

Exemptions from Competitive Bidding

The following regulation is based on rules adopted by the Oregon Department of Administrative Services (DAS) exempting certain public contracts or classes of public contracts from competitive bidding. Rules in their entirety may be found in Oregon Administrative Rules, Chapter 125, Divisions 300-360. Districts should review carefully for applicability to their own purchasing activities, modifying existing language to meet local needs. Districts should develop specific findings for each exemption from competitive bidding it adopts below as required by the definitions of findings ORS 279.011 and as required by ORS 279.015 (2)(a) and (b) to ensure that the exemption will not encourage favoritism in the awarding of public contracts, substantially diminish competition and that the awarding of a public contract under the district's exemption will result in a cost savings to the district. The Findings of Fact and Conclusions of Compliance with Law that follow each exemption are intended as a model only and should be modified as necessary to meet individual district needs. **All** exemptions that affect public improvement contracts must be heard at a public hearing prior to adoption, as required by ORS 279.015 (3).

All public contracts shall be based upon competitive bids or proposals, except the following:

- Contracts which have been specifically exempted under ORS 279.015 (2) or 279.017;
- Contracts excepted under ORS 279.015 subsections (1)(a) through (h) and subsections (4) and (5); and
- Contracts covered by the class exemptions in the following set of rules developed pursuant to ORS 279.015 (2) and (5) and based on Oregon Administrative Rules, Chapter 125, Divisions 300 through 360.

I. BRAND NAMES OR PRODUCTS, "OR EQUAL," SINGLE SELLER AND SOLE SOURCE

- A. The district may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule.
- B. The Board, acting as the Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering,

specialized expertise required, public safety and technical complexity, generally do not apply to this exemption.

- C. Solicitation specifications for public contracts of the district shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections D. and E. of this rule.
- D. The district may specify a particular brand name, make or product suffixed by “or equal,” “or approved equal,” “or equivalent,” “or approved equivalent,” or similar language if there is no other practical method of specification after documenting the procurement file with the following:
 - 1. A brief description of the solicitation(s) to be covered, including contemplated future purchases;
 - 2. The brand name, mark or product to be specified; and
 - 3. The reasons the district is seeking this procurement method, which shall include any of the following findings in the procurement file:
 - a. It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or
 - b. Specification of the brand name, mark or product would result in cost savings to the agency; or
 - c. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
 - 4. The district shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals.
- E. The district may purchase a particular product or service available from only one source, after documenting the procurement file with the district’s findings of current market research to support the determination that the product is available from only one seller or source. The district’s findings shall include:
 - 1. A brief description of the contract or contracts to be covered, including contemplated future purchases;
 - 2. Description of the product or service to be purchased; and
 - 3. The reasons the district is seeking this procurement method, which shall include any of the following:
 - a. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies or services; or
 - b. The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or
 - c. The particular product is for use in a pilot or an experimental project.
- F. The district may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the information required in F.1.-3. of this rule below, and subject to the following:

1. If the total purchase is \$2,500 or more but does not exceed \$75,000, and a comparable product or service is not available under an existing state cooperative purchasing contract, competitive quotes shall be obtained by the district and retained in the procurement file;
 2. If the purchase does not exceed \$75,000, and the comparable product or service is available under an existing state cooperative purchasing contract, authorization from DAS, Central Purchasing, to proceed with the acquisition shall be first requested and obtained. The acquisition process would then be subject to the requirements and documentation in this rule; or
 3. If the amount of the purchase exceeds \$75,000, the product or service shall be obtained through competitive bidding unless a specific exemption is granted by the LCRB.
- G. If the district intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, the district will so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$75,000, this shall be stated in the advertisement for bids or proposals.

Findings of Fact/Conclusion of Compliance with Law

See the district's rule governing Contracts Under Certain Dollar Amounts, Section V., subsection A.1.-4. and related Findings of Fact and Conclusion of Compliance with Law.

II. ADVERTISING CONTRACTS, PURCHASE OF

- A. The district may purchase advertising in any media, regardless of dollar amount, without competitive bidding.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, public safety and technical complexity, generally, do not apply to this rule.

Findings of Fact

The district traditionally purchases advertising in newspapers. The following findings relate primarily to newspapers and written publications. However, the district may also purchase advertising for student activities or educational programs in other media, such as radio or television, where these findings apply:

1. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves;

2. Competition to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the district is limited. There are two newspapers of general circulation in the Brookings-Harbor area. These include the *Curry Coastal Pilot* and *The Oregonian*. There is only one daily newspaper of general statewide trade circulation in which most government agencies routinely advertise procurements of public improvements or construction, the *Daily Journal of Commerce*. There is only one such weekly newspaper, the *Business Journal*;
3. Cost savings are difficult to quantify where the sources are unique and not interchangeable. For example, the newspaper industry's practice is to establish advertising contract rates for advertising purchasers. The purchaser can maximize cost savings through a contractual commitment to advertise, based on volume, format and placement of advertisements. Where the volume of purchases warrants, the district may enter into advertising contracts to get the best price on its advertising needs;
4. Advertisements may be placed to satisfy legal notice or Board policy requirements. For example, the district advertises its public procurements in the local newspaper of general circulation, the *Curry Coastal Pilot* as required by OAR 137-030-0015 (2). If the procurement is for a public improvement or construction project with an estimated cost in excess of \$125,000, the district shall advertise for bids or proposals in the one daily trade newspaper of general statewide circulation, the *Daily Journal of Commerce*, or in the one weekly trade newspaper, the *Business Journal* as required by OAR 137-040-0010 (1);
5. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area and other publications, as appropriate;
6. The communities served by the district rely upon its use of the local daily newspaper as a central source of news and information regarding district activities;
7. It is unknown whether contracts for advertisements placed with radio, television or other broadcast media are going to result in cost savings if not placed for competitive bid or request for proposal (RFP). If possible savings could be obtained through competitive means, the district would attempt to obtain competitive quotes or bids, as appropriate.

Conclusion of Compliance with Law

Due to limited competition and unique nature of sources, it is unlikely that this class exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts, as required by ORS 279.015 (2)(a). Further, any contracts awarded under this exemption would result in a cost savings available to the district as required by ORS 279.015 (b), where the district can achieve volume savings through contracts for advertising with a particular media source. This exemption of a class of contracts complies with the statutory requirements.

III. ADVERTISING CONTRACTS, SALE OF

- A. The district may sell advertising for district publications and activities, regardless of dollar amount, without competitive bidding, including school newspapers, yearbooks, athletic programs, drama or music programs and the like.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, public safety and technical complexity, generally, do not apply to this exemption.

Findings of Fact

- 1. Sales of advertising for student activities are generally other fund revenues, where student groups solicit advertisements from local businesses to help with the cost of the activity itself. A common example is the sale of advertising in school newspapers and yearbooks. The circulation of the newspaper and yearbook is limited to the students, teachers, parents and interested members of the community associated with the activities of that particular school. Due to the limited circulation and audience, the businesses that participate by purchasing advertising do so partly in the spirit of good will. Any business is welcome to place an advertisement in the school newspaper or yearbook; all it needs to do is to contact any district school which publishes one. The district itself would not achieve any increased revenue to the General Fund by seeking competitive bids or proposals for such advertising. This holds true for other student activities, such as athletics, drama or music events and the like.

Conclusion of Compliance with Law

These findings indicate that it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). Any business or individual who wishes to advertise in this manner may do so by simply contacting the student group responsible for the activity.

The sale of advertising for student activities such as school newspapers, yearbooks, athletic, drama or music programs would not benefit from competitive procurement. Such a requirement would place an unnecessary burden on the student group's activity and there is no financial advantage to the district in doing so. Consequently, the cost savings test of ORS 279.015 (b) is not an issue. This exemption of a class of contracts complies with the requirements of law.

IV. CONTRACT AMENDMENTS (INCLUDING CHANGE ORDERS AND EXTRA WORK)

- A. An amendment for additional work or product reasonably related to the scope of work under the original contract including change orders, extra work, field orders or other change in the

original specifications that increases the original contract price, may be made with the contractor, in an unlimited dollar amount and without competitive bidding, subject to the following conditions:

1. The original contract was let by competitive bidding or RFP process, unit prices or additive alternates were provided that established the cost basis for the additional work or product and a binding obligation (a contract) exists between the parties covering the terms and conditions of the additional work; or
 2. The original contract was let pursuant to a declaration of emergency, in accordance with ORS 279.015 (4)(a), (5) and the district's rule governing Emergency Contracts, Section VI.; or
 3. The additional work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original contract and such regulations or ordinances, as provided in ORS 279.318, either were not cited in the original contract or were enacted or amended after submission of the successful bid or proposal; or
 4. The original contract was for the renovation or remodeling of a building.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.
- C. Except for amendments entered into under subsection A.1.-4. of this rule, the total increase resulting from all amendments to a contract shall not exceed 20 percent of the initial contract price. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33 percent of the initial contract price.
- D. If the original contract required the contractor to provide a performance and payment bond and the district has terminated the contractor and notified the contractor's surety of the termination, the district may allow the contractor's surety an opportunity to provide a substitute contractor to complete performance of the original contract. Such substitute performance and any amendment of the original contract that makes a substitute contractor a party to the contract is not an award of a public contract for purposes of ORS 279.015 (1) and shall not be subject to the competitive procurement provisions of ORS 279.005 through 279.111.

Findings of Fact

1. This exemption permits the district to make contract amendments, including change orders, extra work, field orders or other change in the original specifications that increase the original contract price, without further competitive bidding, subject to the limitations of this rule.

2. The exemption allows contract amendments to be made to existing contracts for goods and services where the initial contract was obtained through competitive means and awarded to the lowest, responsive and responsible bidder or to the highest, responsive and responsible bidder, in accordance with state law, Board policy and administrative regulation. This practice ensures that the cost savings achieved by the district in the initial award to the most competitive bidder or best proposer will be carried forward in the contract amendments.
3. The exemption is necessary because in the course of the contract it is impossible for district staff to know or plan for all possible contingencies, including additional requirements, emergencies, unplanned environmental cleanup and other unforeseen circumstances. The district must have the flexibility it needs to respond to contingent circumstances in a prompt and cost-effective manner.
4. There is no need for dollar limits on contract amendments where unit prices or additive alternate prices were provided during the bidding or proposal process that established the cost basis for the additional work or product and a binding obligation exists on the parties covering the terms and conditions of the additional work or product. Therefore, subsection A. of this rule permits amendments in unlimited dollar amounts. However, where these conditions are not met, but there is a need to amend the contract, subsection C. of this rule permits contract amendments within limits which are reasonable and which do not exceed a certain percentage of the initial contract price, in order to guarantee that competition for public contracts is not substantially diminished.
5. Substitute performance by a contractor's surety, as described in subsection D. of this rule, must be allowed as an exempted practice so the district can realize the full benefit of the performance bond which secured the initial contract award. In such cases, the contractor's surety must be enabled to fulfill its obligations to the district on behalf of the secured contractor. Therefore, such substitute performance by contractor's surety shall not be deemed a public contract for the purposes of ORS 279.015 (1).
6. This rule generally allows the district to complete the work at hand, or to purchase additional needed products, without the additional costs in time, project start-up and project coordination if the additional work or product required must be competitively bid. There is also a substantial, though indirect, cost component represented by the knowledge and awareness of the on-site contractor about the additional work needed. However, the conditions and dollar limits of this exemption ensure that competitive means will be used to procure work to be performed or product to be provided in cases which do not meet the requirements of this rule.

Conclusion of Compliance with Law

These findings indicate that it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). Amendments under subsection A. of this rule will be made under conditions where pricing or contractual commitment have already been established by competitive means, or there is an emergency or unplanned environmental cleanup. Amendments under subsection C. of this rule are limited in dollar amount. Substitute performance by a contractor's surety under subsection D. of this rule is necessary to get the full value of the performance bond requirement in the initial contract. The use of this exemption to amend district contracts under the specific conditions outlined will result in a cost savings to the district as required by ORS 279.015 (2)(b).

V. **CONTRACTS UNDER CERTAIN DOLLAR AMOUNTS**

- A. The district may, at its discretion, let public contracts not to exceed \$75,000 for the purchase of goods, materials, supplies and services including trade-related projects such as construction, maintenance, repair or similar labor and materials contracts without formal competitive bidding, if the district has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:
1. The contract is for a single project and is not a component of or related to any other project;
 2. The contract is more than \$2,500, but less than \$75,000. Then the district shall, at minimum, obtain three informally solicited, competitive quotes; or
 3. The contract is less than \$2,500. However, where practical, the district shall obtain competitive quotes;
 4. The required goods, materials, supplies or services are unavailable from a Qualified Rehabilitation Facility as provided in ORS 279.850 (Products of Disabled Individuals).

The district shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.
- C. When the contract is for a “public improvement” as defined in ORS 279.011 (8) or for “public works” as defined in ORS 279.348 (3), the district will follow the procedures in subsection A. of this rule and applicable provisions of ORS 279.015 (3) for holding a public hearing before final adoption of required findings. Further, if the contract price exceeds \$25,000 but is less than \$75,000, the district and the contractor shall comply with:
1. The prevailing wage provisions of ORS 279.348 to 279.365, when applicable;
 2. The performance bond requirements of ORS 279.029;
 3. The contractor registration requirements of ORS Chapter 701; and
 4. Any other law applicable to such a contract.
- D. If more than one supplier may be available and the total purchase is estimated to exceed \$75,000, the district shall select a contractor through competitive bidding.

Findings of Fact

1. Subsection A. of this exemption permits the district to award contracts not to exceed \$75,000 on an informal basis, if the district has determined that the awarding of the contract through informal competitive quoting will result in cost savings and certain conditions are met which are designed to enhance competition.
2. Subsection C. of this exemption permits the district to award contracts for public improvements between \$25,000 and \$75,000 under the requirements of subsection A. of this rule, applicable provisions of ORS 279.015 (3) and further conditions relating to “public works” contracts. The purpose of these requirements is to ensure that all public improvements or public works are performed in accordance with state law.
3. Subsection D. of this exemption directs that if more than one supplier may be available and the total purchase is estimated to exceed \$75,000, the district shall select a contractor through a formal competitive bidding process.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts, as required by ORS 279.015 (2)(a). This exemption applies only to purchases of goods, materials, supplies and services including trade-related projects under a limited dollar amount, and then, only after efforts to obtain competitive quotes are made. The district maintains open lists from which vendors are contacted for quotations. The informal quotation process encourages competition from smaller firms who can respond easily and without great expense to submit quotes on district business. If the contract is for a public improvement, all state requirements relating to performance bonds and contractor registration are required to be met.

VI. EMERGENCY CONTRACTS

- A. Pursuant to the requirements of ORS 279.015 (4), (5) and this rule, the district may, at its discretion, enter into a public contract without competitive bidding if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt performance of a contract to remedy the condition.
- B. The LCRB may, by order, resolution or other official action declare the existence of the emergency stating with specificity either in the order, resolution, other documentation of official action or in the minutes or record of its official proceedings, the findings describing the emergency conditions that require prompt execution of the contract.

The findings shall include a statement of the anticipated harm from failure to establish the contract on an expedited basis and record the measures taken to encourage competition to the extent reasonable under the circumstances, the amounts of the bids, quotes or proposals obtained and the reason for selecting the contractor. There is no dollar limit upon such action by the LCRB.

- C. Under delegation of authority by the LCRB, the superintendent or designee may declare the existence of the emergency, which shall authorize the district to enter into an emergency contract under \$50,000. The superintendent or designee must make written findings describing the emergency conditions that require prompt execution of the contract.
- D. Any contract awarded under this exemption shall be awarded within a reasonable period of time or 60 days, whichever is less, following declaration of the emergency unless an extension is granted by the LCRB pursuant to ORS 279.015 (5).

Findings of Fact

- 1. Under ORS 279.015 (4)(a), public contracts may be exempted from the requirements of ORS 279.015 (1) if emergency conditions exist which require prompt execution of the contract, subject to the additional requirements of ORS 279.015 (5).
- 2. ORS 279.015 (5) requires the Board to adopt rules allowing the LCRB and its superintendent or designee to declare that an emergency exists and to establish procedures for determining when emergency conditions are present. Subsections A., B. and C. of this rule accomplish this. Further, ORS 279.015 (5) requires that the rules shall prescribe that if an emergency is declared, any contract awarded under this exemption must be awarded within 60 days following the declaration of the emergency, unless an extension is granted. Subsection D. of this rule states this requirement.

Conclusion of Compliance with Law

Procurements made by the district in compliance with this exemption meet the requirements of ORS 279.015 (4)(a) and 279.015 (5) as emergency public contracts.

VII. EQUIPMENT REPAIR AND OVERHAUL

- A. The district may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:
 - 1. Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - 2. Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and
 - 3. The purchase is made within the limits and pursuant to the methods in subsection C. of this rule.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.

C. The following limitations apply to this rule:

1. If the contract is less than \$75,000, the school or department shall submit in writing to the superintendent or designee the reasons why competitive bids or quotes are deemed to be impractical. The superintendent or designee will accordingly document in its procurement file and may enter directly into the contract;
2. If the school or department official thinks the contract may exceed \$75,000, he/she shall submit in writing to the superintendent or designee the reasons why competitive bidding is deemed to be impractical and a description of the cost savings to be obtained by an exempted purchase. The superintendent or designee may prepare a specific request for the anticipated contract to be exempted from the competitive bidding requirement of ORS 279.015 (1) to submit to the LCRB for approval under the conditions of ORS 279.015 (2).

Findings of Fact

1. The need for equipment repair or overhaul cannot be anticipated by district staff. If a piece of equipment is broken or not working properly, the district incurs cost of downtime, possible replacement equipment rental fees, staff time and other inconveniences or liabilities to its programs.
2. Generally, there are a limited number of vendors who are able to perform repair or overhaul on a particular piece of equipment because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a partial warranty in place which will guarantee some savings to the district in the parts and/or labor needed to do the repair or overhaul. This warranty savings may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
3. The dollar limits on the use of this exemption ensure that when the cost of the equipment repair or overhaul is expected to exceed \$75,000, the district will either seek formal competitive bids or, if that is not practical or cost effective, obtain a specific exemption from the LCRB to proceed with the purchase of the needed repair or overhaul.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts, as required by ORS 279.015 (2)(a), because the dollar amount of the exempted purchase may not exceed \$75,000 without further exemption from the LCRB. The department which needs to have equipment repaired or overhauled will seek quotes or bids where it is practical. If it is not practical to obtain competitive quotes or bids, the requisitioning school or department must provide written justification to the superintendent or designee which will become part of the public record of the contract.

The awarding of public contracts pursuant to this exemption will result in a cost savings to the district, as required by ORS 279.015 (2)(b), because the district incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This exemption only applies to equipment already owned by the district. Time is of the essence in contracts for the repair or overhaul of district-owned equipment.

The district must be able to purchase necessary services and parts as quickly as possible in order to minimize equipment downtime.

VIII. PRICE REGULATED ITEMS, CONTRACTS FOR

- A. The district may, regardless of dollar amount and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority, including, but not limited to, postage, local garbage and sewer and water service.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, public safety and technical complexity, generally, do not apply to this exemption.

Findings of Fact

Competition is not a relevant issue in the procurement of goods or services where the provider, rate or price of the goods or services being purchased is established by federal, state or local regulatory authority. The goods or services are provided through a sole source and the prices or rates are set by the regulatory authority. Examples are:

1. Postage - Postal rates and services are regulated and provided by the United States Postal Service, a federal agency;
2. Garbage - In the district, service areas are regulated by the city of Brookings. Service providers are licensed and franchised to furnish hauling within their service areas. Rates are established and regulated by the city;
3. Sewer, Water - Sewer and water service are regulated and provided by the city government.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, as required by ORS 279.015 (2)(a), since there is virtually no competition available in these price regulated services. The awarding of public contracts pursuant to this exemption will result in a cost savings to the district, as required by ORS 279.015 (2)(b), because the district is not in a position to economically provide these goods and services to itself in any other manner.

IX. FEDERAL CONTRACTS, PURCHASES UNDER¹

- A. When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, the district may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, generally, does not apply to this exemption.
- C. In exercising its authority under this exemption, the district shall:
 - 1. Obtain and document permission from the appropriate federal agency granting permission to the district to purchase under the federal contract; and
 - 2. Document the cost savings to be gained for the district from the anticipated purchase(s) from the federal contract.
- D. The district shall not contract pursuant to this rule in the absence of a cost savings to the district by using this method.

Findings of Fact

- 1. Federal contracts for goods and services are established by federal agencies with private vendors through competitive processes which meet the standards of ORS Chapter 279. These processes include open competitive bidding, to which all interested vendors are invited to participate. No Oregon company is excluded from or disadvantaged in participation in bidding on federal contracts.
- 2. The prices or rates for goods and services under federal contracts are based upon competitive bids or proposals. This rule requires the district to document the cost savings to be gained from the anticipated purchase(s) from the federal contract. Documentation might include competitive comparison of previous bid prices obtained from other sources, including local Oregon businesses.
- 3. This rule requires that the district obtain the permission of the federal agency to use the federal contract.

¹ORS 279.015 (1)(a) gives districts an exception from compliance with competitive procurement when dealing with the federal government or another public agency. Care should be exercised when purchasing directly from a federal contract, as some may have been procured through the process of negotiations, a direct prohibition in Oregon statutes. This does not apply when purchasing federal or state surplus equipment through the program operated by the Department of Administrative Services (DAS) in Salem. For more information on this program, contact DAS at 503-378-4714.

Conclusion of Compliance with Law

This exemption will not encourage favoritism or substantially diminish competition in the awarding of public contracts as required by ORS 279.015 (2)(a). All vendors, including Oregon businesses, are able to compete for the initial federal contract. Also, the district will not use a federal contract without agency permission.

This exemption will result in a cost savings to the district as required by ORS 279.015 (2)(b). Federal contracts are based on competitive bidding, which results in the most advantageous price to the federal agency. Before it makes a purchase from a federal contract, the district will document the cost savings it will achieve by using the contract. These two facts will ensure that the district purchases the desired goods or services at the best price available.

X. COPYRIGHTED MATERIALS

- A. The district may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials where there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new adopted textbooks/instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or their designated distributor.

- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, public safety and technical complexity, generally, do not apply to this exemption.

Findings of Fact

1. By their nature, copyrighted materials are protected for the use of a single owner. Copyrighted materials may not be duplicated by others without the copyright owner's permission or license. Copyrights are established and regulated under federal law.

2. Often, copyrighted materials are produced by only one supplier who may be the owner of the copyright or his/her licensee. Textbooks/Instructional materials are examples of copyrighted materials that the district purchases through a sole source. Textbooks/Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education. A textbook/instructional material adoption defines the various materials which the district will purchase for use in its educational programs.

The district purchases its textbooks/instructional materials through the Northwest Textbook Depository. This practice enables the regional textbook depository to purchase and warehouse textbooks/instructional

materials in conformance with adoptions made in the states of their region. The result is that savings are achieved through the depository's combined purchases on behalf of member districts. Freight costs for individual districts are reduced by the bulk purchases of the depository and the depository takes on the cost of stocking and warehousing enough to meet each member district's needs.

The system of textbook/instructional materials distribution enables the district to participate in the largest possible bulk purchasing activity of adopted textbooks/instructional materials in the region. This ensures a cost savings to the district. A savings that would be jeopardized if the district was to act as an individual purchaser.

Conclusion of Compliance with Law

This exemption will not encourage favoritism or substantially diminish competition in the awarding of public contracts as required by ORS 279.015 (2)(a). The production and distribution of copyrighted materials is controlled by the owner of the copyright and may only be permitted through a sole source. The district has no control over this.

The awarding of contracts pursuant to this exemption will result in a cost savings to the district, as required by ORS 279.015 (2)(b), when it needs to purchase copyrighted materials and there is only one known supplier for such goods.

XI. INVESTMENT/BORROWING CONTRACTS

- A. The district may, without competitive bidding and regardless of dollar amount, invest public funds or borrow funds pursuant to district authority under state law and in accordance with applicable state laws and rules, Board policy and administrative regulation.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering and technical complexity, generally, do not apply to this exemption.

Findings of Fact

- 1. The district may invest or borrow funds on a short-term basis in accordance with Oregon statutes, Board policy and administrative regulation in order to achieve district fiscal management goals. See Board policy DFA and accompanying administrative regulation on investments. Among other considerations, two of the district's goals are to maximize investment performance and safety and to minimize the cost of borrowing. All Oregon school districts' investment and borrowing activities are regulated by ORS Chapter 294 and detailed in the district's investment policy, DFA and accompanying administrative regulation. The district's investment and borrowing activities are also regulated or closely monitored by the LCRB, district auditors and designated district officials.

2. Within the formal limits of allowable investments, the district uses an alternative method of procuring sources for investment placement. First, the district maintains an approved vendor list based on an evaluation of vendor qualifications as investment institutions. Every three to five years, the district updates the entire list. Each vendor on the list provides current financial qualifications (such as financial statements, investment performance profiles, risk management reports, etc.) to the district business office. The business manager evaluates the vendor qualifications and makes a determination whether the vendor is qualified to be on the approved vendor list. In the interim between vendor list updates, vendors may apply to the district for placement on the approved vendor list by providing the required financial information to the business office. The current approved vendor list for investments includes most of the larger financial institutions in the northwest.

A second source of investment placements is through investment pools. For example, there is a state pool of public agency investors operated through the state treasury.

3. Time is literally equal to money in the investment activity. This activity does not lend itself well to the traditional methods of public sector competitive bidding, where advertisements are placed, a written invitation to bid is sent to all interested parties and sealed bids are opened two weeks later. Rates of return on particular maturities and the allowable types of investment instruments offered by any one institution may literally change within minutes. Also, the district tries to place the investment as quickly as it receives the funds from state disbursement or tax revenues in order to maximize earnings. For example, if the district receives funds on Friday, it wants to place them that same day in order to earn interest over the weekend. Since district investments are generally made in the very short term, it would not be the best use of district funds to lie idle while a formal bidding process is made.
4. When the time comes for an investment to be placed, authorized district officials follow a competitive quotation process. See Board policy DFA and accompanying administrative regulation. They contact at least three sources from the approved vendor list by phone before making a placement decision. The decision is based on the quote which fits with district portfolio requirements and which offers the most advantageous performance over the maturity or term of the investment.

Conclusion of Compliance with Law

The Legislative Assembly has found, as provided in ORS 279.005 (2), that meaningful competition can be achieved through a variety of methods when procuring products or services. The district has adopted a policy and developed an administrative regulation which provides the procedure for selection of investment instruments and the maintenance of a list of qualified institutions from whom competitive quotations will be sought at the time an investment is anticipated.

This same process is followed for short-term borrowing for fiscal management purposes. This is not to be confused with the financing of district purchases of equipment, which is also done from time to time using routine competitive bidding procedures.

The exemption from traditional competitive bidding requirements of short-term investment of district funds or the short-term borrowing of funds for fiscal management purposes is in compliance with the

requirements of ORS 279.015 (2)(a) and (b). Since the district is following an alternate method of competitive selection of vendors in accordance with adopted Board policy and administrative regulation, it is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. The awarding of contracts pursuant to this exemption results in maximum return on investment or minimum cost of borrowing to the district.

XII. PRODUCT PREQUALIFICATION

- A. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the district may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following product prequalification procedure:
1. The district will make reasonable efforts to notify all known manufacturers and vendors of competing products of the district's intent to compile a list of prequalified products. The notice will explain the opportunity manufacturers and vendors of competing products will have to apply to have their product(s) included on the district's list of prequalified products. At its discretion, the district may provide notice by advertisement in the *Daily Journal of Commerce* or other appropriate trade publication; or instead of advertising, the district may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the district; and
 2. The district will accept manufacturer and vendor applications to include products in the district's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the district's written notice.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract subject to the district's product prequalification rule is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of product prequalification, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that special expertise required, generally, does not apply to this rule.
- C. If the district denies an application for including a product on a list of prequalified products, the district shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within 10 calendar days to the district business manager to request review and reconsideration of the denial.

Findings of Fact

1. There are occasions when the district needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The district may have a specific performance or design need, but it is impractical for the district to create a specification for the type of products to be purchased. An example is audiovisual equipment. There is a tremendous variety of audiovisual products offered in the market. The equipment technology is complex and constantly changing. It would be very burdensome and time consuming for the district to generate nonbrand name, generic performance specifications for such equipment every time it wants to make a purchase.

Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the district's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and district programs, because staff are not able to order the equipment they need until the contract is awarded.

In this case, it might be more cost effective and efficient for the district to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract. Once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.

2. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the district must have time to carefully consider what is offered in the market that may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.
3. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification. The district maintains vendor mailing lists which are open to all interested vendors. The district uses these lists routinely to notify vendors of its intentions to prequalify products or to invite bids on products.
4. This includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
5. Subsection C. of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.

Conclusion of Compliance with Law

Where prequalification of products is appropriate, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or diminish competition for such contracts as required by ORS 279.015 (2)(a). There are several safeguards in the rule to prevent this, including notice, advertising,

time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.

The prequalification of products process is a time-consuming effort for the district. It is not a shortcut procurement method. The district would use this method only after balancing cost-saving considerations, such as the ability of the district to create or generate nonbrand name generic specifications for types of products or the need for lengthy product evaluation prior to contract award. If the prequalification method is chosen, it will result in a cost savings to the district as required by ORS 279.015 (2)(b) because the normal method of product selection is too cumbersome and costly to pursue.

XIII. REQUEST FOR PROPOSAL (RFP)²

- A. The district may, at its discretion, use RFP competitive procurement methods subject to the following conditions:
 - 1. The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and
 - 2. Contractual requirements are stated clearly in the solicitation document; and
 - 3. Evaluation criteria and weighting factors to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the 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 and support, compatibility, product or system reliability, financial stability, operating efficiency, proposer qualifications and experience; and
 - 4. The solicitation document clearly states all complaint processes and remedies available; and
 - 5. The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract using the RFP process is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of the RFP process, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.

Findings of Fact/Conclusion of Compliance with Law

As the RFP process is an alternate method of competitive selection and not an exemption from the competitive procurement requirements of law, the district has determined that findings of fact are not required. It is unlikely that this process will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). The awarding of

²All procurement documents, unless trade secrets, are considered a public record under Oregon law.

contracts pursuant to this process will result in optimal value to the district based on selection by the district of the best competitive proposal that meets the stated evaluative criteria. This meets the test of ORS 279.015 (2)(b).

XIV. REQUEST FOR PROPOSAL - CONSTRUCTION MANAGER/GENERAL CONTRACTOR³

- A. The district may use RFP procedures, in accordance with its rule governing Request for Proposal, Section XIII., for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:
1. Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a preannounced time and place;
 2. Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include, but are not limited to, cost, quality, experience relevant to the improvement to be constructed and time required to commence and complete the improvement.
- B. The superintendent or designee shall prepare specific written findings to support the use of the CM/GC contracting method for each public improvement contract proposed and submit them to the LCRB for adoption.⁴ The findings must show compliance with ORS 279.011(5) that due consideration has been given to information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources and 279.015 (2)(a) and (b) - that awarding a contract subject to the district's CM/GC rule is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. The district shall retain the findings and make them available upon request. These findings shall address the following items, as applicable:
1. The district has competitively bid a public improvement project and failed to receive a responsive, responsible bid within the cost estimate established by the district or its consultant. There are de facto cost savings from not redesigning and rebidding the project;
 2. There are expected substantial savings on direct construction costs;

³All procurement documents, unless trade secrets, are considered a public record under Oregon law.

⁴The district is required to do specific written findings for each CM/GC contract proposed. As findings may vary from project to project, sample language has not been provided here.

3. The district requires use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;
 4. The technical complexity or unique character of the project requires the coordination of multiple disciplines;
 5. The use of value engineering through cooperation among the architect/engineer, contractor and district is important to the project's delivery on time and within budget;
 6. There are other factors which demonstrably affect cost.
- C. The district shall publish notice and hold a public hearing in accordance with ORS 279.015 (3) prior to final adoption of findings.

Findings of Fact (See footnote 4.)

Conclusion of Compliance with Law⁵

The use of this exemption will not encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). The requirements of this rule ensure that competition will be carefully addressed and protected, if the LCRB finds it in the public's best interest to use the CM/GC method to build a project.

The awarding of contracts pursuant to this exemption will result in cost savings to the district as required by ORS 279.015 (2)(b). When the situation requires, a fast track construction process, value engineering and management of technically complex construction elements are best achieved with the early involvement of a CM/GC. When circumstances preclude the use of traditional design-bid-build contracting methods, this exemption allows the district to use a competitive RFP process which provides the district with a guaranteed maximum price for the project, a value-engineering partnership between the CM/GC, the architect and the district and timely completion of the project.

XV. REQUIREMENTS CONTRACTS (BLANKET PURCHASE ORDERS, PRICE AGREEMENTS)⁶

- A. The business manager, on behalf of the district, may establish requirements contracts for the purposes of minimizing paper work, achieving continuity of product, securing a source of

⁵As the district's findings may vary from project to project, the district should check to ensure the findings are consistent with the Conclusion of Compliance with Law provided for this exemption.

⁶The state of Oregon's Cooperative Purchasing Program (ORCPP) allows authorized members to utilize the state's price agreement/contracts to purchase goods and services. Authorized ORCPP members can legally attach to a state price agreement and forego the competitive bid process. Access to hundreds of competitive price contracts for a wide variety of goods and services - vehicles, computers, furniture, copiers, fax machines, travel, pharmaceuticals, office products, etc. is available. Counties, cities, schools, municipalities or other public corporate entities having local governing authority, a United States governmental agency or American Indian tribe or agency are eligible to participate.

Members pay an annual fee to participate in the program. The fee is based on the agency/organization's budget. Public agencies with budgets under \$3 million per year also have the ability to participate in a consortium option and share the cost of the annual subscription fee.

supply, reducing inventory, combining district requirements for volume discounts, standardization among schools and departments and reducing lead time for ordering.

- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract subject to the district's requirements contracts rules is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, specialized expertise required and technical complexity, generally, do not apply to this rule.
- C. The district may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is let by a competitive procurement process pursuant to the requirements of ORS 279.005 to 279.111 and these rules.
- D. Once a requirements contract is established, schools and departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.
- E. Schools and departments shall use requirements contracts established by the district, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the superintendent or designee.
- F. Under the authority of ORS 279.015 (1)(g)(A), the district may use the requirements contract entered into by another Oregon public agency when:
 - 1. The original contract met the requirements of public procurement statutes contained in ORS Chapter 279; and
 - 2. The original contract allows other public agency usage of the contract; and
 - 3. The original public contracting agency concurs and this is documented by a written interagency agreement between the district and the agency.
- G. The term of any district requirements contract, including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS 279.015.

Findings of Fact

- 1. This rule permits the district to enter into requirements contracts, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, school, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.

2. Requirements contracts are a common method of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, obtaining volume discounts, standardizing usage among schools and departments and reducing lead time for ordering.
3. The district establishes requirements contracts as a result of open competitive bidding or RFP processes, unless otherwise exempted.
4. The district limits the term of requirements contracts, including all renewal options, to a maximum of five years before competitive rebidding must be done, unless otherwise exempted.
5. The district may use the requirements contracts established by other public agencies, subject to certain conditions of state law, Board policy and administrative regulation.

Conclusion of Compliance with Law

It is unlikely that this exemption will result in favoritism in the awarding of public contracts or diminish competition for such contracts, as required by ORS 279.015 (2)(a). The district will only enter into requirements contracts which result from open competitive bidding processes. This condition applies also to the use of requirements contracts established by other public contracting agencies.

The awarding of district requirements contracts will result in a cost savings to the district, as required by ORS 279.015 (2)(b). It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the district to get better prices from bidders.

XVI. USED PERSONAL PROPERTY OR EQUIPMENT, PURCHASE OF⁷

- A. Subject to the provisions of this rule, the district may purchase used property or equipment without obtaining competitive bids or quotes, if the district has determined that the purchase will result in cost savings to the district and will not diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used" at the time of district purchase. Used personal property or equipment generally does not include property or equipment if the district was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety;

⁷When contracting with another governmental entity, a district has a statutory exception under ORS 279.015 (1)(a). The district may purchase state/federal surplus property through the Department of Administrative Services, Surplus Property Division. For more information on this program, contact DAS at 503-378-4714.

(6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that special expertise required and technical complexity, generally, do not apply to this exemption.

- C. For purchases of used personal property or equipment costing less than \$75,000, the district shall, where feasible, obtain three competitive quotes unless the district has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the district and will not diminish competition or encourage favoritism.
- D. For purchases of used personal property or equipment totaling \$75,000 or more, the district shall attempt to obtain three competitive quotes. The district will keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

Findings of Fact

1. The district is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the procurement of used property and equipment. The district purchases used property and equipment when it meets the district's needs and is cost effective. Considerations include type, quality, quantity and estimated useful life of the used item.
2. Used equipment and property becomes available sporadically and without notice. Used equipment and property is generally sold on a first-come, first-served basis. When used property or equipment does become available, the district must be able to respond immediately in order to obtain the property or equipment.
3. Some types of property or equipment may not be readily available in the new goods market. The district may have to look for used items to fill the need.
4. Competition to provide used property and equipment may be very limited and inconsistent, depending on the type of product.
5. The district maintains vendor lists which include information on whether a vendor provides used property or equipment. These lists are open to all vendors.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). The purchase of used property or equipment depends on an inconsistent, sporadic market. When a used item is available, there is often little competition available. Sources for used items of the type, quality and quantity required by the district are inconsistent. This rule requires the district to attempt to obtain and document quotes as appropriate to the dollar amount of the purchase. If the anticipated purchase is over \$75,000, the district will advertise its need.

The use of this exemption will result in a cost savings to the district as required by ORS 279.015 (2)(b). The cost of used equipment or property is generally substantially less than that of new. Savings of 20

percent to 50 percent are not uncommon. Used equipment can provide good value to the district and help ensure the continuation of district services and programs.

XVII. INFORMATION TECHNOLOGY CONTRACTS

- A. The district may enter into a contract to acquire information technology hardware and software without competitive bidding subject to the following conditions:
1. If the contract amount does not exceed \$75,000, the district shall, as a minimum, follow its rule governing Contracts Under Certain Dollar Amounts, Section V. Prior to selecting a contractor, reasonable efforts shall be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the district;
 2. If the contract amount exceeds \$75,000, the district shall determine and use the best procurement method, pursuant to ORS 279.005 through ORS 279.111 and these rules, and shall solicit written proposals in accordance with the requirements of the Attorney General's Model Public Contract Rules. The district shall document the evaluation and award process, which will be part of the public record justifying the award;
 3. If the amount of the contract is estimated to exceed \$75,000, the district shall provide proposers an opportunity to review the evaluation of their proposals before final selection is made.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that public safety, generally, does not apply to this exemption.

Findings of Fact

1. Rapid changes in technology make it necessary for the district to be able to purchase needed computer equipment quickly.
2. Pricing for high-technology equipment also changes rapidly. It is frequently possible to take advantage of frequent price changes in the marketplace in the purchase of computer equipment.
3. There is generally sufficient competition among vendors of information technology hardware and software for school district business.
4. The district will follow its rule governing Contracts Under Certain Dollar Amounts, Section V. and obtain at least three informally solicited quotes for purchases less than \$75,000.

5. If the district requires a brand name or sole source product, the district will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section I., to procure it.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the award of district contracts or substantially diminish competition for district contracts as required by ORS 279.015 (2)(a). The purchase of information technology hardware and software will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$75,000, the district will advertise its need.

The use of this exemption will result in a cost savings to the district as required by ORS 279.015 (2)(b). Competition will be encouraged at all dollar levels of purchase of information technology hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.

XVIII. TELECOMMUNICATIONS SYSTEMS - HARDWARE AND SOFTWARE CONTRACTS

- A. The district may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:
 1. If the contract amount does not exceed \$75,000, the district shall at a minimum obtain competitive quotes. See the district's rule governing Contracts Under Certain Dollar Amounts, Section V. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the district;
 2. If the contract amount exceeds \$75,000, the district shall determine and use the best procurement method, pursuant to ORS 279.005 through ORS 279.111 and these rules and shall solicit written proposals in accordance with the requirements of Chapter 137, Division 030 of the Attorney General's Model Public Contract Rules.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that public safety, generally, does not apply to this exemption.
- C. The telecommunications solicitation authorized in subsection A.2. of these rules shall:
 1. State the contractual requirements in the solicitation document;
 2. State the evaluation criteria to be applied in awarding the contract and the role of any evaluation committee. Criteria that would be used to identify the proposal that best meets the district's needs may include, but are not limited to, cost, quality,

- service and support, compatibility, product or system reliability, vendor viability and financial stability, operating efficiency and expansion potential;
3. State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and
 4. Be advertised in accordance with ORS 279.025 and OAR 137-030-0015.

Findings of Fact

1. Rapid changes in technology make it necessary for the district to be able to purchase needed telecommunications hardware and software quickly.
2. Since deregulation, there is generally adequate competition among vendors of telecommunication hardware and software to allow the district to make competitive purchases.
3. Pricing for telecommunications hardware and software also changes frequently. It is important for the district to take advantage of price competition in the marketplace.
4. The district will follow its rule governing Contracts Under Certain Dollar Amounts, Section V., and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than \$75,000.
5. If a purchase of telecommunications hardware or software is expected to cost more than \$75,000, the district will use a formal competitive bidding or proposal process in accordance with these rules and the Attorney General's Model Public Contract Rules. See the district's rule governing Request for Proposal, Section XIII.
6. There are also times when the district needs to purchase specific items that are compatible with current equipment. On these occasions, the district will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section I., to make the purchase.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). The purchase of telecommunications hardware and software will be made in accordance with other competitive bidding rules herein. If the anticipated purchase is over \$75,000, the district will advertise its need.

The use of this exemption will result in a cost savings to the district as required by ORS 279.015 (2)(b). Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.

XIX. TELECOMMUNICATIONS SERVICES

- A. The district shall secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service performance requirements while minimizing administrative and service delivery costs. The district will use routine purchasing

procedures whenever possible, but if necessary, the district can consider alternative procurement methods in accordance with this rule.

The district will generally follow the normal competitive procurement processes in obtaining telecommunications services. This exempted process will only be used if necessary where there is a lack of sufficient competition to furnish needed services.

- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.
- C. In determining the appropriate procurement method for telecommunications services, the district shall comply with the requirements of ORS 291.038 and determine whether competition exists. In determining whether competition exists, the district may consider the following factors:
 - 1. The extent to which alternative providers exist in the relevant geographic and service market; the greater area of Curry County;
 - 2. The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance. For example, if the district requires digital services, analog services are not comparable or substitutable. If the district requires fiber optic technology, then copper, microwave or satellite transmission technology may not be comparable or substitutable;
 - 3. The extent to which alternative providers can respond to the district's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting district liability. For example, to be considered as the district's long-distance service provider, any long-distance service vendor must be able to meet, support and interface with the district's centralized automated billing requirements. The district must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the district may solicit the information either through informal telephone or written contacts or through a formal solicitation such as an RFP.
- D. If the district determines that competition does not exist in the area for the relevant service, the district may proceed to secure the service on a sole source basis, as described in the district's rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section I.

Findings of Fact

1. Since deregulation, there is generally adequate competition among vendors of telecommunication services to allow the district to make competitive procurements.
2. Since there is competition, price competition exists in the marketplace. It is important for the district to take advantage of existing competition.
3. The district will follow its rule governing Emergency Contracts, Section VI. and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than \$75,000.
4. If a purchase of service is expected to cost more than \$75,000, the district will use a formal competitive bidding or proposal process in accordance with these rules and the Attorney General's Model Public Contract Rules. See the district's rule governing Request for Proposal, Section XIII. and OAR Chapter 137, Division 030.
5. There may be occasions where there is limited competition that can furnish telecommunications services of the quality and extent required by district operations. In such instances, the district will follow this rule and also its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section I., to procure needed services from the sole source.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). Routinely, the purchase of telecommunications services will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$75,000, the district will advertise its need, issue a written solicitation document and invite written bids or proposals to be furnished in response.

However, there may be circumstances where sufficient competition does not exist in the relevant geographic and service market area. In such cases, the district will follow this rule in determining whether sufficient competition exists to make a competitive procurement.

The use of this exemption will result in a cost savings to the district as required by ORS 279.015 (2)(b). Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur. The rule also states the steps to be taken to document situations where sufficient competition may not exist and a sole source purchase needs to be made.

XX. HAZARDOUS MATERIAL REMOVAL; OIL CLEANUP

- A. The district may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Oregon Department of Environmental Quality (DEQ) under ORS Chapter 466,

especially ORS 466.605 through 466.680. In exercising its authority under this exemption, the district shall:

1. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods and services;
 2. Make written findings describing the circumstances that require the cleanup or maintain a copy of the DEQ order for the cleanup;
 3. Record the measures taken under A.1. of this rule to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor to whom award is made.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of this exemption, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources.
- C. The district shall not contract pursuant to this exemption in the absence of an order from the DEQ to clean up a site which includes a time limit that would not allow the district to hire a contractor under normal competitive bidding procedures. Goods and services to perform other hazardous material removal or cleanup will be purchased in accordance with normal competitive bidding procedures as described in Board policy and this administrative regulation.

Findings of Fact

1. When the DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. The district would be liable for any delay in responding to DEQ orders to perform hazardous material removal or cleanup.
2. This exemption will not be used in those situations where there is no DEQ order to remedy the situation. Routine competitive procurement methods will be used where there is no DEQ order to act immediately. The district maintains open lists of vendors who are interested in providing hazardous material removal and cleanup services. Whenever it needs hazardous material removal or disposal, the district makes use of these lists to solicit quotes, bids or proposals as needed, in addition to advertising the procurement as required.
3. Cost savings are achieved through this exemption because the district can be liable for DEQ penalties and fines if it does not timely remove hazardous materials or oil as ordered. There is also serious risk in these situations that property damage or personal injury could result if the district is slow to act.

Conclusion of Compliance with Law

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279.015 (2)(a). If it is under DEQ order to act immediately, the district will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the district is faced with the quasi-emergency situation of a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services.

The award of public contracts pursuant to this exemption will result in a cost savings to the district in these situations, as required by ORS 279.015 (2)(b), because the district must comply with the law and avoid and minimize risk to persons and property. Where possible, it will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible bidder.

XXI. INSURANCE, EMPLOYEE BENEFIT⁸

- A. The district may purchase employee benefit insurance without competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement.
- B. The Board, acting as the LCRB for the district, has made the findings required by ORS 279.015 (2)(a)(b) and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district. In approving the findings justifying the use of product prequalification, the Board has considered pertinent information regarding: (1) operational, budget and financial data; (2) public benefits; (3) value engineering; (4) specialized expertise required; (5) public safety; (6) market conditions; (7) technical complexity; and (8) funding sources. The district has determined that value engineering, public safety and technical complexity, generally, do not apply to this exemption.

Findings of Fact

1. The nature, type, specific services to be provided and timing of employee benefit insurance are dictated by collective bargaining agreements between the district and represented labor groups. The district must fulfill its contractual obligations to represented employee groups to provide appropriate employee benefits.
2. The district relies on its professional insurance broker, or agent-of-record, to solicit competitive proposals from responsible companies to furnish employee benefit coverages. The agent-of-record solicits proposals from providers. The agent maintains a mailing list of interested providers. When it is time to solicit proposals to furnish employee benefit coverages, the agent sends solicitations to all providers on the list. The agent-of-record also advertises the solicitation in *The Oregonian* and local newspaper(s).

⁸ORS 279.015 (1)(e) provides for an exception when purchasing medical insurance. This exception is exclusive to medical insurance and does not extend to other insurance contracts that a Board may enter into.

3. The agent-of-record works with the district to evaluate proposals and to negotiate contract awards with those firms who provide the most comprehensive and best services at the most cost-effective rates.
4. The district resolicits proposals to provide employee benefit coverages approximately every two to three years.
5. It would be impractical and costly for the district to attempt to purchase employee benefit insurance “in house” without the guidance and help provided by the district’s agent-of-record. The district saves substantially by using professional insurance brokerage services.

Conclusion of Compliance with Law

It is unlikely that use of this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. The award of contracts pursuant to this exemption will result in a cost savings to the district as required by ORS 279.015 (2)(a) and (b). The district’s agent-of-record solicits proposals from employee benefit insurance providers under conditions that foster competition among a sufficient number of potential suppliers. The district evaluates the proposals submitted to furnish employee benefit insurance for the best value to the district, given the requirements specified by the employee benefits portions of the district’s agreements with represented employee groups.

XXII. WAIVER OF BID SECURITY REQUIREMENTS (OTHER THAN PUBLIC IMPROVEMENTS)

- A. The LCRB may, at its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements.

Findings of Fact/Conclusion of Compliance with Law

This rule allows the district to waive bid security requirements for contracts other than public improvement contracts. As such, it is not an exemption to the competitive bidding requirements of law. Consequently, findings otherwise required by law are unnecessary here.

XXIII. WAIVER OF BID SECURITY REQUIREMENTS (PUBLIC IMPROVEMENT CONTRACTS UNDER \$100,000)

- A. The LCRB may, at its discretion, waive the bid security requirements of ORS 279.027 if the amount of the contract for the public improvement is less than \$75,000. Although the bid security requirement is waived for public improvement contracts under \$75,000, the LCRB may impose a bid or quote security requirement for projects under \$75,000 when deemed to be in the best interest of the district.

Findings of Fact/Conclusion of Compliance with Law

This rule allows the LCRB to waive bid security requirements for certain public improvement contracts. Waiver of the bid security is provided for by statute without a requirement for findings.