

**PORT OF BROOKINGS HARBOR
CURRY COUNTY, OREGON**

RESOLUTION NO. 2023-08

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
AMENDING PUBLIC CONTRACTING RULES AND PRESCRIBING
RULES AND PROCEDURES FOR PUBLIC CONTRACTING**

WHEREAS, the Port of Brookings Harbor is an Oregon special district which is subject to Oregon Public Contracting Law; and

WHEREAS, on March 21, 2005, the Commission adopted Resolution No. 368 adopting the Oregon Attorney General's Model Public Contracting Rules ("Model Rules") with some variations; and

WHEREAS, 82nd Oregon Legislative Assembly-2023 Regular Session passed Senate Bill 1047 increasing small and intermediate procurement amounts that takes effect on the 91st day after the date on which the 2023 regular session adjourns; and

WHEREAS, Senate Bill 1047 increases ORS 279B.065 public contract for goods or services that does not exceed a contract price of \$25,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award; and

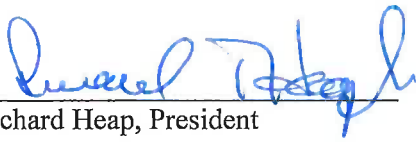
WHEREAS, Senate Bill 1047 increases ORS 279B.070 public contract for goods or services that exceeds a contract price of \$25,000, but does not exceed a contract price of \$250,000; and

WHEREAS, the Port Commission desires to match the amounts as specified in SB 1047.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF BROOKINGS HARBOR THAT:

1. Paragraph (6) of Section V: Competitive Bids; Exemptions: of Exhibit A to Resolution No, 368, is hereby amended to read as follows:
 - (1) Small procurements of goods and services under \$25,000. The Port Manager or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the Port. The Port may amend a public contract awarded as a small procurement beyond the \$25,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.
2. Paragraph (7, A) of Section V: Competitive Bids; Exemptions: of Exhibit A to Resolution No, 368 and 2023-06, is hereby amended to read as follows:
 - (1) A contracting agency may award a procurement of goods or services that exceeds \$25,000 but does not exceed \$250,000 in accordance with intermediate procurement procedures. A contract awarded under this section may be amended to exceed \$250,000 only in accordance with rules adopted under ORS 279A.065 (Model rules generally).

APPROVED AND ADOPTED by the Board of Commissioners this 18th day of October, 2023.


Richard Heap, President

ATTEST:

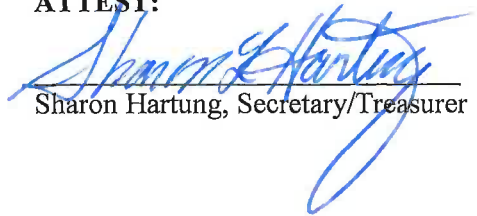

Sharon Hartung, Secretary/Treasurer

EXHIBIT A

PORT OF BROOKINGS HARBOR RULES FOR PUBLIC CONTRACTING

Section I: TITLE

These rules shall be known as the PUBLIC CONTRACTING RULES (“RULES”) FOR THE PORT OF BROOKINGS HARBOR (“PORT”).

Section II: PURPOSE

The purpose of these Rules is to establish procedures for entering into public contracts, pursuant to ORS 279A.065.

Section III: DEFINITIONS

The following definitions shall apply to these Rules:

- a. Board: The Port’s Board of Commissioners.
- b. Competitive Bid: The solicitation of competitive offers using the formal process of advertising, bids and bid opening required by ORS Chapters 279A, 279B, and 279C, and other applicable statutes and these Rules.
- c. Local Contract Review Board: The Port’s Board of Commissioners, unless the Board of Commissioners, by separate act, establishes a different Local Contract Review Board (“LCRB”).
- d. 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.
- e. Public Improvement Contract: “Public improvement” means a project for construction, reconstruction or major renovation on real property by or for a contracting agency. “Public improvement” does not include: (A) Projects for which no funds of a contracting agency 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.

- f. Request for Proposals: The solicitation of competitive offers for a public contract when specification and price will not necessarily be the predominant award criteria.
- g. Competitive Quotes: An informal, written or oral solicitation of offers from competitive vendors, either by advertisement or by initiating a request to vendors.

Section IV: DELEGATION

- (1) Except as otherwise provided in these Rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the Board of Commissioners.
- (2) Unless expressly limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Port Manager or the Port Manager's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080.
- (3) All public contracts estimated to cost \$10,000 or more in a calendar year must be approved by the Board of Commissioners. All public contracts estimated to cost less than \$10,000 in a calendar year may be entered into by the Port Manager or designee without Board approval. However, emergency contracts may be entered into by either the Board or the Port Manager or designee pursuant to Section VII of these Rules, regardless of dollar limits, subject to ORS 294.481.

Section V: COMPETITIVE BIDS; EXEMPTIONS

All public contracts shall be based upon competitive bids unless exempted from competitive bidding by the Local Contract Review Board pursuant to Section VI of these Rules, or unless granted one of the following statutory exemptions:

- 1. Contracts made with other public agencies or the federal government. [ORS 279A.025]
- 2. Public improvements for which no funds of the Port are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection. [ORS 279A.010(aa)]

3. Sole-source expenditures where the rate or price is established by law or ordinance for source selection [ORS 279A.02592(f)]
4. The investment of funds as authorized by law, and other financial transactions that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085 [ORS 279A.025(2)(q)(C)]
5. Sole-source acquisitions following the adoption of proper findings and provision of notice as required by ORS 279B.075 and OAR 137-047-0275.
6. Small procurements of goods and services under \$5,000. The Port Manager or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the Port. The Port 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 amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.
7. (A) A contracting agency may award a procurement of goods or services that exceeds \$10,000 but does not exceed \$150,000 in accordance with intermediate procurement procedures. A contract awarded under this section may be amended to exceed \$150,000 only in accordance with rules adopted under ORS 279A.065 (Model rules generally).

(B) A contracting agency may not artificially divide or fragment a procurement so as to constitute an intermediate procurement under this section.

(C) When conducting an intermediate procurement, a contracting agency shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contracting agency shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort the contracting agency makes to obtain the quotes or proposals.

(D) If a contracting agency awards a contract, the contracting agency shall award the contract to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility

*Section Amended
Updated Version to Reflect
Resolution 2023-08
in Policy Book (TP)*

under ORS 279B.110 (Responsibility of bidders and proposers). [2003 c.794 §54; 2013 c.66 §2]

8. Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals under ORS 279.835 to ORS 279.855. [ORS 279A.025(4)].
9. Contracts for purchase or lease of personal property according to the requirements of ORS 279A.205 through 279A.215 (“Cooperative Procurements”).
10. Purchases from Federal Catalogs. By Resolution No. 370, the Local Contract Review Board has adopted the following rules for procurement of goods from federal catalogs:

Subject to applicable Board approval requirements stated in the Port’s Contracting Rules, the Port may purchase goods from federal catalogs 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 LCRB that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

Section VI: SPECIAL PROCUREMENTS AND EXEMPTIONS

- (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 LCRB may authorize the contract to be awarded using the Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

Section VII: EMERGENCY CONTRACTS

- (1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”
- (2) The Board Chair, the Port Manager, or a designee of the Port Manager shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.
- (3) Emergency contracts may be awarded as follows:
 - a. Goods and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080. Authority for entering into emergency contracts may be delegated as provided in these Rules.
 - b. Public Improvements. The Port hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

Section VIII: AWARD OF CONTRACT

After bids are opened or quotes reported to the Local Contract Review Board, and after it is determined that the contract is to be awarded, the contract shall be awarded to the “lowest responsible bidder” as defined in ORS 278A.010.

Section IX: BID REJECTION

The Board, or an official designated by the Board, may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so. The reasons for the rejection shall be recorded, pursuant to ORS 279B.100 and 297C.395.

Section X: REVOCATION OF PREQUALIFICATION OR DEBARMENT OF BIDDER

The Board, or an official designated by the Board, may debar any person from bidding on a contract after providing notice and a hearing as provided in ORS 279B.120 and 279B.130, as applicable.

Section XI: APPEAL OF PREQUALIFICATION AND DEBARMENT DECISIONS

A person who has been denied prequalification or debarred as a bidder may appeal such decision to the Board according to the following procedures as adopted by the Local Contract Review Board in Resolution No. 370.

Review of the Port's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the Local Contract Review Board:

- a. Notices shall be submitted in writing to the Port Manager. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
- b. Upon opening of the hearing, Port staff shall explain the Port'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 Chair. 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 Chair.
- c. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the Port's decision shall be provided time to be heard, with time limits established by the Board Chair. 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 Chair shall close the hearing.
- d. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

SECTION XII: RULES AND PROCEDURE FOR PUBLIC CONTRACTING INCLUDING PERSONAL SERVICES

For non-state agencies (such as special districts), "personal services" are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts, and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists,

architects, engineers, land surveying and related services (procured under ORS 279C.105 or 279C.110).

Note: The Attorney General's Public Contracting Code and Model Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no "default" rules for personal services contracts. A district that wants to enter into personal services contracts without competitively bidding those contracts, must adopt rules for doing so.

Purpose

The purpose of this policy is to establish guidelines for authorization regarding personal services contracts, governed by State statutes, primarily ORS 279A and 279C, as modified and adopted by the Board of Commissioners.

Policy

The Port of Brookings Harbor, as a special district, is subject to the Model Rules adopted by the Attorney General under ORS 279A, 279B, and 279C, which includes Division 46, 47, 48 and 49 in the Attorney General's Public Model Rules for contracting activities. Division 46 and 47 are applicable to Personal Services contracts, while Division 48 rules are limited to professional services to be performed by a licensed Architect or a Registered Professional Engineer (A&E). The following policy governs all personal services contracts; subset apply only to A&E Contracts, and are identified as such.

Definition

Personal services shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The Port Manager or their designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

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

Selection Process for A&E Consultants

a. Direct Appointment Process (Up to \$100,000)

A&E Consulting Services may be entered into a contract directly, when the estimated cost does not exceed \$100,000, as set forth in OAR 137-048-0200.

b. Informal Selection Process (Up to \$250,000)

When the estimated cost of A&E Consultant Services is not expected to exceed \$250,000, the informal selection procedure set forth in OAR 137-048-0210, shall be used.

c. Formal Selecting Process (Over \$250,000)

The formal procedure shall be used whenever the estimated cost of A&E Consultant Services exceeds \$250,000, using the formal selection procedure set forth in OAR 137-048-0220.

Procedures

The following procedures must be used for solicitation of A&E contracts:

Competitive Procurement

a. Direct Appointment Process

A&E Consultation Services may be appointed directly without completing the competitive procurement process if the contract is no more than \$100,000. The appointment can include, but not be limited to: District's current list of consultants (OAR 137-048-0120); or another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement.

b. Informal Selection Process

When the estimated cost is equal to or less than \$250,000 the following informal selection process should be used:

- i. Written Solicitation - Solicitations inviting written proposals shall be sent to a minimum of five (5) prospective A&E Consultants to include at least:
 - (1) Description of project
 - (2) Anticipated contract performance schedule
 - (3) Conditions or limitations
 - (4) Date and time proposals are due
 - (5) Criteria upon qualified consultant will be selected
 - (6) Statement that proposer is responding at the own expense

(7) Statement directing proposers to protest procedures set forth in Division 48 of these rules.

- ii. Review Proposals - All proposals shall be reviewed, and the three most qualified consultants selected and ranked.
- iii. Competitive Informal Selection - The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking based on criteria which include, but not limited to consultant's capacity to perform; number of experienced staff; performance history; project approach and design philosophy; compensation information; geographic proximity to the project.
- iv. Negotiate Scope of Services- The District shall discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to a compensation and performance schedule with the highest ranked consultant.

Note: If the scope of a project is revised during negotiations and the estimated cost of the consultant's services exceeds \$250,000, then the informal process will be terminated, and the services of a qualified consultant shall be solicited using the formal selection process below.

c. Formal Selection Process

This formal procedure shall be used whenever the estimated cost of A&E consultant services exceeds \$250,000. The Board of Commissioners must authorize the solicitation for A&E consultant services when services exceed \$250,000.

- i. Request for Qualifications (RFQ) - Used to develop a short list of at least three qualified Consultants. Must be followed by a Request for Proposal.
- ii. Request for Proposal (RFP) - Whether preceded by an RFQ, the RFP shall describe or contain a project description, the evaluation process, whether interviews are anticipated, closing date and time, District's reservation to reject any or all proposals, contract requirements, and a sample contract.

(a) The Request for Proposals (RFP) is to include at a minimum:

- (1) Background information and project description;
- (2) Evaluation Criteria for Selection;
- (3) Conditions or Limitations;
- (4) Whether interviews are possible;
- (5) Proposal Due Date;
- (6) Reservation of the right to: seek clarification, negotiate, and reject any and all proposals;
- (7) Statement that Proposers responding at own expense;
- (8) Protest Procedures
- (9) Special Contract Requirements;
- (10) Statement of whether a pre-Proposal meeting will be held;
- (11) Sample Contract

- (b) District shall advertise each RFP at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14) calendar days before the closing date of the RFP.
- iii. Pre-proposal meeting - May be held for all interested consultants to discuss the proposed project and the required consultant services.
- iv. RFP Analysis - Consultant selection committee shall review, score and rank all responsive proposals according to the criteria included in the RFP.
- v. Contract Negotiations - Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement.
- vi. Contract Award - Only the Board of Commissioners has the authority to award a contract for services.

d. Solicitation Requirements

All formal solicitations require an RFP or RFQ, and must be in writing and advertised at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14) calendar days before the closing date of the RFP or RFQ. Upon completion of consultant selection and competitive procurement procedures, refer to Purchasing Authority Policy.

SECTION XIII: DISPOSAL OF SURPLUS PROPERTY

- (1) "Surplus Property" is defined as any personal property of the Port that has been determined by the Port Manager or designee as being of no use or value to the Port.
- (2) The Port Manager or designee may dispose of surplus property by submitting a request to the Board of Commissioners for a declaration that certain property is of no further use or value to the Port. The Board of Commissioners shall, by resolution, declare such property "surplus" and authorize the means by which the Port Manager may dispose of the property in any appropriate manner. The Board of Commissioners may require the Port Manager to obtain an appraisal of the property prior to disposition.
- (3) Surplus property may be disposed of in the manner that is most advantageous to the Port or the community at large, including, but not limited to, the following:

- a. Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the Port may purchase surplus property from the Port only at an advertised auction, and only if the employee submits the highest bid for such property.
- b. Donation. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.
- c. Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

SECTION XIV: CONCESSION AGREEMENTS

- (1) A “concession agreement” is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned by the Port, and under which the concessionaire makes payments to the Port based, in whole or in part, on the concessionaire’s sales revenues. The term “concession agreement” does not include an agreement, which is merely a flat-fee or per-foot rental, lease, license, permit or other arrangement for the use of public property.
- (2) Concession agreements are not required to be competitively bid. However, when it is in the Port’s best interest to do so, the Port may obtain competitive proposals for concession agreements using the procedures described in ORS 297B.060.

SECTION XV: RULEMAKING AUTHORITY

The Board shall have rulemaking authority to carry out its power and duties. Rules shall be adopted by ordinance or resolution after public notice has been given by one publication in newspaper(s) having general circulation throughout the county at least seven (7) days prior to adoption of the ordinance or resolution at a public meeting.

SECTION XVI: ADDITIONAL AUTHORITY OF THE BOARD

In addition to the powers and duties established by these Rules, the Board shall have such additional powers as are authorized by law.

CURRY COUNTY, OREGON
PORT OF BROOKINGS HARBOR
LOCAL CONTRACT REVIEW BOARD

LCRG RESOLUTION 370

RESOLUTION OF THE LOCAL CONTRACT REVIEW BOARD
ADOPTING PUBLIC CONTRACTING RULES

WHEREAS, the Board of Commissioners of the Port of Brookings Harbor (“Port”) serves as the Port’s Local Contract Review Board (“LCRB”); and

WHEREAS, amendments to Oregon’s Public Contracting Code, which took effect March 1, 2005, require certain rules to be adopted by the Port’s Local Contract Review Board in order to authorize adoption of required public contracting rules.

NOW, THEREFORE, BE IT RESOLVED THAT the LCRB adopts the following rules:

Electronic Advertising. Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertising of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Port Manager or designee shall have the authority to determine when electronic publication is appropriate, and consistent with the Port’s public contracting policies.

Personal Services. Pursuant to ORS 279C.100(5), “Personal Services” is defined as follows:

“Personal Services” shall be defined to include those services that require technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to, architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers and consultants.”

Appeals. Pursuant to ORS 279B.425(5), the process for hearing appeals of prequalification or debarment decisions shall be as provided in ORS 279.425, and as follows:

- a. Notices shall be submitted in writing to the Port Manager. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
- b. Upon opening of the hearing, Port staff shall explain the Port's decision being appealed and the justification hereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Board Chair. 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 Chair.
- c. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the Port's decision shall be provided time to be heard, with time limits established by the Board Chair. 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 Chair shall close the hearing.
- d. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

Federal Catalog Procurements. Subject to the applicable Port approval requirements stated in the Port's Contracting Rules, the Port may purchase goods from federal catalogs 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.

PASSED AND ADOPTED on this 21st day of March, 2005.

RESOLUTIONS AND AMENDMENTS: PUBLIC CONTRACTING RULES

Resolution No.	Description	Adopted Date
368	Public Contracting Rules & Procedures	March 21, 2005
370	Public Contracting Rules Amendment – Electronic Advertising, Personal Services, Appeals & Federal Catalog Procurements	March 21, 2005
484	Section 12 Personal Services Amendment	December 13, 2017
525-B	Section 4 Delegation Amendment – paragraph (3) increase limits to \$10,000.	September 24, 2019
545	Selection Process for A&E Consultants Amendment – Supersedes Resolution No. 484.	September 15, 2020
2023-6	Intermediate Procurements Amendment – Increased limit from \$10,000 to \$150,000.	June 21, 2023

Oregon State Legislature (<http://www.oregonlegislature.gov/>)

Oregon Legislative Information (/liz/)

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2023 Regular Session

SB 1047 Enrolled (/liz/2023R1/Downloads/MeasureDocument/SB1047)

Overview ▼

At the request of:	(at the request of Governor Tina Kotek)
Chief Sponsors:	Senator Wagner (https://www.oregonlegislature.gov/wagner)
Regular Sponsors:	Representative Grayber (https://www.oregonlegislature.gov/grayber)
Bill Title:	Relating to equity in public procurements; and prescribing an effective date.
Catchline/Summary:	Raises contract price threshold under which contracting agency may apply certain solicitation and procurement methods for public contracts. 📌
Chapter Number:	Chapter 127
Fiscal Impact:	Has Minimal Fiscal Impact
Revenue Impact:	No Revenue Impact
Measure Analysis:	Staff Measure Summary / Impact Statements (/liz/2023R1/Measures/Analysis/SB1047)
Current Location:	Chapter Number Assigned
Current Committee:	()
Current Subcommittee:	
Subsequent Referral(s):	
Potential Conflicts of Interest/Vote Explanations:	Potential Conflicts of Interest/Vote Explanation Documents (https://www.oregonlegislature.gov/pcive/Forms/Display.aspx?View={F16B1F7B-33C4-4EA7-AA10-9D3022EE155C}&FilterField1=Session&FilterValue1=2023R1&FilterField2=Measure&FilterValue2=SB1047)

Measure History ▼

2-27 (S)	Introduction and first reading. Referred to President's desk.
3-1 (S)	Referred to Labor and Business.
3-23 (S)	Public Hearing and Work Session held. (/liz/2023R1/Committees/SLB/2023-03-23-08-00/SB1047/PAW/Details)🔗 (/liz/2023R1/Committees/SLB/2023-03-23-08-00)
3-28 (S)	Work Session held. (/liz/2023R1/Committees/SLB/2023-03-28-08-00/SB1047/WRK/Details) 🔗 (/liz/2023R1/Committees/SLB/2023-03-28-08-00) 📌
3-30 (S)	Recommendation: Do pass.
3-30 (S)	Second reading.
4-3 (S)	Carried over to 04-04 by unanimous consent.
4-4 (S)	Carried over to 04-05 by unanimous consent.
4-5 (S)	Carried over to 04-06 by unanimous consent.
4-6 (S)	Carried over to 04-10 by unanimous consent.
4-10 (S)	Third reading. Carried by Patterson. Passed. Ayes, 19; Nays, 9--Boquist, Findley, Girod, Hayden, Linthicum, Robinson, Smith DB, Thatcher, Weber; Excused, 2--Gorsek, Hansell. 📌
4-11 (H)	First reading. Referred to Speaker's desk.
4-13 (H)	Referred to Business and Labor.
4-26 (H)	Public Hearing held. (/liz/2023R1/Committees/HBL/2023-04-26-08-00/SB1047/PUB/Details) 🔗 (/liz/2023R1/Committees/HBL/2023-04-26-08-00)

5-3 (H)	Work Session held. (/lilz/2023R1/Committees/HBL/2023-05-03-08-00/SB1047/WRK/Details) ↻ (/lilz/2023R1/Committees/HBL/2023-05-03-08-00)
5-4 (H)	Recommendation: Do pass.
5-8 (H)	Second reading.
5-9 (H)	Rules suspended. Carried over to May 11, 2023 Calendar.
5-11 (H)	Rules suspended. Carried over to May 15, 2023 Calendar.
5-15 (H)	Rules suspended. Carried over to May 16, 2023 Calendar.
5-16 (H)	Third reading. Carried by Grayber. Passed. Ayes, 39; Nays, 18--Boice, Boshart Davis, Cate, Cramer, Diehl, Elmer, Goodwin, Helfrich, Hieb, Levy B, Lewis, McIntire, Morgan, Osborne, Reschke, Scharf, Stout, Wright; Excused, 2--Breese-Iverson, Smith G; Excused for Business of the House, 1--Speaker Rayfield.
5-18 (S)	President signed.
5-23 (H)	Speaker signed.
5-30 (S)	Governor signed.
6-2 (S)	Chapter 127, 2023 Laws.
6-2 (S)	Effective on the 91st day following adjournment sine die.

Scheduled Events

Committee Meetings

No Meetings Currently Scheduled

Floor Sessions

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Enrolled
Senate Bill 1047

Sponsored by Senator WAGNER; Representative GRAYBER (at the request of Governor Tina Kotek)

CHAPTER

AN ACT

Relating to equity in public procurements; creating new provisions; amending ORS 279B.065, 279B.070 and 279C.335; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 279B.065 is amended to read:

279B.065. (1) A contracting agency may award a [*procurement of*] **public contract for goods or services that does not exceed [\$10,000] a contract price of \$25,000** in any manner the contracting agency deems practical or convenient, including by direct selection or award. A contract awarded under this section may be amended to exceed [*\$10,000*] **\$25,000** only in accordance with rules adopted under ORS 279A.065.

(2) A state contracting agency that awards a public contract with a contract price of \$10,000 or more using a method permitted under this section shall document in the state contracting agency's procurement file the actions the state contracting agency takes to:

(a) Comply with ORS 200.035; and

(b) Consider for the procurement businesses or enterprises that the Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.

~~[(2)]~~ (3) A contracting agency may not artificially divide or fragment a procurement so as to constitute a small procurement under this section.

SECTION 2. ORS 279B.070 is amended to read:

279B.070. (1) A contracting agency may award a [*procurement of*] **public contract for goods or services that exceeds [\$10,000] a contract price of \$25,000, but does not exceed [\$150,000] a contract price of \$250,000, [in accordance with intermediate procurement procedures] as provided in subsection (4) of this section.** A contract awarded under this section may be amended to exceed [*\$150,000*] **\$250,000** only in accordance with rules adopted under ORS 279A.065.

(2) A state contracting agency that awards a public contract with a contract price of \$10,000 or more using a method permitted under this section shall document in the state contracting agency's procurement file the actions the state contracting agency takes to:

(a) Comply with ORS 200.035; and

(b) Invite to participate in the procurement qualified businesses or enterprises that the Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.

~~[(2)]~~ (3) A contracting agency may not artificially divide or fragment a procurement so as to constitute an intermediate procurement under this section.

~~[(3)]~~ (4) When conducting an intermediate procurement, a contracting agency shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contracting agency shall keep a written record of the sources of the quotes or pro-

posals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contracting agency shall make a written record of the effort the contracting agency makes to obtain the quotes or proposals.

[(4)] (5) If a contracting agency awards a **public** contract, the contracting agency shall award the **public** contract to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.

SECTION 3. ORS 279C.335 is amended to read:

279C.335. (1) A contracting agency may award a public improvement contract only in response to competitive bids, except for:

(a) A public improvement contract with a qualified nonprofit agency that provides employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

(b) A public improvement contract that is exempt under subsection (2) of this section.

(c) A public improvement contract with a value of less than [~~\$10,000~~] **\$25,000. A state contracting agency that awards a public improvement contract with a contract price of \$10,000 or more under this paragraph shall document in the state contracting agency's procurement file the actions the state contracting agency takes to:**

(A) Comply with ORS 200.035; and

(B) Invite to participate in the procurement qualified businesses or enterprises that the Certification Office for Business Inclusion and Diversity certifies under ORS 200.055.

(d) A public improvement contract with a contract price that does not exceed \$100,000 made under procedures for competitive quotes in ORS 279C.412 and 279C.414.

(e) A contract to repair, maintain, improve or protect property the Department of Veterans' Affairs obtains under ORS 407.135 and 407.145 (1).

(f) An energy savings performance contract that a contracting agency enters into in accordance with rules of procedure adopted under ORS 279A.065.

(g) A public improvement contract with an estimated contract price of \$250,000 or less that a contracting agency awards to an emerging small business certified under ORS 200.055 and funds with moneys from the Emerging Small Business Account established under ORS 200.180. A contracting agency that awards a public contract exempted from competitive bidding under this paragraph shall solicit competitive quotes as provided in ORS 279C.414 before making the award.

(2) Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

(A) How many persons are available to bid;

(B) The construction budget and the projected operating costs for the completed public improvement;

(C) Public benefits that may result from granting the exemption;

(D) Whether value engineering techniques may decrease the cost of the public improvement;

(E) The cost and availability of specialized expertise that is necessary for the public improvement;

(F) Any likely increases in public safety;

(G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;

(H) Whether granting the exemption will affect the sources of funding for the public improvement;

(I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure;

(L) Whether the public improvement will be occupied or unoccupied during construction;

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

(c) As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public im-

provement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(c) Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3).

(5)(a) A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

(b) Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.

(c) The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.

(d) If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

(e) If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

(6) The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section.

SECTION 4. The Oregon Department of Administrative Services shall promote and apply a policy of diversity, equity and inclusion in public contracting by engaging in efforts to increase public contracting opportunities for businesses and enterprises that the Certification Office for Business Inclusion and Diversity has certified under ORS 200.055. The department shall undertake the following actions:

(1) Review and evaluate the recommendations of a statewide study of disparities in awarding public contracts;

(2) Develop a plan to implement the priority recommendations set forth in the study described in subsection (1) of this section;

(3) Implement the priority recommendations set forth in the study described in subsection (1) of this section; and

(4) Report to the Governor's Policy Advisor for Economic and Business Equity concerning the department's plan and implementation every six months until the earlier of the date on which the department has fully implemented the priority recommendations or June 30,

2025. The department shall submit the first report not later than 90 days after the completion of the study described in subsection (1) of this section.

SECTION 5. Section 4 of this 2023 Act and the amendments to ORS 279B.065, 279B.070 and 279C.335 by sections 1 to 3 of this 2023 Act apply to procurements that a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or otherwise solicit the procurement, to public contracts into which the contracting agency enters on or after the operative date specified in section 6 of this 2023 Act.

SECTION 6. (1) The amendments to ORS 279B.065, 279B.070 and 279C.335 by sections 1 to 3 of this 2023 Act become operative on January 1, 2024.

(2) A contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary for the contracting agency to undertake and exercise all of the duties, functions and powers conferred on the contracting agency by the amendments to ORS 279B.065, 279B.070 and 279C.335 by sections 1 to 3 of this 2023 Act.

SECTION 7. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate April 10, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 16, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State