

LOCAL
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July 16, 2020

Via Email Only To: brian@yamhillfire.org

Brian Jensen, Fire Chief
Yamhill Fire Protection District
P.O. Box 249
Yamhill, OR 97148-0249

Re: Public Contracting Rules Packet

Dear Brian:

Enclosed are a resolution, notice, draft findings and accompanying Public Contracting Rules drafted to replace the District's Rules adopted in 2014 and address statutory amendments adopted in the interim. ORS Chapters 279A, 279B and 279C (the "Public Contracting Code" or "Code") has been in place since March 1, 2005. Since that date, the legislature has amended some aspect of the Code nearly every session. The most recent changes went into effect January 1, 2020. Per ORS 279A.065, the Attorney General's Model Rules govern public contracting. The statute goes on, however, to allow a public entity to adopt its own rules of procedure which may or may not include portions of the Attorney General's Model Rules.

Rules

To a great extent, the enclosed rules reflect the substance of the Attorney General's Model Rules to ensure compliance with the Code. Rules not dictated by statute have been modified to grant the District the greatest level of flexibility, and to simplify them as much as possible. For instance, in drafting these rules, I omitted the Attorney General's provisions allowing your entity to consider debt to the state when assessing the contractor's qualifications. If that is an important factor, that can always be added into a specific solicitation. Additionally, we filled in holes created by the Code and the Model Rules, which otherwise would not have allowed flexibility when purchasing and surplus personal property or the use of requests for proposal for public improvement contracts.

These 2020 rules address legislative amendments adopted through the 2019 legislative session, reflecting the following statutory amendments:

- 1) The 2019 legislature modified its Qualification Based Solicitation (QBS) requirements for Division 48 consultants (primarily architects and engineers) to allow price to be used as award criteria, subject to certain requirements and limitations.
- 2) For contracts over \$500,000, 2019 legislation now requires contracting agencies to place amounts deducted as retainage into interest bearing escrow accounts, unless the contractor requests an alternative, non-cash retainage method.
- 3) As of July 1, 2014, Construction Manager/General Contractor (CM/GC) Contracts are permitted only pursuant to the Attorney General's CM/GC Model Rules, even for entities which have adopted their own rules.
- 4) In 2013, the legislature increased the small procurement threshold for goods and service contracts from \$5,000 to \$10,000.
- 5) In 2011, the legislature added photogrammetric mapping and transportation planning service providers to Division 48. Please note that the only transportation planners subject to these new requirements are those which will perform services on projects subject to the National Environmental Policy Act (NEPA). In other words, Division 48 should only apply to transportation planning services provided on federally funded projects.

The final section of the attached Rules includes a set of exemptions addressing standard purchasing needs not otherwise covered by the Code or the Model Rules. Please review all Rules and the implementing Resolution carefully to ensure the chosen procedures and exemptions meet your District's need. If not, to the extent permitted by the Code, we can tailor them accordingly.

As you can see, the term "Contracting Agency," as used in the Rules and the Resolution, references the District, but also includes the District's chief administrative officer, his or her designee and any other purchasing agent, as identified by District policy. The authority of the Contracting Agency is, however, subject to all other District policies. Therefore, if your District's policies are not clear as to a District officer's authorized level of spending, this is a good time to determine that authority, and what contracting amounts must come back to the Board of Directors. If you wish, we can help in drafting or updating such purchasing authority policies.

Adoption Process

Because the amended public contracting rules modify prior class exemptions for both the purchase of certain types of goods and services and public improvement contracts, two separate exemption adoption procedures apply. ORS 279B.085 addresses “special procurements” (otherwise known as exemptions for the purchase of goods and services). This provision requires the making of specific findings, which are included in the attached Resolution. Notice of the request for these classes of special procurements must be given at least seven days prior to the approval of the classes. The notice must be published in at least one newspaper of general circulation in the District and in as many additional issues and publications as you may desire. ORS 279B.055(4)(b).

ORS 279C.355 governs the process for granting exemptions to public improvement contracts. It requires a slightly different set of findings, which are also set forth in the enclosed Resolution. Such exemptions require the holding of a public hearing. Notice of the hearing must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

As required, the enclosed Notice states that the public hearing is for the purpose of taking comments on the District’s draft findings supporting the exemption of certain classes of contracts from competitive bidding requirements. At the time the notice is published, copies of the draft findings must be made available to the public. At the District’s option, the notice may describe the process by which the findings will be adopted and may indicate the opportunity for any further public comment. I have omitted this information, but can add it, at your direction.

After filling in the blanks within the enclosed Notice, please publish it in the *Daily Journal of Commerce* or other trade newspaper of general statewide circulation at least 14 days before the hearing. The same notice must also be published in at least one newspaper of general circulation in the District at least 7 days before the hearing. The notice may also be posted on the door of the building where the meeting will be held, not later than three days prior to the date of meeting.

As indicated on the Notice, the hearing will be at a joint meeting of both the Board of Directors and the Local Contract Review Board (i.e., in the meeting, the Board will be wearing both “hats”). The Resolution and Rules may only be adopted by the Local Contract Review Board after the public hearing (i.e., after the District has provided an opportunity for any interested person to appear and present comment). The Board can conduct other Board business at the meeting as well, so long as this is reflected in the Board agenda.

Brian Jensen, Fire Chief
July 16, 2020
Page 4 of 4

Please call with any questions.

Sincerely yours,

Carolyn H. Connelly

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Enclosures

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