District may require bid security even if it has exempted a class of solicitations from bid or proposal security.

(2) **Security Amount:** If bid or proposal security is required, it shall be not more than 10% of the bidder's bid or proposal. The District shall not use bid or proposal security to discourage competition. The District shall expressly provide for any bid or proposal security in its Solicitation Document. The bidder shall forfeit bid or proposal security after award if the bidder fails to execute the contract and promptly return it with any required Performance Bond and Payment Bond.

(3) **Form of Bid or Proposal Security:** The District may accept only the following forms of bid or proposal security:

   (A) A surety bond from a surety company authorized to do business in the state of Oregon;

   (B) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

   (C) A cashier's check or bidder's certified check.

   (D) Other methods specifically authorized by the Public Contracting Code.

(4) **Return of Security for Unsuccessful Bids:** The District shall return or release the bid or proposal security of all unsuccessful bidders after a contract has been fully executed and all required bonds have been provided, or after all bids have been rejected. The District may return the bid or proposal security of unsuccessful bidders prior to award if the return does not prejudice contract award and the security of at least the bidders with the three lowest bids, or the proposers with the three highest scoring proposals, is retained pending execution of a contract. The bid or proposal security of unsuccessful bidders shall be returned when the contract has been duly signed.

(5) **Return of Security for Successful Bids:** Upon the execution of a Public Improvement Contract and delivery of a good and sufficient performance bond and a good and sufficient payment bond by the successful bidder, the bid security of the successful bidder
Local Contract Review Board Rules

shall be returned to the bidder. A bidder who is awarded a contract and who fails promptly and properly to execute the contract and to deliver the performance bond and the payment bond shall forfeit the bid security that accompanied the successful bid. The bid security shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bonds. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and may not be retained by the District after the contract has been duly signed.

400-110 - Electronic Bids and Proposals

(1) **Authorization:** The District may authorize bidders to submit electronic bids. If the District determines that bid or proposal security is or will be required, the District shall not authorize electronic bids unless it has established a method for receipt of such security.

(2) **Provisions to Be Included in Solicitation Document:** In addition to all other requirements, if the District authorizes an electronic bid, it shall include in the Solicitation Document provisions substantially similar to the following:

- (A) Bidders may submit electronic bids in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
- (B) Electronic bids must be signed by the Bidder.
- (C) The District reserves the right to award the contract solely on the electronic bid. However, upon the District's request, the apparent successful bidder shall promptly submit its complete original signed bid.
- (D) The District is not responsible for any failure attributable to the transmission or receipt of the electronic bid including, but not limited to the following:
  - i) Receipt of garbled or incomplete documents.
  - ii) Availability or condition of the District’s electronic systems.
  - iii) Incompatibility between electronic systems.
  - iv) Delay in transmission or receipt of documents.
  - v) Failure of the bidder to properly identify the bid documents.
  - vi) Illegibility of bid documents.
  - vii) Security and confidentiality of data.

400-111 - Electronic Procurement

(1) **General:** The District may advertise Public Improvement Contracts electronically in accordance with ORS 279C.360 (1), and post notices of intent to award and addenda electronically as provided by ORS 279C.410 (7).

(2) **Alternative Procedures:** In the event that the District desires to utilize electronic procurement, including submission and receipt of electronic bids, for a Public Improvement Contract, it shall either promulgate supporting procedures substantially in
Local Contract Review Board Rules

conformance with Rule 210-080 (electronic procurement for goods and services), taking into account statutory requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates, or include such provisions in the Solicitation Document for the specific contract in question.

(3) **Interpretation:** Nothing in this rule shall be construed as prohibiting the District from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when bids are to be submitted only in hard copy.

400-112 - Pre-Closing Modification or Withdrawal of Bids

(1) **Modifications:** A bidder may modify its bid in writing prior to the closing. A bidder shall prepare and submit any modification to its bid to the District in accordance with Rule 400-108, unless otherwise specified in the Solicitation Document. Any modification must include the bidder's statement that the modification amends and supersedes the prior bid. The bidder shall mark the submitted modification as follows:

(A) Bid (or proposal) Modification; and

(B) Solicitation Number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals:**

(A) A bidder may withdraw its bid by written notice submitted on the bidder's letterhead, signed by an authorized representative of the bidder, delivered to the location specified in the Solicitation Document (or the place of closing if no location is specified), and received by the District prior to the closing. The bidder or authorized representative of the bidder may also withdraw its bid in person prior to the closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(B) The District may release an unopened bid withdrawn under Subsection 2(A) to the bidder or its authorized representative, after voiding any date and time stamp mark.

(C) The bidder shall mark the written request to withdraw a bid as follows:

   i) Bid (or proposal) Withdrawal; and

   ii) Solicitation Number (or other identification as specified in the Solicitation Document).

(3) **Documentation:** The District shall include all documents relating to the modification or withdrawal of bids in the appropriate solicitation file.

400-113 - Receipt, Opening and Recording of Bids

(1) **Receipt:** The District shall electronically or mechanically time-stamp or hand-mark each bid and any modification upon receipt. The District shall not open the bid or modification upon receipt, but shall store it in a secure place until opening. If the District inadvertently opens a bid or a modification prior to the opening, the District shall reseal and store the opened bid or modification for opening. The District shall document the
resealing for the procurement file (e.g., "Inadvertently opened the bid due to improper identification of the bid.").

(2) **Opening and Recording:** The District shall publicly open bids including any modifications made to the bid pursuant to Rule 400-112. In the case of Invitations to Bid, to the extent practicable, the District shall read aloud the name of each bidder, the bid price(s), and such other information as it considers appropriate. In the case of Requests for Proposals or voluminous bids, if the Solicitation Document so provides, the District will not read bids aloud.

(3) **Availability:**

(A) After opening and the District’s review for potential Public Record Exempt Material, the District shall make the bids available for public inspection except for those portions of a bid that the bidder designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501 (2); ORS 646.461 to 646.475. To the extent the District determines such designation is not in accordance with applicable law, it shall make those portions available for public inspection. The bidder shall separate information designated as confidential from other non-confidential information at the time of submitting its bid. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of a bidder's designation to the contrary.

(B) In those cases where the District is allowed to and may need to negotiate changes to bids, the District may hold the bidders confidential until it has satisfied that process.

400-114 - Late Bids, Late Withdrawals and Late Modifications
Any bid received after closing is late. A bidder's request for withdrawal or modification of a bid received after closing is late. The District shall not consider late bids, withdrawals or modifications except as permitted in Rule 400-115 or 400-119.

400-115 - Mistakes

(1) **Generally:** To protect the integrity of the competitive solicitation process and to assure fair treatment of bidders, the District should carefully consider whether to permit waiver, correction or withdrawal for certain mistakes.

(2) **Treatment of Mistakes:** The District shall not allow a bidder to correct or withdraw a bid for an error in judgment. If the District discovers certain mistakes in a bid after opening, but before award of the contract, it may take the following action:

(A) The District may waive, or permit a bidder to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the bid, or an insignificant mistake that can be waived or corrected without prejudice to other bidders. Examples of minor informalities include a bidder's failure to:
Local Contract Review Board Rules

i) Return the correct number of signed bids or the correct number of other documents required by the Solicitation Document;

ii) Sign the bid in the designated block, provided a signature appears elsewhere in the bid, evidencing an intent to be bound; and/or

iii) Acknowledge receipt of an addendum to the Solicitation Document, provided that it is clear on the face of the bid that the bidder received the addendum and intended to be bound by its terms; or the addendum involved did not affect price, quantity or delivery.

(B) The District may correct a clerical error if the error is evident on the face of the bid or other documents submitted with the bid, and the bidder confirms the District's correction in writing. A clerical error is a bidder's error in transcribing its bid. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the bid). In the event of a discrepancy, unit prices shall prevail over extended prices.

(C) The District may permit a bidder to withdraw a bid based on one or more errors in the bid only if the bidder shows with objective proof and by clear and convincing evidence:

i) The nature of the error;

ii) That the error is not a minor informality under this subsection or an error in judgment;

iii) That the error cannot be corrected or waived under subparagraph (B) of this subsection;

iv) That the bidder acted in good faith in submitting a bid that contained the claimed error and in claiming that the alleged error in the bid exists;

v) That the bidder acted without gross negligence in submitting a bid that contained a claimed error;

vi) That the bidder will suffer substantial detriment if the District does not grant it permission to withdraw the bid;

vii) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and

viii) That the bidder promptly gave notice of the claimed error to the District.

(D) The criteria in Subsection (2)(C) of this rule shall determine whether the District will permit a bidder to withdraw its bid after closing. These criteria also shall apply to the question of whether the District will permit a bidder to withdraw its bid without forfeiture of its bid bond (or other bid security), or without liability to the District based on the difference between the amount of the bidder's bid and the
amount of the contract actually awarded by the District, whether by award to the
next lowest responsive and responsible bidder or the best responsive and
responsible proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes:** The District shall reject any bid in which a mistake is evident
on the face of the bid and the intended correct bid is not evident or cannot be
substantiated from documents submitted with the bid.

---

### 400-116 - First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure:** Within two working hours after the bid closing on an ITB for a
Public Improvement having a contract price with a value estimated by the District to
exceed $100,000, all bidders shall submit to the District a disclosure form as described by
ORS 279C.370 (2), using forms provided or made available by the District, identifying
any first-tier subcontractors (those Entities that would be contracting directly with the
prime contractor) that will be furnishing labor or labor and materials on the contract, if
awarded, whose subcontract value would be equal to or greater than:

(A) Five percent (5%) of the total project bid, but at least $15,000; or

(B) $350,000, regardless of the percentage of the total project bid. The disclosure of
first-tier subcontractors must include the name of each subcontractor, the category
of work that each subcontractor will perform and the dollar value of each
subcontract.

(2) **Bid Closing, Disclosure Deadline and Bid Opening:** For each ITB to which this rule
applies, the District shall:

(A) Set the bid closing on a Tuesday, Wednesday or Thursday, and at a time between
2 p.m. and 4 p.m., so that the resulting two-hour disclosure deadline occurs during
District business hours.

(B) Open bids publicly immediately after the bid closing; and

(C) Consider for contract award only those bids for which the required disclosure has
been submitted by the announced deadline on forms prescribed by the District.

(3) **Bidder Instructions and Disclosure Form:** For the purposes of this rule, the District in
its solicitation shall:

(A) Prescribe the disclosure form that must be utilized, substantially in the form set
forth in ORS 279C.370 (2); and

(B) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure"

Bidders are required to disclose information about certain first-tier subcontractors
when the contract value for a Public Improvement is estimated by the District to
be greater than $100,000 (see ORS 279C.370). Specifically, when the contract
amount of a first-tier subcontractor furnishing labor or labor and materials would
be greater than or equal to:

i) 5% of the project bid, but at least $15,000, or
ii) $350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract either in its bid submission, or within two working hours after bid closing:
   a) The subcontractor's name,
   b) The category of work that the subcontractor would be performing, and
   c) The dollar value of the subcontract. If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

   “THE DISTRICT MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.”

(4) Submission: A bidder shall submit the disclosure form required by this rule either in its bid submission, or within two working hours after bid closing in the manner specified by the ITB.

(5) Responsiveness: Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of responsiveness. Bids that are submitted by bid closing, but for which the disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for contract award.

(6) The District’s Role: The District shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The District shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.

(A) Substitution: Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The District shall accept written submissions filed under that statute as public records. Except for issues involving inadvertent clerical error under ORS 279C.585, the District does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. ORS 279C.590 provides a procedure for an initially disclosed subcontractor to file a complaint with the Construction Contractors Board to claim that the contractor improperly substituted a different subcontractor for the initially disclosed subcontractor.

400-117 – Disqualification of Persons

(1) Authority: The District may disqualify a person from consideration of award of contracts with the District after providing the person with notice and a reasonable opportunity to be heard in accordance with this Rule 400-117.

(A) Standards for Conduct Disqualification: As provided in ORS 279C.440, ORS 200.065 or 200.075, the District may disqualify a person for a period up to three years based upon:
i) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

ii) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor.

iii) Conviction under state or federal criminal antitrust statutes.

iv) Violation of a contract provision that is regarded by the District to be so serious as to justify Conduct Disqualification. A violation under this Subsection 1(A) iv) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a person's failure to perform or unsatisfactory performance caused by acts beyond the person's control is not a basis for Disqualification.

v) The person does not carry workers’ compensation or unemployment insurance as required by statute.

(B) **Standards for Discrimination Disqualification:** The District may disqualify a person, pursuant to ORS 279A.110, if it finds that the person discriminated against minority, women or emerging small business enterprises in awarding a subcontract in connection with a contract advertised by the District or a contract between the District and the person.

(2) **Notice of Intent to Disqualify:** The District shall notify the person in writing of a proposed disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the District intends to disqualify the person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the person's right to a hearing, pursuant to ORS 279C.445 and 279C.450, if requested in writing within the time stated in the notice and that if the District does not receive the person's written request for a hearing within the time stated, the person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular Sections of the statutes and rules involved, as to the reason(s) for the disqualification and the rights to appeal;

(F) State the proposed Disqualification period; and

(G) State that the person may be represented by legal counsel, if expressly authorized under the applicable statutes or by Rule.
(3) **Hearing:** The District shall schedule a hearing upon the receipt of the person's timely request. The District shall notify the person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) **Notice of Disqualification:** The District shall immediately notify the person in writing of its disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of disqualification;

(B) The grounds for disqualification; and

(C) A statement of the person's appeal rights and applicable appeal deadlines. For any disqualification, including, but not limited to, Conduct Disqualification, BEC Disqualification under ORS 200.065 or ORS 200.075, or Discrimination Disqualification under ORS 279A.110, the disqualified person must notify the District in writing within three (3) business days after receipt of notice of disqualification if the person intends to appeal the District's decision, unless some other appeal period is set forth by statute or rule.

**400-118 - Bid or Proposal Evaluation Criteria**

(1) **General:** Unless excluded or exempt from the competitive bidding requirements, a Public Improvement Contract, if awarded, shall be awarded to the responsible bidder submitting the lowest responsive bid, or to the responsible proposer submitting the best responsive proposal. See for reference Rule 400-119, and Rules for Alternative Contracting Methods at Rule 400-200 to 400-208.

(2) **Bid Evaluation Criteria:** Invitations to bid may solicit lump-sum bids, unit-price bids or a combination of the two.

(A) **Lump Sum:** If the ITB requires a lump-sum bid, without additive or deductive alternates, or if the District elects not to award additive or deductive alternates, bids shall be compared on the basis of lump-sum prices, or lump-sum base bid prices, as applicable. If the ITB calls for a lump-sum base bid, plus additive or deductive alternates, the total bid price shall be calculated by adding to or deducting from the base bid those alternates selected by the District, for the purpose of comparing bids.

(B) **Unit Price:** If the bid includes unit pricing for estimated quantities, the total bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the bidder, and adjusting for any additive or deductive alternates selected by the District, for the purpose of comparing bids. The District shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the bidder, the unit price shall govern. See for reference Rule 400-115 (2).
Proposal Evaluation Criteria: If the Contract Review Board has exempted the procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335 (1), and has directed the District to use an Alternative Contracting Method under ORS 279C.335 (3), the District shall set forth the evaluation criteria in the Solicitation Documents. See for reference Rule 400-205.

400-119 - Bid Evaluation and Award; Determination of Responsibility

(1) General: If awarded, the District shall award the Contract to the responsible bidder submitting the lowest responsive bid or the responsible proposer or proposers submitting the best responsive proposal or proposals, provided that such person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, pursuant to ORS 279C.375 (2)(a) and ORS 701.227. The District may award by item, groups of items or the entire bid provided such award is consistent with the Solicitation Document and in the District’s interest.

(2) Determination of Responsibility: Bidders are required to demonstrate their ability to perform satisfactorily under a contract. Before awarding a contract, the District must have information that indicates that the bidder meets the standards of responsibility set forth in ORS 279.375 (2)(b). To be a responsible bidder, the District must determine that the bidder:

(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the bidder to meet all contractual responsibilities;

(B) Has a satisfactory record of contract performance. The District should carefully scrutinize a bidder's record of contract performance if the bidder is or recently has been materially deficient in contract performance. In reviewing the bidder's performance, the District should determine whether the bidder's deficient performance was expressly excused under the terms of contract, or whether the bidder took appropriate corrective action. The District may review the bidder's performance on both private and public contracts in determining the bidder's record of contract performance. The District shall make its basis for determining a bidder not responsible under this paragraph part of the solicitation file.

(C) Has a satisfactory record on integrity. A bidder may lack integrity if the District determines the bidder demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the District or another contracting Agency. The District may find a bidder not responsible based on the lack of integrity of any person having influence or control over the bidder (such as a key employee of the District who has the authority to significantly influence the bidder's performance of the contract or a parent company, predecessor or successor person). The standards for Conduct Disqualification under Rule 400-117 may be used to determine a bidder's integrity. The District shall make its basis for determining that a bidder is not responsible under this paragraph part of the solicitation file;
(D) Is qualified legally to contract with the District (including that the contractor has not been disqualified or debarred by the District); and

(E) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the bidder 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 not responsible.

(3) **Evaluation:** The District shall evaluate a bid only as set forth in the Solicitation Document and in accordance with applicable laws and regulations. The District shall not evaluate a bid using any other requirement or criterion.

(4) **Bidder Submissions:**

(A) The District may require a bidder to submit product samples, descriptive literature, technical data, or other material and may also require any of the following prior to award:

i) Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or workmanship;

ii) Examination of such elements as appearance or finish; or

iii) Other examinations to determine whether the product conforms to specifications.

(B) The District shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The District shall reject a bid providing any product that does not meet the Solicitation Document requirements. The District's rejection of a bid because it offers nonconforming work or materials is not disqualification and is not appealable under ORS 279C.445.

(5) **Evaluation of Bids:** The District shall use only objective criteria to evaluate bids as set forth in the ITB. The District shall evaluate bids to determine which responsible bidder offers the lowest responsive bid.

(A) **Nonresident Bidders:** In determining the lowest responsive bid, the District shall, in accordance with these rules, add a percentage increase to the bid of a nonresident bidder equal to the percentage, if any, of the preference given to that bidder in the state in which the bidder resides.

(B) **Clarifications:** In evaluating bids, the District may seek information from a bidder only to clarify the bidder's bid. Such clarification shall not vary, contradict or supplement the bid. A bidder must submit written and signed clarifications and such clarifications shall become part of the bidder's bid.

(C) **Negotiation Prohibited:** The District shall not, unless permitted elsewhere by law or rule, negotiate scope of work or other terms or conditions under an Invitation to Bid process prior to award.

(6) **Evaluation of Proposals:** Rule 400-206 governs evaluation of RFPs.
400-120 - Documentation of Award; Availability of Award Decisions

(1) **Basis of Award:** After award, the District shall make a record showing the basis for determining the successful bidder part of the District's solicitation file.

(2) **Contents of Award Record for Bids:** The District’s record shall include:
   (A) All submitted bids;
   (B) Completed bid tabulation sheet; and
   (C) Written justification for any rejection of lower bids.

(3) **Contents of Award Record for Proposals:** Where the use of requests for proposals is authorized as set forth in Rule 400-205, the District’s record shall include:
   (A) All submitted proposals.
   (B) The completed evaluation of the proposals;
   (C) Written justification for any rejection of higher scoring proposals or for failing to meet mandatory requirements of the Request for Proposal; and
   (D) If the District permitted negotiations in accordance with Rule 400-205, its completed evaluation of the initial proposals and the District’s completed evaluation of final proposals.

(4) **Contract Document:** The District shall deliver a fully executed copy of the final contract to the successful bidder.

(5) **Bid Tabulations and Award Summaries:** Upon receipt of a Public Records Request, the District shall provide tabulations of awarded bids or evaluation summaries of proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope.

(6) **Availability of Solicitation Files:** Except for material exempt from public disclosure under Oregon Public Records Law, the District shall make completed solicitation files available for public review at the District.

(7) **Copies from Solicitation Files.** Any person may obtain copies of disclosable material from solicitation files upon payment of a reasonable copying charge.

400-121 - Time for Acceptance; Extension

(1) **Time for Bid Acceptance:** A bidder's bid, or proposal submitted as a firm offer (see Rule 400-108), is irrevocable, valid and binding on the bidder for not less than thirty (30) days from closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time:** The District may request, orally or in writing that bidders extend the time during which the District may consider and accept their bid. Bidders shall acknowledge their agreement to extend or not extend their bid in writing to the District. If a bidder agrees to extend the bid, the bid shall continue as a firm offer, irrevocable, valid and binding on the bidder for the agreed-upon extension period.
400-122 - Negotiation with Bidders and Proposers Limited

(1) **Bids:** When all bids exceed the District’s cost estimate, the District may negotiate with a bidder prior to contract award, only as permitted by ORS 279C.340 and Rule 400-123. After award of the contract, the District and contractor may modify the contract only by change order or amendment to the contract in accordance with Rule 400-306.

(2) **Requests for Proposals:** The District may conduct discussions or negotiations with proposers only in accordance with the requirements of Rule 400-205, or as otherwise by statute or in District Rules, Division 400.

400-123 - Negotiation When Bids Exceed Cost Estimate

(1) **Generally:** In accordance with ORS 279C.340, if all responsive bids from responsible bidders on a competitively bid Project exceed the District's cost estimate, prior to contract award, the District may negotiate value engineering and other options with the responsible bidder submitting the lowest responsive bid in an attempt to bring the Project within the District's cost estimate. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation under ORS 279C.340 and Rules 400-122 and 400-123, are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated. The subcontractor disclosure and substitution requirements of Rule 400-116 do not apply to negotiations under this rule.

(2) **Definitions:** Definitions applicable to the District’s Public Contracting Rules for Construction, Division 400 are set forth in Division 400-020.

(3) **Rejection of Bids:** In determining whether all responsive bids from responsible bidders exceed the cost estimate, only those bids that have been formally rejected, or bids from bidders who have been formally disqualified by the District, shall be excluded from consideration.

(4) **Scope of Negotiations:** The District shall not proceed with contract award if the scope of the Project is significantly changed from the original bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other bidders would have been expected by the District to participate in the bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit re-solicitation of trade subcontracts.

(5) **Discontinuing Negotiations:** The District may discontinue negotiations at any time, and shall do so if it appears to the District that the apparent low bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) **Limitation:** Negotiations may be undertaken only with the lowest responsive, responsible bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with bidders next in line for contract award.
(7) **Public Records**: ORS 279C.340 shall not be construed as creating any additional public records where that result is not otherwise contemplated by the Public Records law, ORS Chapter 192. Records of a bidder used in contract negotiations may not become public records unless they are also submitted to the District, and unless they are otherwise exempted from being considered public records.

**400-124 Rejection of Bids**

(1) **Rejection of a Bid:**

(A) The District may reject any bid upon finding that to accept the bid may impair the integrity of the procurement process or that rejecting the bid is in the public interest.

(B) The District shall reject a bid upon the District's finding that the bid:

i) Is contingent upon the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

ii) Takes exception to terms and conditions (including Specifications);

iii) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

iv) Offers work or goods that fail to meet the Specifications of the Solicitation Document;

v) Is late;

vi) Is not in substantial compliance with the Solicitation Documents;

vii) Is not in compliance with all prescribed public bidding procedures and requirements.

(C) The District shall reject a bid upon the District’s finding that the bidder:

i) Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification;

ii) Has been disqualified;

iii) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the contract is for a Public Work;

iv) Is listed as not qualified by the Construction Contractors Board, if the contract is for a Public Improvement;

v) Has not met the requirements of ORS 279A.105, pertaining to subcontracting to emerging small businesses, if required by the Solicitation Document;

vi) Has not submitted properly executed bid or proposal security as required by the Solicitation Document;

vii) Has failed to provide the certification required under Section 3 of this rule;

viii) Is not responsible. See Rule 400-119 (2) regarding the District's determination that the bidder has met statutory standards of responsibility.
(2) **Form of Business:** For purposes of this rule, the District may investigate any person submitting a bid. The investigation may include that person's officers, directors, owners, affiliates, or any other person acquiring ownership of the person to determine application of this rule or to apply the disqualification provisions of ORS 279C.440 to 279C.450 and Rule 400-117.

(3) **Certification of Non-Discrimination:** The bidder shall certify and deliver to the District written certification, as part of the bid, pursuant to ORS 279.110 (4), that the bidder has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Rejection of all Bids:** The District may reject all bids for good cause upon the District's written finding it is in the District’s interest to do so. The District shall notify all bidders of the rejection of all bids, along with the good cause justification and finding.

(5) **Criteria for Rejection of All Bids:** The District may reject all bids upon a written finding that:

(A) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the contract;

(B) The price, quality or performance presented by the bidders is too costly or of insufficient quality to justify acceptance of the bid;

(C) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(D) Causes that threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(E) The District cancels the solicitation in accordance with Rule 400-107; or

(F) Any other circumstance indicating that awarding the contract would not be in the District’s interest.

### 400-125 - Protest of Contractor Selection, Contract Award

(1) **Purpose:** An adversely affected or aggrieved bidder must exhaust all avenues of administrative review procedures and relief before seeking judicial review of the District's contractor selection or contract award decision.

(2) **Notice of Competitive Range:** If protest of competitive range is provided for in the RFP, when the competitive proposal process is authorized under Rule 400-205, the District shall provide written notice to all proposers of the District's determination of the proposers included in the competitive range. The District's notice of the proposers included in the competitive range shall not be final until the later of the following:

(A) Ten (10) days after the date of the notice, unless otherwise provided therein; or
(B) Until the District provides a written response to all timely-filed protests that denies the protest and affirms the notice of the proposers included in the competitive range.

(3) **Notice of Intent to Award:** Unless otherwise provided in the Solicitation Document, the District shall provide written notice to all bidders of the District's intent to award the contract. The District's award shall not be final until the later of the following:

(A) Seven (7) days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(B) The District provides a written response to all timely-filed protests that denies the protest and affirms the award.

(4) **Right to Protest Award:**

(A) An adversely affected or aggrieved bidder may submit a written protest of the District's intent to award within seven (7) days after the date of the Notice of Intent to Award the contract, unless a different protest period is provided under the Solicitation Document.

(B) The bidder's protest must be in writing and must specify the grounds upon which the protest is based.

(C) A bidder is adversely affected or aggrieved only if the bidder is eligible for award of the contract as the responsible bidder submitting the lowest responsive bid or the responsible proposer submitting the best responsive proposal and is next in line for award, i.e., the protesting bidder must claim that all lower bidders or higher-scored proposers are ineligible for award:

   i) Because their bids were nonresponsive; or

   ii) The District committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting bidder was unfairly evaluated and would have, but for such substantial violation, been the responsible bidder offering the lowest bid or the responsible proposer offering the highest-ranked proposal.

(D) The District shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A proposer may not protest the District’s decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.

(5) **Right to Protest Competitive Range:**

(A) If the RFP document provides for protest of the competitive range, an adversely affected or aggrieved proposer may submit a written protest of the District's decision to exclude the proposer from the competitive range within seven (7) days after the date of the notice of the competitive range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 400-205.)
Local Contract Review Board Rules

(B) The proposer’s protest shall be in writing and must specify the grounds upon which the protest is based.

(C) A proposer is adversely affected only if the proposer is responsible and submitted a responsive proposal and is eligible for inclusion in the competitive range, i.e., the protesting proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring proposers are removed from consideration, and that those ineligible proposers are ineligible for inclusion in the competitive range because:
   i) Their proposals were not responsive; or
   ii) The District committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.

(D) The District shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A proposer may not protest the District's decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.

(6) Authority to Resolve Protests: A written protest may be resolved at any step in the District Administrative Review process by the person(s) authorized to respond to the protest.

(7) Decision: If a protest is not settled at any step of the administrative review process provided by statute or rule, the District or its designee shall issue a written decision on the protest. Judicial review of this decision will be available if the administrative process has been exhausted and if such review is provided by statute.

(8) Award: The successful bidder shall promptly execute the contract after the award is final. The District shall execute the contract only after it has obtained all applicable required documents and approvals.

400-126 - Performance and Payment Security; Waiver

(1) Public Improvement Contract Security Requirements: The successful bidder for a Public Improvement Contract shall promptly execute and deliver to the District a performance bond and a payment bond each in a sum equal to the full contract price for all Public Improvement Contracts, subject to the requirements of ORS 279C.380 and these District Rules, Division 400, unless:
   (A) The required performance bond is waived under ORS 279C.380 (1)(a);
   (B) The performance and/or payment bonds are excused in cases of emergency under ORS 279C.380 (4); or
   (C) The District exempts a contract or classes of contracts from the required performance bond and payment bond pursuant to the Code and the District Rules, including ORS 279C.390.
(2) **Performance Bond:** The performance bond is for the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the District and any other public agency or agencies for whose benefit the contract was awarded. If the Public Improvement Contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract required by this paragraph must also be for the preparation and completion of the design and related services covered under the contract. The District may waive the requirement of a performance bond and may permit the successful bidder to submit a cashier’s check or certified check in lieu of all or a portion of the required performance bond.

(3) **Construction Manager/General Contractor Services:** If the Public Improvement Contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by Subsection (1) of this section upon execution of an amendment establishing the guaranteed maximum price. The District shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

(4) **Payment Bond:** The payment bond shall be in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

(5) **Other Construction Contracts:** The District may require performance security for other construction contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(6) **Requirement for Security Bonds:** The District shall accept only a performance bond executed solely by a surety company or companies authorized to transact surety business in Oregon unless otherwise specified in the Solicitation Document (i.e., the District may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The District shall accept only a payment bond executed solely by a surety company or companies authorized to transact surety business in Oregon, in an amount equal to the full contract price.

(7) **Time for Submission:** The apparent successful bidder must promptly furnish the required performance/payment security upon the District's request. If the bidder fails to furnish the performance/payment security as requested, the District may reject the bid and award the contract to the responsible bidder with the next lowest responsive bid or the responsible proposer with the next highest-scoring responsive proposal, and, at the District's discretion, the bidder shall forfeit its bid or proposal security.

(8) **Exemption of Contracts or Classes of Contracts from Bid Requirements:** Subject to the provisions of Subsection (9) of this Rule, the District may exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all
or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance.

(9) **Authority to Require Security When Contracts Exempted:** The District may require bid security and a good and sufficient performance bond, a good and sufficient payment bond, or any combination of such bonds, even though the Public Improvement Contract is of a class exempted by the District.

### 400-127 - Substitute Contractor

If the contractor provided a performance bond, the District may afford the contractor's surety the opportunity to provide a substitute contractor to complete performance of the contract. A substitute contractor shall perform all remaining contract work and comply with all terms and conditions of the contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the award of a new contract and shall not be subject to the competitive procurement provisions of ORS Chapter 279C.

### 400-128 - Foreign Contractor

If the contract price exceeds $10,000 and the contractor is a Foreign Contractor, the contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the contract price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the District. The District shall satisfy for itself that the above requirements have been complied with before it issues final payment on the contract.

### 400-200 - ALTERNATIVE CONTRACTING METHODS

Rules 400-200 to 400-208 are intended to provide guidance regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the District's Local Contract Review Board Authority under ORS 279C.335. Those methods include, but are not limited to, Design/Build, and Construction Manager/General Contractor (CM/GC) forms of contracting.

### 400-201 - Definitions for Alternative Contracting Methods

Definitions applicable to the District Rules, Division 400 are set forth at the District Rules, Division 400-020.

### 400-202 - Use of Alternative Contracting Methods

1. **Competitive Bidding Exemptions:** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts covered by the Public Contracting Code unless a statutory exception applies, a class of contracts has been exempted or an individual contract has been exempted in accordance with ORS 279C.335 and any applicable contracting Agency rules. Use of Alternative Contracting Methods may be directed by the District as an exception to the prescribed Public contracting practices in Oregon, and their use must be justified in accordance with the Code and these Rules 400-200 to 400-208.
(2) **Post-Project Evaluation:** ORS 279C.355 requires that the District prepare a formal post project evaluation of Public Improvement projects in excess of $100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the District's best interest to use an Alternative Contracting Method. The evaluation must be made available for public inspection, and must be completed to the Board within thirty (30) days of the date the District "accepts" the public improvement project, which event is typically defined in the contract. In the absence of such definition, acceptance of the project occurs on the later of the date of final payment or the date of final completion of the work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(A) Financial information, consisting of the actual project cost as compared with original project estimates, the amount of any Guaranteed Maximum Price, and the number of project change orders issued by the District;

(B) A narrative description of successes and failures during design, engineering and construction; and

(C) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption findings.

**400-203 - Findings, Notice and Hearing**

(1) **General Standard for Exemptions:** The Board may exempt a Public Improvement Contract or class of Public Improvement Contracts from the competitive bidding requirements of ORS 279C.335 (1) upon approval of the following findings submitted by the District:

(A) It is unlikely that the exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; and

(B) The awarding of Public Improvement Contracts under the exemption will result in substantial cost savings to the District.

(2) **Cost Savings Factors:** Under the "substantial cost savings" criterion for findings to support an exemption under ORS 279C.335, the District may, pursuant to ORS 279C.335 (2)(b), consider the type, cost, and amount of the contract, number of persons available to bid, and "such other factors as may be deemed appropriate."

(3) **Information Required for Findings:** Findings means the justification for the District’s conclusion that includes, but is not limited to, information regarding identified areas, as set forth in ORS 279C.330.

(4) **Addressing Cost Savings:** When the contract or class of contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(A) Specified findings that address the factors and other information specifically identified by statute; and
(B) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.

(5) ** Favoritism and Competition:** The criteria at ORS 279C.335 (2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the procurement will be formally advertised, competition will be encouraged, and award made based upon identified selection criteria.

(6) **Class Exemptions:** In making the findings supporting a class exemption, the District shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values or method of procurement or other factors that distinguish the limited and related class of projects from the District’s overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335 (2).

(7) **Requirements for Public Hearing:**
   (A) Before final adoption of findings exempting a Public Improvement Contract from the requirement of competitive bidding, the District shall give notice and hold a public hearing as required by ORS 279C.335 (4). The hearing shall be for the purpose of receiving public comment on the District's draft findings.
   
   (B) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation, a minimum of fourteen (14) days before the hearing.
   
   (C) The notice shall state that the public hearing is for the purpose of taking comments on the District’s draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the District, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.
   
   (D) At the public hearing, the District shall offer an opportunity for any interested party to appear and present comment.
   
   (E) If the District is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the District’s solicitation of contractors for the Alternate Contracting Method, as long as the responses to the solicitation are due at least five (5) days after the meeting and approval of the findings.
(8) **Requirements for Exemptions:** In granting exemptions, the Board shall:

(A) When appropriate, direct the use of Alternate Contracting Methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition; and

(B) Require and approve or disapprove written findings by the District that support the awarding of a particular Public Improvement Contract or a class of Public Improvement Contracts, without the competitive bidding requirement of ORS 279C.335 (1). The findings must show that the exemption of a contract or class of contracts complies with the requirements in this Rule 400-203, and ORS 279C.335.

400-204 - Competitive Proposals; Procedure

The District may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both proposal evaluation and contract negotiation, only in accordance with ORS 279C.400 to 279C.410 Rules 400-200 to 400-208, and the District's Rules, Division 110, unless other applicable statutes control the District’s use of competitive proposals for Public Improvement Contracts. The RFP process for the Alternative Contracting Methods identified in Rules 400-200 to 400-208 includes the following steps:

(1) **Proposal Evaluation:** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(A) Be reasonable estimates based on information available to the District;

(B) Treat all proposals equitably; and

(C) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the District, pursuant to ORS 279C.305 (1).

(2) **Evaluation Factors:**

(A) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality

(B) In CM/GC contracting, in addition to (A) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(C) In Design/Build contracting, in addition to (A) and (B) above, those factors may also include design professional qualifications, specialized experience,
preliminary design submittals, technical merit, design/builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations:** Contract terms may be negotiated to the extent allowed by the RFP and Rules 400-200 to 400-208, provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 400-205. Terms that may be negotiated consist of details of contract performance, methods of construction, timing, and assignment of risk in specified areas, fee, and other matters that affect cost or quality.

**400-205 - Requests for Proposals (RFP)**

(1) **Generally:** The use of competitive proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirements of ORS 279C.335 (1), the District's Public Contracting Rules 400-060, 400-200 to 400-208, and Division 110, and/or findings adopted pursuant thereto. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive proposals, and Rule 400-204 regarding competitive proposal procedures.

(2) **Solicitation Documents:** The Solicitation Document requirements of Rule 400-100 (1) apply to Requests for proposals, except as to first-tier subcontractor disclosure under ORS 279C.370 and reciprocal preference under ORS 279A.120, and except as otherwise provided by statute. For purposes of applying the requirements of Rule 400-100 (1), bids includes proposals and bid documents, and Invitation to Bid include Requests for proposals. RFP Solicitation Documents shall also conform to the following standards:

(A) The District shall set forth evaluation and selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost and its relative importance, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See Rule 400-204. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the District;

(B) When the District is willing to negotiate terms and conditions of the contract or allow submission of revised proposals following discussions, the District must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize bidders to propose certain alternative terms and conditions in lieu of the terms and conditions the District has identified as authorized for negotiation. The District must describe the evaluation and discussion or negotiation process, including how it will establish the competitive range;

(C) When the District intends to award contracts to more than one proposer, the District must identify in the Solicitation Document the manner in which it will determine the number of contracts it will award. The District shall also include
the criteria it will use to determine how it will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular contractor to provide goods or services from those contractors awarded contracts;

(D) The District shall include in the Solicitation Document the method of contractor selection, which may include, but is not limited to, award without negotiation, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed either 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.

(3) **Receipt and Evaluation of Proposals**

(A) **List of Proposals:** For each Request for Proposal, the District shall prepare a list of proposals.

(B) **Public Inspection Issues:** Notwithstanding the public records law, ORS 192.410 to 192.505:

   i) Proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation.

   ii) Proposals are not required to be open for public inspection until after issuance of the Notice of Intent to Award a contract.

   iii) The District may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. The fact that proposals are opened at a public meeting as defined in ORS 192.610 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. If a Request for Proposal is canceled after proposals are received, the District may return a proposal to the proposer that made the proposal. The District shall keep a list of returned proposals in the file for the solicitation.

(C) **Evaluation:** The District shall evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. The District shall evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

   i) **Clarifications:** In evaluating proposals, the District may seek information from a proposer to clarify the proposer's proposal. A proposer must submit written and Signed clarifications and such clarifications shall become part of the proposer's proposal.

   ii) **Limited Negotiation:** If the District did not permit negotiation in its Request for Proposals, it may, nonetheless, negotiate with the highest-ranked proposer, but may then only negotiate the:

      a) Statement of work; and

      b) Contract price as it is affected by negotiating the statement of work.
Local Contract Review Board Rules

c) The process for discussions or negotiations that is outlined and explained in Subsections (5)(B) and (6) of this rule does not apply to this limited negotiation.

(D) Discussions; Negotiations: If the District permitted discussions or negotiations in the Request for Proposals, it shall evaluate proposals and establish the competitive range, and may then conduct discussions and negotiations in accordance with this rule.

i) If the Solicitation Document provided that discussions or negotiations may occur at the District's discretion, the District may forego discussions and negotiations and evaluate all proposals in accordance with this rule.

ii) If the District proceeds with discussions or negotiations, it shall establish a negotiation team, of one or more individuals, tailored for the acquisition. The District's team may include legal, technical and negotiating personnel.

(E) Cancellation: Nothing in this rule shall restrict or prohibit the District from canceling the solicitation at any time.

(4) Competitive Range; Protest; Award

(A) Determining Competitive Range:

i) If the District does not cancel the solicitation, after the opening it will evaluate all proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all proposals in accordance with the criteria set forth in the Request for Proposals, the District will determine and rank the proposers in the competitive range. However, there is no requirement to create a competitive range. The District may rank proposals and give Notice of Intent to Award as provided in 400-205 (4)(C) below.

ii) The District may increase the number of proposers in the competitive range if the District’s evaluation of proposals establishes a natural break in the scores of proposers indicating a number of proposers greater than the initial competitive range are closely competitive, or have a reasonable chance of being determined the best proposer after the District’s evaluation of revised proposals submitted in accordance with the process described in this rule.

(B) Protest Challenge Competitive Range: The District shall provide written notice to all proposers identifying proposers in the competitive range, if the RFP provides that notice is to be given. A proposer that is not within the competitive range may protest the District's evaluation and determination of the competitive range in accordance with Rule 400-125, if the RFP provides for protest of the competitive range. If no competitive range is set, the provisions of Rule 400-205 (4)(C) apply.

(C) Intent to Award, Discuss or Negotiate: After the protest period provided in accordance with these rules expires, or after the District has provided a final response to any protest, whichever date is later, it may either:
Local Contract Review Board Rules

i) Provide written notice to all proposers in the competitive range of its intent to award the contract to the highest-ranked proposer in the competitive range.
   a) An unsuccessful proposer may protest the District's intent to award in accordance with Rule 400-125.
   b) After the protest period provided in accordance with Rule 400-125 expires, or after the District has provided a final response to any protest, whichever date is later, it shall commence final contract negotiations with the highest-ranked proposer in the competitive range; or

ii) Engage in discussions with proposers in the competitive range and accept revised proposals from them, and, following such discussions and receipt and evaluation of revised proposals, conduct negotiations with the proposers in the competitive range.

(5) Discussions; Revised Proposals: If the District chooses to enter into discussions with and receive revised proposals from the proposers in the competitive range, it shall proceed as follows:
   (A) Initiating Discussions: The District shall initiate oral or written discussions with all of the proposers in the competitive range regarding their proposals with respect to the provisions of the RFP that it identified in the RFP as the subject of discussions. The District may conduct discussions for the following purposes:
      i) Informing proposers of deficiencies in their initial proposals;
      ii) Notifying proposers of parts of their proposals for which the District would like additional information; and
      iii) Otherwise allowing proposers to develop revised proposals that will allow the District to obtain the best proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
   (B) Conducting Discussions: The District may conduct discussions with each proposer in the competitive range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each proposer. The District may terminate discussions with any proposer in the competitive range at any time. However, the District shall offer all proposers in the competitive range the opportunity to discuss their proposals with the District before the District notifies proposers of the date and time pursuant to this section that revised proposals will be due.
      i) In conducting discussions, the District:
         a) Shall treat all proposers fairly and shall not favor any proposer over another;
         b) Shall not discuss other proposers' proposals;
         c) May suggest specific revisions that a proposer could make to its proposal, but shall not otherwise direct the proposer to make any specific revisions to its proposal; and
d) Shall accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

ii) At any time during the time allowed for discussions, the District may:
   a) Continue discussions with a particular proposer;
   b) Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range; or
   c) Conclude discussions with all remaining proposers in the competitive range and provide notice to the proposers in the competitive range to submit revised proposals.

(C) **Revised Proposals:** If the District does not cancel the solicitation at the conclusion of the District's discussions with all remaining proposers in the competitive range, the District shall give all remaining proposers in the competitive range notice of the date and time by which they must submit revised proposals. This notice constitutes the District's termination of discussions, and proposers must submit revised proposals by the date and time set forth in its notice.

i) Upon receipt of the revised proposals, the District shall score the revised proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised proposals based on the District's scoring.

ii) The District may conduct discussions with and accept only one revised proposal from each proposer in the competitive range unless otherwise set forth in the Request for Proposals.

(D) **Intent to Award; Protest:** The District shall provide written notice to all proposers in the competitive range of its intent to award the contract. An unsuccessful proposer may protest the District's intent to award in accordance with Rule 400-125. After the protest period provided in accordance with that rule expires, or after the District has provided a final response to any protest, whichever date is later, it shall commence final contract negotiations.

(6) **Negotiations:**

(A) **Initiating Negotiations:** The District may determine to commence negotiations with the highest-ranked proposer in the competitive range following the:

i) Initial determination of the competitive range; or

ii) Conclusion of discussions with all proposers in the competitive range and evaluation of revised proposals

(B) **Conducting Negotiations:**

i) Scope. The District may negotiate:
   a) The Statement of Work;
   b) The contract price as it is affected by negotiating the Statement of Work; and
c) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, proposers shall not submit, and the District shall not accept, for negotiation any alternative expressly authorized for negotiation in the Request for Proposals.

(C) **Terminating Negotiations:** At any time during discussions or negotiations that the District conducts in accordance with this rule, the District may terminate discussions or negotiations with the highest-ranked proposer, or the proposer with whom it is currently discussing or negotiating, if the District reasonably believes that:

i) The proposer is not discussing or negotiating in good faith; or

ii) Further discussions or negotiations with the proposer will not result in the parties agreeing to the terms and conditions of a final contract in a timely manner.

(D) **Continuing Negotiations:** If the District terminates discussions or negotiations with a proposer, it may then commence negotiations with the next highest scoring proposer in the competitive range, and continue the process described in this rule until the District has either:

i) Determined to award the contract to the proposer with whom it is currently discussing or negotiating; or

ii) Completed one round of discussions or negotiations with all proposers in the competitive range, unless the District provided for more than one round of discussions or negotiations in the Request for Proposals.

(7) **Cancellation/Rejection of Proposals:** The District may reject any proposal not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject all proposals upon the District’s finding that it is in the public interest to do so. In any case where competitive bids are required and all proposals are rejected and the proposed project is not abandoned, new proposals may be called for as in the first instance.

(8) **Award of Contract Pursuant to Proposals**

(A) **Intent to Award:** At least seven (7) days before the award of a Public Contract, unless the District determines that seven (7) days is impractical under the circumstances, the District shall issue to each proposer or post, electronically or otherwise, a Notice of Intent to Award.

(B) **Award of Contract:** If a Public Contract is awarded, the District shall award a Public Contract to the responsible proposer whose proposal is determined in writing to be the most advantageous to the District based on the evaluation factors set forth in the Request for Proposal and, when applicable, the outcome of any negotiations authorized by the Request for Proposal. Other factors may not be used in the evaluation.
400-206 - RFP Pricing Mechanisms

1. A Request for Proposals may result in a lump sum contract price, as in the case of competitive bidding. Alternatively, a cost reimbursement contract may be negotiated.

2. Economic incentives or disincentives may be included to reflect stated District purposes related to time of completion, safety or other Public contracting objectives, including total least cost mechanisms such as life cycle costing.

3. A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total contract price is provided in the design phase in order to assist the District in determining whether the project scope is within the District's budget, and allowing for design changes during preliminary design rather than after final design work has been completed.
   (A) If this collaborative process is successful, the contractor shall propose a final GMP, which may be accepted by the District and included within the contract.
   (B) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the contractor, then the District shall terminate the contract. The District may then proceed to negotiate a new contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

4. When Cost Reimbursement Contracts are utilized, regardless of whether a GMP is included, the District shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

400-207 - Design/Build Contracts

1. **General:** The Design/Build form of contracting, as defined in Rule 400-020, has technical complexities that are not readily apparent. The District shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design/Build process, the District must be able to reasonably anticipate the following types of benefits:
   (A) Obtaining, through a Design/Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
   (B) Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes;
   (C) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims;
   (D) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a "biddable"
 Local Contract Review Board Rules

design, or where a design solution is still required (as in complex or phased projects); and

(E) Obtaining innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

(2) **Authority:** The District shall utilize the Design/Build form of contracting only in accordance with the requirements of these Rules 400-200 et seq. See particularly Rule 400-202 on "Use of Alternative Contracting Methods."

(3) **Selection:** Design/Build selection criteria may include those factors set forth above in Rule 400-204 (2)(A), (B) and (C).

(4) **Licensing:** If a Design/Build contractor is not an Oregon licensed design professional, the District shall require that the Design/Build contractor disclose in its written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030 (5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(5) **Performance Security:** ORS 279C.380 (1)(a) provides that for Design/Build contracts the surety's obligation on performance bonds, or the bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective work and associated costs prior to final completion of the contract (or for such longer time as may be defined in the contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage, which the District may also require.

(6) **Contract Requirements:** The District shall conform their Design/Build contracting practices to the following requirements:

(A) **Design Services:** The level or type of design services required must be clearly defined within the procurement documents and contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards, and performance measurements must be identified.

(B) **Professional Liability:** The contract shall clearly identify the liability of design professionals with respect to the Design/Build contractor and the District, as well as requirements for professional liability insurance.

(C) **Risk Allocation:** The contract shall clearly identify the extent to which the District requires an express indemnification from the Design/Build contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.
(D) **Warranties:** The contract shall clearly identify any express warranties made to the District regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(E) **Incentives:** The contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the contract.

(F) **Honoraria:** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the District is benefited from such deliverables.

400-208 - Construction Manager/General Contractor (CM/GC)

(1) **General:** The CM/GC form of contracting, as defined at Rule 400-020, is a technically complex project delivery system. The District shall use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting and project management. Unlike the Design/Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the contractor is responsible for successful completion of all work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the District and design professional, although in CM/GC there is a separate contract between the District and design professional. In order to utilize the CM/GC method, the District must be able to reasonably anticipate the following types of benefits:

(A) **Time Savings.** The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The District may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(B) **Cost Savings:** Early contractor input during the design process is expected to contribute to significant cost savings. The District may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The District shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and

(C) **Technical Complexity:** The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the District, design professionals and contractor, in which the contractor will assist in
addressing specific project challenges through pre-construction services. The District may consider the need for contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Authority:** The District shall use the CM/GC form of contracting only in accordance with the requirements of these rules. See particularly Rule 400-202 on "Use of Alternative Contracting Methods".

(3) **Selection:** CM/GC selection criteria may include those factors set forth above in Rule 400-204 (2)(B).

(4) **Basis for Payment:** The CM/GC process adds specified Construction Manager services to traditional General Contractor services, requiring full contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP. See GMP definition and Pricing Mechanisms at Rule 400-206.

(5) **Contract Requirements:** The District’s CM/GC contracting practices shall conform to the following requirements:

(A) **Setting the GMP:** The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.

(B) **Adjustments to the GMP:** The contract shall clearly identify the standards or factors under which changes or additional work will be considered outside of the work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.

(C) **Cost Savings.** The contract shall clearly identify the disposition of any cost savings resulting from completion of the work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the District's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the District.)

(D) **Cost Reimbursement:** The contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually agreeable cost-reimbursement standard.
(E) **Audit:** Cost reimbursements shall be made subject to final audit adjustment, and the contract shall establish an audit process to ensure that contract costs are allowable, properly allocated and reasonable.

(F) **Fee:** Compensation for the CM/GC's services shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

(G) **Incentives:** The contract shall clearly identify any economic incentives or disincentives, the specific criteria that apply and their relationship to other financial elements of the contract (including the GMP).

(H) **Controlled Insurance Programs:** For projects anticipated to exceed $90 Million, the contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the contract shall clearly identify:
   i) Anticipated cost savings from reduced premiums, claims reductions and other factors,
   ii) The allocation of cost savings, and
   iii) Safety responsibilities and/or incentives.

(I) **Early Work:** The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:
   i) Early Procurement of materials and supplies;
   ii) Early release of bid packages for such things as site development; and
   iii) Other advance work related to critical components of the contract.

(J) **Subcontractor Selection:** The contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record bids or price quotations, and competitively select subcontractors to perform the contract work based upon price, as well as the mechanisms by which the District may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public opening of bids or quotations by an independent party.

(K) **Subcontractor Approvals and Protests:** The contract shall clearly establish whether the District must approve subcontract awards, and to what extent, if any, the District will resolve procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms shall be established with certainty, including whether the CM/GC acts as the District's representative in this
process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the District shall retain the right to monitor the subcontracting process in order to protect the District’s interests.

(L) CM/GC Self-Performance: Whenever feasible, the contract shall establish the elements of work the CM/GC may self-perform without competition, including, for example, the work of the job-site general conditions. In the alternative, the contract shall include a process for the District approval of CM/GC self-performance.

CONTRACT PROVISIONS

400-300 - Required Contract Clauses

The District shall include in all formal solicitations for Public Improvement Contracts all of the ORS Chapter 279C required contract clauses, as set forth in the checklist contained in Rule 400-100 (1)(C) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular public contract provisions.

400-301 - Retainage

(1) Withholding of Retainage: Except to the extent the District's enabling rules require otherwise, the District shall not retain an amount in excess of five percent of the contract price for work completed. If the contractor has performed at least 50 percent of the contract work and is progressing satisfactorily, upon the contractor's submission of written application containing the surety's written approval, the District may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The District shall respond in writing to all such applications within a reasonable time. When the contract work is 97-1/2 percent completed, the District may, at its discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed contract work. The District may at any time reinstate retainage. Retainage shall be included in the final payment of the contract price.

(2) Deposit in Interest-Bearing Accounts: Upon request of the contractor, the District shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the District. Earnings on such account shall accrue to the contractor.

(3) Alternatives to Cash Retainage: In lieu of cash retainage to be held by the District, the contractor may substitute one of the following:

(A) Deposit of securities:
   i) The contractor may deposit bonds or securities with the District or in any bank or trust company to be held for the benefit of the District. In such event, the District shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the contractor.
   ii) Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the District that may include, without limitation:
      a) Bills, certificates, notes or bonds of the United States.
b) Other obligations of the United States or its contracting Agencies.
c) Obligations of any corporation wholly owned by the Federal Government.

iii) Upon the District's determination that all requirements for the protection of the District's interests have been fulfilled, it shall release to the contractor all bonds and securities deposited in lieu of retainage.

(B) Deposit of Surety Bond: The District, at its discretion, may allow the contractor to deposit a surety bond in a form acceptable to the District in lieu of all or a portion of funds retained or to be retained. A contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(4) Recovery of Costs: The District may recover from the contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

400-302 - Contractor Progress Payments

(1) Request for progress payments: Each month the contractor shall submit to the District its written request for a progress payment based upon an estimated percentage of contract completion. At the District's discretion, this request may also include the value of material to be incorporated in the completed work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed work." With these estimates as a base, the District will make a progress payment to the contractor, which shall be equal to:

(A) The value of completed work;
(B) Less those amounts that have been previously paid;
(C) Less other amounts that may be deductible or owing and due to the District for any cause; and
(D) Less the appropriate amount of retainage.

(2) Progress Payments Do Not Mean Acceptance of Work: Progress payments shall not be construed as an acceptance or approval of any part of the work, and shall not relieve the contractor of responsibility for defective workmanship or material.

400-303 - Interest

(1) Prompt Payment Policy: The District shall pay promptly all payments due and owing to the contractor on Contracts for Public Improvements.

(2) Interest on Progress Payments: Late payment interest shall begin to accrue on payments due and owing on the earlier of thirty (30) days after receipt of invoice or fifteen (15) days after the District approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial
interest on the amount of the settlement or judgment shall be added to and not made part of the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve shall accrue from the later of the Progress Payment Due Date, or thirty (30) days after the contractor submitted a claim for payment to the District in writing or otherwise in accordance with the contract requirements.

400-304 - Final Inspection

(1) Notification of Completion; Inspection: The contractor shall notify the District in writing when the contractor considers the contract work completed. Within fifteen (15) days of receiving contractor's notice, the District will inspect the project and project records, and will either accept the work or notify the contractor of remaining work to be performed.

(2) Acknowledgment of Acceptance: When the District finds that all work required under the contract has been completed satisfactorily, it shall acknowledge acceptance of the work in writing.

400-305 - Specifications; Brand Name Products

(1) Generally: The District's Solicitation Documents shall not expressly or implicitly require any product by any brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345 (2). See exemptions in Division 110.

(2) Equivalents: The District may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The District shall determine, in its sole discretion, whether a bidder's alternate product is "equal" or "equivalent."

400-306 - Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access: Contractors and subcontractors shall maintain all fiscal records relating to contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, contractors and subcontractors shall maintain all other records necessary to clearly document:

(A) Their performance; and
(B) Any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the District at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit:** The District may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any person that has submitted cost or pricing data according to the terms of a contract to the extent that the Records relate to such cost or pricing data. If the person must provide cost or pricing data under a contract, the person shall maintain such Records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(3) **Records Inspection; Contract Audit:** The District, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any contractor's or subcontractor's Records, as provided in Section (1) of this rule. The contractor and subcontractor shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of three (3) years from the date of final payment under the contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a shorter period is otherwise authorized in writing.

**400-400 - Contract Suspension; Termination Procedures**

(1) **Suspension of Work:** In the event a District contract is not terminated, but the District suspends performance of work for any reason considered by the District to be in the public interest other than a labor dispute or any third-party judicial proceeding relating to the work filed in regards to a labor dispute, the contractor shall be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the contractor as a result of the suspension.

(2) **Contractor Violations of Laws, Regulations or the Contract:** The contractor is not entitled to an extension or compensation under this Rule where the suspension of the work or termination of the contract occurs as a result of the contractor’s violation of federal, state or local statutes, ordinances, rules or regulations in existence at the time the contract was executed or as a result of violations of the terms of the contract.

(3) **Termination of Contract by Mutual Agreement for Reasons Other than Default:**

(A) **Reasons for termination:** The parties may agree to terminate the contract or a divisible portion thereof if:

i) The District suspends work under the contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the work filed to resolve a labor dispute); and

ii) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work.
(B) **Payment:** When a contract, or any divisible portion thereof, is terminated pursuant to this Section (2), the District shall pay the contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. The District shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the contract, payment shall be calculated based on percent of contract completed. No claim for overhead or loss of anticipated profits on unperformed work will be allowed.

(4) **Termination for Public Interest:** The District may include in its contracts terms detailing the circumstances under which the contractor shall be entitled to compensation as a matter of right in the event the District unilaterally terminates the contract for any reason considered by the District to be in the public interest.

(5) **Responsibility for Completed Work:** Termination of the contract or a divisible portion thereof pursuant to this rule shall not relieve either the contractor or its surety of liability for claims arising out of the work performed.

(6) **Remedies Cumulative:** The District may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the contract, or available at law or in equity.

400-401 - **Change Orders and Contract Amendments**

(1) **Definitions** applicable to the District Public Contracting Rules Division 400 are set forth at the District Public Contracting Rules, Division 400-020.

(2) **Changes Provisions:** Change Orders are anticipated in construction and, accordingly, shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize it to issue Change Orders and provide a procedure for addressing contractor claims for additional time or compensation. When Change Orders are issued consistent with the contract’s change provisions, they are not considered to be new procurements and an exemption from competitive bidding is not required for their issuance by the District.

(3) **Change Order Authority:** The District may establish internal limitations and delegations for Change Order authority, including dollar limitations. Dollar limitations on Change Orders are not set by these Rules, but Change Orders are limited by the above definition to changes in the work, within the general scope of the contract, ordered by the District under the changes provisions of the Public Improvement Contract.

(4) **Contract Amendments:** Amendments to a Public Improvement Contract may be made only within the general scope of the original procurement, when the field of competition and contractor selection would not likely have been affected by the contract modification, and the Amendment is made consistent with current legal requirements. Factors to be considered in making that determination include similarities in work, project site, including proximity; if appropriate, relative dollar values, differences in risk allocation and whether the original procurement was accomplished through competitive bidding, competitive proposals, competitive quotes, sole source or emergency contract. Contracting agencies shall determine whether an Amendment:
Local Contract Review Board Rules

(A) Affects only the legal or commercial terms and conditions of the public contract, in which case the Amendment is not considered to be a new procurement and does not require an exemption from competitive bidding; or

(B) Resolution of contract claims; or

(C) Adds work beyond the general scope of the current public contract and its changed provisions (such as a cardinal change in the work), in which case the Amendment is considered to be a new procurement and may not be entered into unless an exemption from competitive bidding is first obtained.