

**RESOLUTION NO. 12-04**

**A RESOLUTION ADOPTING PUBLIC CONTRACTING  
RULES AND PROCEDURES**

**THIS RESOLUTION IS REPEALED BY  
RESOLUTION NO. 22-01**

# OREGON WATER WONDERLAND UNIT II SANITARY DISTRICT

## RESOLUTION NO. 12-04

### A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES

**WHEREAS**, the Oregon Water Wonderland Sanitary District ("District") is an Oregon special district formed pursuant to Oregon Revised Statutes ("ORS") Chapter 450, and is subject to Oregon's public contracting laws; and

**WHEREAS**, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that:

- A. Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and
- B. Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

**NOW, THEREFORE**, the District's Board of Directors, acting as both the governing body of the District and as the District's Local Contract Review Board, hereby resolves as follows:

1. Except as otherwise provided herein, the District hereby adopts the Oregon Attorney General's Model Public Contracting Rules ("Model Rules") as the contracting rules for the District, as such Model Rules now exist or are later modified.
2. That District adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules.
3. The District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.

APPROVED AND ADOPTED on 10-18-12, 2012.

Robert Chase  
Board President

ATTEST:

Robert W. Worthen  
Recording Secretary



## OREGON WATER WONDERLAND UNIT II

SANITARY DISTRICT

55841 SWAN ROAD

BEND, OREGON 97707

PHONE (541) 593-3124 • FAX (541) 593-1111

www.oww2sd.com

### EXHIBIT A

## PUBLIC CONTRACTING RULES AND PROCEDURES

### A. Professional Services.<sup>1</sup>

- 1) **Definition.** "Professional Services" shall be defined to include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: Architect; engineer; surveyor; attorney; bookkeeper; accountant; auditor; computer programmer; artist; designer; consultant; trainer or educator; workshop facilitator.
- 2) **Contracts for Professional Services Other than Architectural, Engineering and Surveying Services and Related Services.<sup>2</sup>**
  - a) A professional services contract totaling, or estimated to total, less than \$(5,000)<sup>3</sup> in the aggregate in either a calendar year or a fiscal year may be awarded by direct appointment, without competitive bidding.
  - b) A professional services contract totaling, or estimated to total, between \$(5,000) and \$(50,000) in the aggregate may be awarded after obtaining at least three informal quotes, according to the procedures for Intermediate Procurement described in ORS 279B.070 and Section E of these Rules.
  - c) A professional services contract totaling, or estimated to total, more than \$(50,000) in the aggregate shall be awarded using competitive sealed proposals as provided in ORS 279B.060, unless exempted from competitive bidding by resolution of the Local Contract Review Board according to the requirements of ORS 279B.085.
  - d) Professional service contracts exempted from competitive proposal processes may be awarded in any manner authorized by the Local Contract Review Board.

### 3) Contracts with Architects, Engineers, and Land Surveyors.<sup>4</sup>

<sup>1</sup> The District has wide latitude to determine the definition of "professional services" that will apply to the District. The definition proposed here includes typical types of services. The Board should consider whether there are other professions that it would like to include.

<sup>2</sup> Architects, engineers, surveyors, and photogrammetrists get special treatment under Oregon law. There was also a legislative change in 2011 that affects how these contracts are obtained. Therefore, those types of professional services contracts are handled separately in these Rules. This section applies to professional services within the definition that are NOT for those types of contracts.

<sup>3</sup> The dollar limit for awarding professional services contracts without competitive bidding is within the discretion of the Board. The Board also has the option of making all professional services exempt from competitive bidding if it so chooses, provided this authority is provided in these Rules. The Rules as proposed allow for smaller contracts (i.e., less than \$5,000) to be awarded without bidding, with increasing formality as the contract amount gets bigger. If the dollar amounts as proposed in parentheses don't meet the District's needs, the Board should consider what, if any, dollar amounts it wants to use instead.

#### 4) Contracts with Architects, Engineers, Land Surveyors, and Photogrammetrists.

- a) A contract for architectural, engineering, surveying, and photogrammetry services may be entered into by direct appointment if the cost of such services for the project will not exceed \$100,000; or in an emergency; or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.
- b) Unless otherwise provided in this Section, contracts for architectural, engineering, surveying and photogrammetry services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these rules.
- c) All contracts for architectural, engineering, surveying and related service shall be entered into consistent with ORS 279C.110, which substantially provides as follows:
  1. The District shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required.
  2. The District may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after selecting a candidate pursuant to the procedures that the District creates to screen and select consultants and to select a candidate.
  3. The District's screening and selection procedures under this section, regardless of the estimated cost of the services for a project, may include considering each candidate's:
    - (a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
    - (b) Resources committed to perform the work and the proportion of the time that the candidate's staff 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) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
    - (e) Availability to the project locale;

---

<sup>4</sup> These rules reflect the recent changes in laws as they apply to these types of professionals, i.e., they must be selected based on qualifications first, with price negotiated only after the selection is made (Qualification Based Selection, or QBS).

- (f) Familiarity with the project locale; and
- (g) Proposed project management techniques.

- 4. If, after following screening and selection procedures, the District determines that two or more candidates are equally qualified, the District may select a candidate through any process that is not based on the candidate's pricing policies, proposals or other pricing information.

**B. Delegation.**

- 1) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the Board of Directors.
- 2) Except as provided in these Rules, the District's Board of Directors shall approve any contract entered into by the District. Authority to approve public contracts shall be delegated only by amendment of these Rules or by resolution of the Board.
- 3) The District Manager may enter into any contract up to \$5,000 without prior approval of the Board, provided the amount of such contract and the purpose therefor is contained in the adopted budget of the District.<sup>5</sup>

**C. Special Procurements and Exemptions.<sup>6</sup>**

- 1) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.
- 2) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

**D. Small Procurements (Under \$5,000).<sup>7</sup>**

- 1) Public contracts, including public improvement contracts, under \$5,000 are not subject to competitive bidding requirements. The Board of Directors or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- 2) The District may amend a public contract awarded as a small procurement beyond the \$5,000 limit in accordance with OAR 137-047-0800, provided the cumulative

---

<sup>5</sup> There is no requirement that the Board delegate any purchasing authority to the manager or any other staff member. However, if the Board chooses to delegate some of its authority to approve contracts, this rule must explicitly state the scope of the authority delegated. The rule as proposed allows the District manager to enter into contracts up to a certain dollar amount, provided the money is budgeted for that purpose. The Board can increase or decrease this authority, take away this authority, or delegate authority to other staff members if it chooses.

<sup>6</sup> This process requires the Local Contract Review Board to adopt findings as required by statute to support the exemption. The Board should seek legal advice before exercising this authority, to be sure all statutory requirements are met.

<sup>7</sup> Unless otherwise stated, a "procurement" under these Rules means a purchase of goods. It does not include professional services or construction-related activities. Dollar amounts for small and intermediate procurements are established by statute.

amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.<sup>8</sup>

**E. Intermediate Procurements.<sup>9</sup>**

- 1) A contract for procurement of goods, or for services which are not Professional Services. estimated to cost between \$5,000 and \$150,000 in a calendar year, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- 2) If the proposed contract is expected to exceed \$25,000, both the specifications for the bid and the bids themselves must be in writing.
- 3) Public improvement contracts advertised or awarded under this section still must comply with all statutory requirements, including those relating to the payment of prevailing wage. For example, a construction contract that exceeds \$50,000 is subject to prevailing wage requirements, even if it is informally bid.
- 4) A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section or to circumvent competitive bidding requirements.

**F. Methods for Awarding Contracts Using Requests for Proposal Process.<sup>10</sup>**

In making an award using the request for proposal process in ORS 279B.060, the District may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the processes described in ORS 279B.060(6)(b), as well as direct appointment of professional services contracts if direct appointment is determined to be most advantageous to the District. The evaluation process(es) to be used shall be stated in the Request for Proposals. OAR 137-047-0261 through 137-047-0263 shall apply to evaluation of proposals.

**G. Emergency Contracts.<sup>11</sup>**

- 1) "Emergency" shall be defined as follows: "Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition."
- 2) The Board President, or, in the absence of the Board President, the District Manager, shall have authority to determine when emergency conditions exist

<sup>8</sup> This is an optional rule, but it allows the District some latitude to continue to use the small procurement exemption if the contract ends up being slightly larger than expected. The rule as proposed allows you to still use this process even if the projected cost of the project ends up exceeding the \$5,000 by up to 25 percent. If this rule is included, the percentage of permitted variance is within the Board's discretion, but it shouldn't be so high as to completely flout the intent of the rule.

<sup>9</sup> The intermediate procurement process refers to the process of obtaining at least three informal quotes, rather than doing a formal bidding process. The dollar amounts for small and intermediate procurements are established by statute. The Board can adopt more stringent limits, but cannot exceed the limits provided in statute.

<sup>10</sup> This rule speaks to the District's authority to use either a traditional invitation to bid or a request for proposal, at its discretion. Statute requires the District's rules to address how it will evaluate responses to RFPs if it chooses to go that route.

<sup>11</sup> If the District wants to authorize someone to enter into contracts in an emergency without competitive bidding, it must have a rule describing emergency contracting authority. The rule proposed here is the "traditional" way this is handled, but the Board has discretion to modify the process if it chooses. If the Board adopts no emergency delegation rule, the District will be required to do a bidding process in an emergency, which may not be feasible.

sufficient to warrant an emergency contract, and shall so declare in writing. The nature of the emergency shall be documented in writing prior to executing the contract, or as soon as feasible thereafter.

- 3) Pursuant to ORS 279B.080, the Board President or Manager may make, or authorize others to make, procurements of goods or services in an emergency, including dispensing with competitive bidding if time is of the essence. The method used for the selection of the contractor shall be documented in writing as soon as is practicable and made part of the District's files.

#### **H. Disposal of Surplus Property.<sup>12</sup>**

- 1) "Surplus Property" is defined as any personal property of the District that has been determined by the Board as being of no use or value to the District.
- 2) The Board or a designee named by the Board may dispose of surplus property as in the manner that is, in the discretion of the Board or designee, deemed most advantageous to the District or the community at large. The method of disposal shall be documented in writing and made part of the District's files.

#### **I. Appeals of Prequalification Decisions and Debarment Decisions.<sup>13</sup>**

- 1) The Local Contract Review Board shall hear all appeals of prequalification and debarment decisions made by the District.
- 2) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply:
  - a. Notices shall be submitted in writing to the District Manager. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
  - b. Upon opening of the hearing, the Board President shall explain the District's decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Board President. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board President.
  - c. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board President. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board President shall close the hearing.

---

<sup>12</sup> There is no statutory process for special districts to dispose of surplus property. Instead, statute requires Districts either to obtain bids and sell to the highest bidder (i.e., a "reverse" competitive bidding process), or establish a rule for disposing of surplus property. The rule as proposed provides a definition of "surplus property" as well as a very wide grant of authority to dispose of it in any appropriate manner. The Board may decide how it chooses to dispose of surplus property, if the rule as proposed doesn't meet the District's needs.

<sup>13</sup> For most Districts, prequalification and debarment procedures are unlikely to come up. However, the Local Contract Review Board is required to establish a process that it will use if the situation does arise. The process described here is offered in lieu of a contested case hearing, which is required under state law unless a simpler procedure is adopted. The Board is free to adopt a different procedure than the one proposed here, if it chooses to do so.

d. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

#### **J. Public Improvement Contracts.<sup>14</sup>**

- 1) Except as provided in these Rules, all public improvement contracts shall be advertised and awarded according to the requirements of Oregon Revised Statutes, chapter 279C.
- 2) "Public improvement" means a project for construction, reconstruction or major renovation on real property by or for the District. "Public improvement" does not include:
  - (A) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
  - (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- 3) Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the Local Contract Review Board has exempted the product from competitive bidding after making the following written findings:
  - (a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;
  - (b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency;
  - (c) There is only one manufacturer or seller of the product of the quality required; or
  - (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [ORS 279C.345]
- 4) Unless otherwise authorized by these Rules, an advertisement for a public improvement contract must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the District may determine.

If the public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

---

<sup>14</sup> Requirements for public improvement contracts are lengthy and complex, and are subject to change. Rather than reprint the statutory requirements here in their entirety, these rules refer to the appropriate statutory cites where more information can be obtained when needed. Legal advice at all stages of the public contract – solicitation, reviewing bids, preparing the contract – is strongly recommended.

All advertisements for public improvement contracts must state:

- (a) The public improvement project;
  - (b) The office where the specifications for the project may be reviewed;
  - (c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
  - (d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
  - (e) The name and title of the person designated for receipt of bids;
  - (f) The date, time and place that the District will publicly open the bids; and
  - (g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act. [ORS 279C.360]
- 5) A solicitation for a public improvement shall comply with all applicable requirements of ORS 279C.365 through ORS 279C.414.
- 6) Contracts for public improvements shall comply with all applicable requirements of ORS 279C.500 through ORS 279C.590 (prevailing wage requirements).

**K. Purchases from Federal Catalogues.**<sup>15</sup> Subject to applicable Board approval requirements stated in these Rules, the District may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

**L. Electronic Advertising.**<sup>16</sup> Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Board shall determine when electronic publication is appropriate, and consistent with the District's public contracting policies. However, regardless of electronic or other advertisement, if a public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

<sup>15</sup> If the District purchases, or may purchase, anything through federal purchasing programs, it must have a rule authorizing it to do so. The rule as proposed gives that authority. The Board may omit the rule altogether if it does not need such authority.

<sup>16</sup> This rule is necessary if the District intends to advertise bids electronically, such as on its website, on something like Craigslist, or on a state procurement website such as ORPIN, or other electronic medium. The \$125,000 requirement for public improvement contracts to be advertised in a trade journal is required by statute.