

Public Contracting Supplemental Rules and Procedures

THE BOARD ADOPTS THE FOLLOWING SUPPLEMENTAL RULES AND PROCEDURES

DIVISION 46

GENERAL PROVISIONS

46-0100

Application; Commentary; Federal Law Supremacy.

(1) These Supplemental Rules and the Attorney General’s Model Public Contract Rules set forth the procedures for Public Contracting of Estacada School District (“District”). The District is subject to the Attorney General’s Model Public Contract Rules, as supplemented herein, including all modifications that the Attorney General may adopt. Pursuant to ORS 279A.065(5), the District adopts these Rules, which supplement the Attorney General’s Model Public Contract Rules. The Rules set forth in Divisions 46 and 47 of this Public Contracting Rules and Procedures Manual supplement OAR chapter 137, divisions 46 and 47, respectively.

(2) In the event of a conflict or inconsistency between the Attorney General’s Model Public Contract Rules and these Supplemental Rules, these Supplemental Rules take precedence over the Attorney General’s Model Public Contract Rules; provided, however, that if these Supplemental Rules conflict or are inconsistent with the Attorney General’s Model Public Contract Rules in such a way that would result in a violation of the Oregon Revised Statutes, the Attorney General’s Model Public Contract Rules shall apply unless doing so would also result in a violation of the Oregon Revised Statutes.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A and 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A and 279B, and ORS 279C.005 through 279C.670 or these Rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A and 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These Rules become effective on the date they are promulgated by the District and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

(5) All terms used but not defined in these Rules shall have the meanings given to them in ORS chapters 279A, 279B, and ORS 279C and the Attorney General’s Model Public Contract Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030; ORS 279A.065

46-0110

Definitions.

As used in the Public Contracting Code and these Rules, unless the context or a specifically applicable definition requires otherwise:

- (1) **“As-Is, Where-Is”** applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer’s own inspection. Implied and express warranties are excluded in sales of Goods “As-Is, Where-Is.”
- (2) **“Contract”** for the purposes of these Rules means “Public Contract.”
- (3) **“Independent Contractor”** means a Person who provides services to the District in which the District neither controls nor has the right to control the means or manner by which Work is performed. The District may control the results of the services, but not control the means or manner of a Contractor’s performance of the Work. The person providing the services must meet the tests of “Independent Contractor” as defined by the Internal Revenue Service’s (“IRS”) Ruling 87-41 and the Public Employees Retirement System’s OAR 459-010-0030.
- (4) **“Local Contract Review Board”** or **“LCRB”** means the governing body of the District unless the governing body designates another body, board or commission to serve as the local contract review board pursuant to ORS 279A.060.
- (5) **“OAR”** means the Oregon Administrative Rules.
- (6) **“Original Contract”** means the initial Contract or Price Agreement as solicited and awarded by the District.
- (7) **“ORS”** means the Oregon Revised Statutes.
- (8) **“Price Agreement”** means a Public Contract for the Procurement of Goods or Services at a set price with:
- (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services in which the District does not guarantee a minimum or maximum additional purchase.
- (9) **“Procurement”** means the act of purchasing, leasing, renting or otherwise acquiring: Goods or Services; Architectural, Engineering, and Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by the District to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules.
- (10) **“Proposer”** means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services and Related Services, whereby “Proposer” means a Consultant who submits a proposal to the District in response to a Request for Proposals.
- (11) **“Provider”** means collectively or in the alternative: the supplier, Contractor or Consultant, providing Goods or Services or Public Improvements.
- (12) **“Purchase Order”** means the District’s document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. The District’s use of a Purchase Order must comply with District Policy, the Public Contracting Code and these Rules.
- (13) **“Quote”** means a verbal or Written Offer obtained through an Intermediate Procurement.
- (14) **“Request for Qualifications”** or **“RFQ”** means a Written document describing the District’s circumstances and the type of service(s) desired; setting forth all significant evaluation factors and their relative importance and, if appropriate, price; and soliciting competitive Written qualifications. The RFQ will not result in a Contract, but is intended to establish an open, inclusive list of qualified Contractors from which to seek Proposals and select a Contractor.
- (15) **“Rules”** mean the Attorney General’s Model Public Contract Rules as supplemented and amended herein.
- (16) **“School Board”** means the District Board of Directors pursuant to ORS chapter 332.
- (17) **“Specifications”** means any description of the physical or functional characteristics, or of the nature of Goods or Services or a construction item, including any requirement for inspecting, testing, or preparing Goods or Services or a construction item for delivery and the quantities or qualities of materials to be

furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. See ORS 279B.200(3).

(18) **“State”** means the State of Oregon.

(19) **“State Government,”** subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(20) **“Superintendent”** means the District Superintendent or the Superintendent’s designee.

(21) **“Surplus Property”** means all real or personal property, vehicles and titled equipment owned by the District that the district no longer has a use for, is unsuitable for use, has become too costly to repair, or is obsolete. The School Board shall formally declare the property as surplus and authorize its disposal.

(22) **“Work”** means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

(23) **“Written”** or **“Writing”** means conventional paper documents, whether hand Written, manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required or permitted by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.065; ORS 279A.200; ORS 279B.005; ORS 279C.110

AUTHORITY

46-0140

Procurement Authority.

Pursuant to ORS 279A.050, except as otherwise provided in the Public Contracting Code, the District has all of the procurement authority necessary to carry out the provisions of the Public Contracting Code, and the District must exercise all procurement authority in accordance with the Public Contracting Code. The District is the Local Contracting Agency described in the Public Contracting Code, except as delegated pursuant to Rule 46-0170.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.050(1), (2)

46-0170

Delegation of Authority.

(1) **Policy.** Pursuant to ORS 279A.075 and 332.075(3), the School Board delegates to the Superintendent or his/her designee, the authority to enter into and approve payment on contracts for products, materials, capital outlay, equipment, and services if:

(a) The Contract is within appropriations made by the School Board pursuant to ORS 294.456; and

(b) The total amount of the Contract is less than the amount stated in any formal delegation of authority or policy promulgated by the School Board. In the absence of any such formal delegation of authority or policy, the total amount of the Contract must be less than \$150,000.

(2) Except as provided in Subsection (1) of this section, the School Board must approve all District Contracts.

Stat. Auth: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.050; ORS 279A.075

PERSONAL SERVICES CONTRACTS

46-0330

Authority and Standards for Personal Services Contracts.

(1) **Application.** For purposes of this Rule only, “Personal Services” include but are not limited to the following:

- (a) Contracts for services performed in a professional capacity, including services of an accountant, attorney, insurance agent, appraiser, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant, or broadcaster;
- (b) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
- (c) Contracts for services that are specialized, creative, or research-oriented;
- (d) Contracts for services as a consultant;
- (e) Contracts for educational services; and
- (f) Contracts for human custodial care, childcare, mental health care, health services, social and emergency services, and other human services.

“Personal Services” does not include architect, engineer, land surveyor and related services as defined in ORS 279C.100(5).

(2) **Identification of Personal Services Contracts.**

(a) **Authority.** Pursuant to ORS 279A.055(2), the LCRB may designate Contracts or classes of Contracts as Personal Services Contracts for the purposes of reporting Personal Services Contracts in accordance with ORS 279A.055 and identifying the appropriate required procedures in accordance with ORS 279A.070. In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the LCRB may determine whether the Work calls for the performance of Personal Services.

(b) **Contract Requirements.** The District must identify within the Contract that it is contracting for Personal Services. A failure to adequately describe Personal Services within the Contract will not invalidate the procurement or Contract if the District properly used a sourcing method pursuant to ORS 279B.055 through 279B.085 and substantially followed the related Rules regarding screening, selection, evaluation, award, and approval in accordance with these Rules. In addition, District Personal Services Contracts must comply with all applicable provisions of ORS 279B.220 to 279B.240.

(3) **Independent Contractor.** The District may, within the limits of its adopted budget, Contract for Personal Services with Providers who are Independent Contractors.

(4) **Employees.** The District may not use Personal Services Contracts to obtain and pay for the services of an employee. If a Contractor is not an Independent Contractor, the District may not enter into a Personal Services Contract with the Contractor; instead, the District must follow personnel policies for employment options.

(5) **Contracting out for Services Provided by Employees.** Where the District is contemplating contracting for Work performed by District employees represented by a labor organization, the District must review the relevant collective bargaining agreement to ensure the Contract complies with the provisions.

Stat. Auth.: ORS 279A.055; ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.

46-0335

Selection Procedures.

(1) **Informal Selection Procedures.**

The District may use an informal selection process to obtain services where the anticipated cost of the service is expected to be more than \$50,000 but less than or equal to \$150,000. If the anticipated cost of

the service is expected to be \$50,000 or less, the District may procure the service through direct appointment as defined in OAR 137-48-0200.

(2) The informal selection process must solicit responses/Proposals from at least three qualified contractors offering the required services.

(3) The informal selection process is competitive. The selection and ranking may be based on criteria including but not limited to each Proposer's:

(4) Particular capability to perform the services required;

(5) Experienced staff available to perform the services required, including each Proposer's recent, current, and projected workloads;

(6) Performance history;

(7) Approach and philosophy used in providing services;

(8) Fees or costs;

(9) Geographic proximity to the project or the area where the services are to be performed; and

(g) Work volume previously awarded by the District, with the object of effecting an equitable distribution of Contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.

(10) Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the Procurement file.

(b) Formal Selection Procedures.

(1) The District will use a formal selection procedure when the anticipated cost of the Contract will exceed \$150,000 or whenever the Superintendent determines that the amount of the Contract or complexity of the project requires use of the formal process. All formal RFP and RFQ solicitations must comply with the requirements for RFPs contained in Division 47 of these Rules.

(2) Additional Requirements for a Request for Qualifications (RFQ). An RFQ may be used to determine whether competition exists to perform the needed services or to establish a list of qualified contractors for RFPs, for informal solicitations, or for individual negotiation, as provided in these Rules.

(a) The RFQ must at least describe the particular specialty desired, the qualifications the contractor must have in order to be considered, and the evaluation factors and their relative importance.

(b) The RFQ may require information, including but not limited to:

(i) The contractor's particular capability to perform the required services;

(ii) The number of experienced staff available to perform the required services, including specific qualifications and experience of personnel;

(iii) A list of similar services the contractor has completed, with references concerning past performance; and

(iv) Any other information necessary to evaluate contractor qualifications.

(c) A qualifications presubmission meeting may be held for all interested contractors to discuss the proposed services. The RFQ must include the date, time, and place of the meeting and indicate whether it is voluntary or mandatory.

(d) Unless the RFQ establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements are rejected, all respondents (who met the published qualifications) will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a Proposal in response to a contracting district's subsequent RFP.

Stat. Auth.: ORS 279A.055; ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS ch 279A

46-0340

Selection by Negotiation.

The District may procure Personal Services with contractors directly through negotiation, if:

- (1) The District has, through an RFQ, established a list of qualified contractors for the particular project or class of projects; or
- (2) The nature of the Work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples include legal services and audit services.

Stat. Auth.: ORS 279A.055; ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS ch 279A

46-0345

Procedures for Personal Services Contracts.

(1) **Contract Forms for Architectural, Engineering and Land Surveying Services and Related Services.** The District must comply with OAR 137-48-0300(1).

(2) **Contract Forms for Other Personal Services Contracts.** The District must use the forms provided by the LCRB for Contracts for Personal Services.

(a) If the District obtains approval in accordance with this Rule, it may enter into a Personal Services Contract containing terms and conditions other than those in the approved form for one-time acquisitions of Personal Services so long as the School Board approves the changes.

(b) The District must review the approved Contract form at least every two years. If, upon review, revisions to the Contract form are deemed necessary, the District must obtain approval from the LCRB prior to using the revised Contract form.

(3) **Screening, Selection, Evaluation and Award Procedures.** The District must follow the procedures set forth in Division 48 of the Attorney General's Model Public Contract Rules when contracting for Architectural, Engineering and Land Surveying Services and Related Services. For all other Personal Services Contracts, the District must select a sourcing method from the seven methods available pursuant to ORS 279B.055 through 279B.085 and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Division 47 of these Rules.

(4) **Amendments and Reinstatements.** The procedures that shall apply to amendments and reinstatements are found in Division 47 of the Attorney General's Model Public Contract Rules. Procedures for amendments and reinstatements for Architectural, Engineering and Land Surveying Services and Related Services are found in Division 48 of the Attorney General's Model Public Contract Rules.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.70; ORS 279A.140(h)(B)

DIVISION 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

47-0288

Special Procurements; by Rule.

(1) Renegotiations of Existing Contracts with Incumbent Contractors.

(a) **Authorization.** The Local Contract Review Board hereby grants approval of this special procurement. The Superintendent, acting on behalf of the District, must have prior approval of the School Board in order to renegotiate and amend existing Contracts with incumbent Contractors, and then only if it is in the best interest of the District.

(b) **Process and Criteria.** The Superintendent may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, online ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Superintendent must meet the following conditions in his/her renegotiations with incumbent Contractors:

(A) **Favorable Result.** The Superintendent shall determine that, with all things considered, the renegotiated Contract is at least as favorable to the District as the Original Contract and document this in the Procurement file. For example, the District and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) **Within the Scope.** The Goods or Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the District may accept functionally equivalent substitutes for any Goods or Services in the Original Contract's Solicitation.

(C) **Optional Term or Condition.** If a Contractor offers a term or condition that was rejected in the original Solicitation, the District may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or Condition without additional consideration from the District and as only an option to the District, then the District may accept the option of a lower price under the rejected term or Condition. For example, if the District initially rejected a Contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the District may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(c) Findings/Compliance.

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279B.085(4)(a). This Rule requires the District to make a good faith effort to determine the best value for the specified product or service before renegotiating. In addition, the District is required to evaluate the current market to determine that the Contract renegotiation will result in a favorable outcome for the District. Accordingly, this Rule is reasonably expected to result in substantial cost savings to the contracting agency or to the public.

(2) Brand Names or Products, "or Equal," Single Seller and Sole Source.

(a) **Authorization.** The Local Contract Review Board hereby grants approval of this special procurement. The Superintendent, acting on behalf of the District, may enter into a Public Contract for the Procurement of Brand Name "or Equal" Products subject to the requirements of this Rule.

(b) **Definitions.** "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(c) Requirements.

(A) Specifications. Solicitation Specifications for Public Contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in Subsections (i) and (ii) of this Rule.

(i) **“Or Equal” Specification.** 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.

(ii) **Specifying a Particular Make or Product.** The District may specify a brand name, make, or product without an “or equal” or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement file in accordance with the following:

(I) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(II) The brand name, mark, or product to be specified; and

(III) The reasons for seeking this procurement method, which must include at least one of the following findings in the Procurement file:

(aa) 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

(bb) Specification of the brand name, mark or product would result in substantial cost savings to the District; or

(cc) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(B) Public Notice. The District will make reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or document the Procurement file with findings of current market research to support the determination that the product is available from only one seller. This Requirement is satisfied by electronically posting a notice as provided in OAR 137-47-0330 for a reasonable period of time or by documenting direct contact with such suppliers in the Procurement file.

(C) Purchasing from Sole Source, Single Seller. The District may purchase a particular product or service (also known as Goods or Services) available from only one source if the District meets the requirements of Subsections (c)(A) and (B) of this Rule and a sole-source procurement pursuant to ORS 279B.075 and OAR 137-47-0275. Prior to purchase, the District must document its findings of current market research to support the determination that the product or service is available from only one seller or source and place this information in the Procurement file. The District’s findings must also include:

(i) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(ii) Description of the product or service to be purchased; and

(iii) The reasons the District is seeking this procurement method, which must include at least the following:

(I) Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services; or

(II) 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

(III) The particular product is for use in a pilot or an experimental project.

(D) Single Manufacturer, Multiple Sellers. The District may specify a product or service available from only one manufacturer, but available through multiple sellers, if the requirements of Subsections (c)(A) and (B) and the following are met:

(i) If the total purchase is \$10,000 or more but does not exceed \$150,000 competitive quotes must be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements;

(ii) If the purchase exceeds \$150,000, the acquisition process would then be subject to the requirements in this Rule.

(E) Single Manufacturer, Multiple Purchases. 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 must so state in the Solicitation file, the Solicitation Document, if any, and the public notice described in Subsection (c)(B) of this Rule. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$150,000, this must be stated in the advertisement for Bids or Proposals.

(F) If the District competitively solicits, it must comply with the Rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075.

(d) Findings/Compliance.

It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). This Rule requires the District to make a good faith effort to determine that no other sources are available for the specified products. The District maintains open lists from which vendors are contacted for quotations and utilizes electronic means of determining new vendors on an ongoing basis.

(3) Advertising Contracts, Purchase of.

(a) Authorization. The Local Contract Review Board grants approval of this Special Procurement. The Superintendent, acting on behalf of the District, may purchase media advertising, regardless of dollar value, without competitive bidding, pursuant to OAR 137-46-0170.

(b) Process and Criteria. The District will use competitive methods wherever possible to achieve best value and must document in the Procurement file the reasons why a competitive process was deemed to be impractical. If the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes must be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements. If the anticipated purchase exceeds \$150,000, the District will publish notice pursuant to OAR 137-47-0300. The resulting Contract must be in Writing and the Procurement file must document the use of this Special Procurement Rule by number to identify the sourcing method.

(c) Findings/Compliance. It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The unique nature of media services and the targeted audience the source serves generally limit the number of sources available to the District. Competition for Contracts to furnish advertising space in daily newspapers, trade journals, etc. is limited within the District. Cost savings are difficult to quantify where sources are unique and not interchangeable. Advertising of legal notices and required publications generally identify the means by which the District must advertise as well as the frequency and duration of those advertisements as prescribed in the statute. This Rule requires the District to make a good faith effort to determine the best value for the specified service, which effort is reasonably expected to result in substantial cost savings to the contracting agency or to the public.

(4) Advertising Contracts, Sale of.

(a) Authorization. The Local Contract Review Board grants approval of this special procurement. The Superintendent, acting on behalf of the District, may authorize the sale of advertising in district publications and for district activities, regardless of dollar value, without competitive bidding, pursuant to OAR 137-46-0170.

(b) Process and Criteria. The District will use competitive methods wherever possible to achieve best value and must document in the Procurement file the reasons why a competitive process was deemed to be impractical.

(c) Findings/Compliance. It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). Sales of advertising space are generally part of student activities and are accounted for as other fund revenues. These funds typically serve the student group soliciting the advertisement and are

utilized to help offset the cost of the activity. For example, suppose a group of high school students sell advertising space in their yearbook. The primary audience for this publication is the students, teachers, parents and interested community members. The funds generated from the sales of advertising are utilized to offset the cost of the publication. Since the primary audience is so limited, businesses generally purchase advertising space in the spirit of good will and as a means of supporting student activities. In addition, the District would not achieve any increase in General Fund Revenue as a result of seeking competitive bids. Accordingly, because the sale of advertising Contracts encourages important student activities, this Rule will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder. Any interested individual or business who wishes to advertise in this manner may do so by contacting the individual student group or organization.

(5) Equipment Repair and Overhaul.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for equipment repair and overhaul, as described in this Rule. The Superintendent, acting on behalf of the District, shall comply with the requirements of this Rule for the Procurement of equipment repair or overhaul services.

(b) **Conditions.** The Superintendent may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) 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

(C) The District purchases within the limits and pursuant to the methods in (4)(c) of this Rule.

(c) **Process and Criteria.** The Superintendent will use competitive methods wherever possible to achieve best value and must document in the Procurement file the reasons why a competitive process was deemed to be impractical. If the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes must be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements. If the anticipated purchase exceeds \$150,000, the District will publish notice pursuant to OAR 137-47-0300. The resulting Contract must be in Writing and the Procurement file must document the use of this special procurement Rule by number to identify the sourcing method.

(d) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The need for equipment repair or overhaul cannot be anticipated by the District and generally needs to be repaired immediately so as to avoid unnecessary downtime. The District may incur additional costs as well as liability exposure if it experiences downtime or is forced to rent replacement equipment. The District is also required to make a good faith effort to secure competitive quotes under this Rule. In those instances where it is not practical to obtain quotes or quotes are not available, the District will document that in writing and maintain this information as a part of the Procurement file. When compared to the potentially significant costs associated with unnecessary downtime, this Rule is reasonably expected to result in substantial cost savings to the contracting agency or to the public. In the alternative, because there is a strong public interest in maintaining services provided by equipment, this Rule will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(6) Purchase of Used Personal Property.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for used personal property, as described in this Rule. Subject to the provisions of this Rule, the Superintendent, acting on behalf of the District, may purchase used property or equipment without competitive bidding and

without obtaining competitive quotes, if, at the time of purchase, the District has determined and documented that the purchase:

- (i) will be unlikely to encourage favoritism or diminish competition; and
- (ii) is reasonably expected to result in substantial cost savings to the contracting agency or to the public.

“Used personal property or equipment” means the 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 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 under a similar arrangement.

(b) Process and Criteria.

(A) For purchases of used personal property or equipment where the cost does not exceed \$150,000, the District will, 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 and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, the District will obtain and 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.

(c) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). 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. In determining whether the District’s needs are best met by purchasing used property or equipment, consideration is given to type, quality, quantity and estimated useful life of the item. Used property and equipment comes available sporadically without notice and is typically sold on a first-come, first-served basis. When a used item becomes available there is often little or no competition available. This Rule requires the District to obtain quotes wherever possible and to document the reasons why they were unable to do so in Writing. In those instances where it was not practical to obtain quotes or quotes were not available, the District will document that in Writing and maintain this information as a part of the Procurement file. Accordingly, purchasing used items is reasonably expected to result in substantial cost savings to the contracting agency or to the public.

(7) Information Technology Contracts.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for information technology Contracts as described in this Rule. The Superintendent, acting on behalf of the District, shall comply with the requirements of this Rule for the Procurement of information technology Contracts.

(b) **Process and Criteria.** Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the Procurement file.

(A) If the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes will be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements.

(B) If the anticipated purchase exceeds \$150,000, the District will solicit written proposals in accordance with OAR 137-47-0260.

(C) The resulting Contract must be in Writing and the Procurement file must document the use of this special procurement Rule by number to identify the sourcing method.

(c) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such contracts as required by ORS 279B.085(4)(a). Rapid changes in technology and technology pricing make it necessary for the District to be able to purchase needed computer equipment and software quickly. It is frequently possible to take advantage of lower pricing due to the frequent price changes in the marketplace. Generally there is

sufficient competition among vendors in the area of information technology hardware and software for the District to secure competitive quotes. The District is required to make a good faith effort to secure competitive quotes under this Rule. In those instances where it is not practical to obtain quotes or quotes are not available, the District will document that in Writing and maintain this information as a part of the Procurement file. 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 procurements if those situations occur. Accordingly, this Rule is expected to result in substantial cost savings to the contracting agency or to the public. Alternatively, because the ability to keep pace with rapid changes in technology is important for the continued provision of services to the public, this Rule will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(8) Telecommunications Systems Hardware and Software Contracts.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for telecommunications systems Contracts as described in this Rule. The Superintendent, acting on behalf of the District, shall comply with the requirements of this Rule for the Procurement of telecommunications systems Contracts.

(b) **Process and Criteria.** Competitive methods will be used wherever possible to achieve best value. The reason(s) why a competitive process was deemed to be impractical must be documented in the Procurement file. If the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes will be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements. If the anticipated purchase exceeds \$150,000, the District will solicit Written proposals in accordance with OAR 137-47-0260. The resulting Contract must be in Writing and the Procurement file must document the use of this special procurement Rule by number to identify the sourcing method.

(c) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). Rapid changes in technology and technology pricing make it necessary for the District to be able to purchase needed telecommunications hardware and software quickly. It is important that the District take advantage of price competition in the marketplace. Since deregulation, there is generally sufficient competition among vendors of telecommunications hardware and software for the District to secure competitive quotes. The District is required to make a good faith effort to secure competitive quotes under this Rule. In those instances where it is not practical to obtain quotes or quotes are not available, the District will document that in Writing and maintain this information as a part of the Procurement file. 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 procurements if those situations occur. Accordingly, this Rule is expected to result in substantial cost savings to the contracting agency or to the public. Alternatively, because the ability to keep pace with rapid changes in technology is important for the continued provision of services to the public, this Rule will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(9) Telecommunications Services.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for telecommunications services as described in this Rule. The Superintendent, acting on behalf of the District, shall comply with the requirements of this Rule for the Procurement of telecommunications services.

(b) **Conditions.** The Superintendent may enter into a Public Contract for telecommunications services without competitive bidding, if no competition exists within the area for the service required. To determine whether competition exists, the Superintendent will consider the following factors:

(A) Determination of alternative providers available within the geographic and service market area;

(B) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance; and

(C) 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.

(c) **Process and Criteria.** The Superintendent will use competitive methods wherever possible to achieve best value. If competition exists as defined above and the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes will be obtained and retained in the Procurement file pursuant to the Rules governing Intermediate Procurements. If the anticipated purchase exceeds \$150,000, the District will solicit written proposals in accordance with OAR 137-47-0260. The resulting Contract must be in Writing and the Procurement file must document the use of this special procurement Rule by number to identify the sourcing method.

(d) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). Since deregulation, there is generally sufficient competition among vendors of telecommunications services for the District to secure competitive quotes. It is important that the District take advantage of price competition in the marketplace. There may be circumstances, however, 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 District is required to make a good faith effort to secure competitive quotes under this Rule. In those instances where it is not practical to obtain quotes or quotes are not available, the District will document that in Writing and maintain this information as a part of the Procurement file. 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 procurements if those situations occur. Accordingly, this Rule is expected to result in substantial cost savings to the contracting agency or to the public. Alternatively, because the ability to keep pace with rapid changes in technology is important for the continued provision of services to the public, this Rule will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(10) Copyrighted Materials.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for copyrighted materials as described in this Rule. The Superintendent, acting on behalf of the District, may purchase copyrighted materials, regardless of dollar value, without competitive bidding, pursuant to this Rule.

(b) **Process and Criteria.** The Superintendent may purchase copyrighted materials as a Sole Source Procurement subject to the provisions of Rule 47-0288(2). Examples of copyrighted materials covered by this exemption may include, but are not limited to, newly adopted textbooks/instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or its designated distributor.

(c) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). By their nature, copyrighted materials are protected for the use of a single owner and often are produced by a single supplier who may be the owner of the copyright or his/her licensee. Instructional materials are examples of copyrighted materials that the District purchases through a sole source. Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education. The District purchases its instructional materials through Northwest Textbook Depository. This allows the District to benefit from the regional purchase and warehousing of these materials and the associated savings. This Rule allows the District to participate in the largest possible

bulk purchasing activity of instructional materials in the region. This bulk purchasing is expected to result in substantial cost savings to the contracting agency or to the public.

(11) Product Prequalification.

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for product prequalification as described in this Rule. The Superintendent, acting on behalf of the District, may enter into a Public Contract for Procurement based upon product(s) prequalification, pursuant to this Rule.

(b) **Process and Criteria.** 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 procedures:

(A) 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 procedure manufacturers and vendors of competing products must utilize to apply to have their products included on the District's list of prequalified products. At its discretion, the District may provide such notice by:

(i) advertising in a trade publication of general circulation (e.g., Daily Journal of Commerce); or
(ii) Written notice to those manufacturers and vendors appearing on the appropriate list maintained by the District.

(B) 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 District's Written notice.

(c) **Denial and Protest.** If the District denies an application for inclusion of a product on its list of prequalified products, the District will promptly provide the applicant with a Written notice of the denial, including the reason(s) for the denial. The applicant may submit a Written request to the Superintendent within seven calendar days of the District's notice requesting review and reconsideration of the denial. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the Procurement file. The resulting Contract must be in Writing and the Procurement file must document the use of this special procurement Rule by number to identify the sourcing method.

(d) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). There are occasions when the District needs to establish a list of prequalified products before it invites bids or proposals. The District may have a specific performance or design need, but it is impractical to create a specification for the type of product to be purchased. For example, there are a tremendous number of audiovisual products offered in the market. The equipment technology is complex and constantly changing so it would be burdensome and time consuming for the District to generate performance specifications for such equipment every time it wants to make a purchase. In addition, competition would be poorly served because bidders or Proposers would not know if their offered product would meet the general specification substantially enough to be considered a responsive offer. This Rule provides several safeguards to ensure there will not be favoritism in the award of public Contracts 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.

(12) Requirements Contracts (Blanket Purchase Orders or Price Agreements).

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for requirements Contracts as described in this Rule. The Superintendent, acting on behalf of the District, may establish requirements Contracts pursuant to this Rule.

(b) **Definitions.** “Requirements Contracts” means the Procurement of goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the Contract was let by one of the source selection methods identified in ORS 279B.050.

(c) **Process and Criteria.** The District may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of products, securing a source of supply, reducing inventory, combining District requirements for volume discounts, standardization among schools and departments, and reducing lead time for ordering. Requirements Contracts may be utilized in accordance with the following:

(A) The Contract must have been let by one of the source selection methods identified in ORS 279B.050.

(B) Schools and departments may purchase the goods or services from the awarded Contractor without first undertaking additional competitive procurement procedures.

(C) The term of any District requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.

(d) The District may use the requirements Contract entered into by another Oregon public agency under the following conditions:

(A) The original Contract met the requirements of public procurement statutes contained in ORS 279A and ORS 279B.

(B) The original Contract allows other public agency usage of the Contract; and

(C) The original public contracting agency concurs and this is documented by a written interagency agreement between the district and the agency.

(e) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The District will only enter into requirements contracts which result from open competitive bidding or proposal processes. Requirements Contracts are a useful tool when the purchase of goods or services is routine and repetitive. Requirements Contracts are a common method of minimizing paperwork, achieving continuity of products, and securing a source of supply. For example, school, office, custodial, and facility maintenance are customarily purchased through requirement contracts. The District is required to make a good faith effort to secure competitive quotes under this Rule and will only enter into requirements contracts as a result of open competitive bidding or proposal process unless otherwise exempted. The utilization of requirements contracts allows the District to get better pricing from bidders because of the guaranteed volume.

(13) **Insurance and Employee Benefits.**

(a) **Authorization.** The Local Contract Review Board grants approval of this special procurement for insurance and employee benefits as described in this Rule. The Superintendent, acting on behalf of the District, shall comply with the requirements of this Rule for the Procurement of insurance and employee benefits.

(b) **Process and Criteria.** The District may purchase liability, property damage, workers’ compensation, and other insurance and insurance services Contracts, and employee benefits, without competition and regardless of dollar amount, by appointing an agent of record who shall conduct a competitive process to procure such services. For the purposes of this special procurement rule, “employee benefits” includes, but is not limited to, “employee benefit plans” as defined in ORS 243.105(1); plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886; plans provided through flexible benefit plans as defined in ORS 243.221; insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans; long-term care insurance; health care coverage to retired officers, employees, spouses, and children; employee assistance plans; and expense reimbursement plans.

(c) **Findings/Compliance.** It is unlikely that this special procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The District will enter into insurance and employee benefits Contracts that result from

competitive bidding or proposal processes conducted by the District's agent of record. Because agents are knowledgeable about the insurance and employee benefits markets, the District can reasonably expect to achieve substantial cost savings by using an agent of record to conduct the Procurement.

(14) **Spot Buys.** This special Procurement provides a process for the District to procure goods that are available for a limited period of time at "lower-than-normal" prices (also referred to as "Spot Buys").

(a) Regardless of dollar value and without competition, the District may purchase Spot Buys.

(b) **Conditions.** The District may procure an unlimited dollar value of goods as Spot Buys when all of the following conditions are present:

(A) A Contract or regularly scheduled bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Contract or recent bid, or is based on obtaining at least three Quotes, and the amount saved exceeds any additional administrative costs incurred to purchase the item using this special Procurement;

(C) The product being purchased has limited availability (i.e., the product may no longer be available or is available at the special price upon completion of normal bid processes);

(D) Any Contract currently in place for the item being purchased contains clauses allowing for the use of this special Procurement; and

(E) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Contract.

(c) **Documentation.** Purchases may only be made under this special Procurement if the Superintendent documents to the Procurement file that the conditions set forth in Section (14)(b) apply to the proposed purchase.

(d) The Superintendent is hereby authorized to enter into and approve payment on Spot Buy Contracts in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract exceeds the Superintendent's delegated authority in Rule 46-0170.

(15) **Price Agreements.**

(a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase goods or services for an anticipated need at a predetermined price, but the Contract must be let by a competitive Procurement process pursuant to the requirements of these Rules.

(b) The Superintendent may purchase the goods and services from a Contractor awarded a Price Agreement without first undertaking additional competitive solicitation up to the amount set forth in the Price Agreement.

(c) The Superintendent may use the Price Agreement entered into by another public agency when the original Contract was let pursuant to OAR 137-46-0400 through OAR 137-46-0480;

(d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

(16) **Purchase of Goods for Resale to Students and Staff.**

(a) **Authorization.** The District may purchase personal property for resale to students and staff without a competitive Procurement and regardless of dollar amount.

(b) **Findings/Compliance.** District students and staff frequently are offered volume discounts on personal property, such as sporting equipment, uniforms and footwear. For the convenience of students and staff, the District may enter into Contracts for purchase of such personal property and obtain reimbursement of costs from students and staff. It is unlikely that such procurements will encourage favoritism because students and staff, not the District, will decide what goods should be purchased. In addition, the District would not achieve any increase in general fund revenue as a result of seeking competitive bids. Because such Procurement encourage student and faculty participation in important activities, this Rule promotes

the public interest in a manner that could be practicably realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(17) Radio and Television Contracts for Student Activities.

(a) **Generally.** The Superintendent must use a competitive Procurement method (e.g., an invitation to bid or request for proposals) to obtain Written bids or proposals to provide commercial radio and television services for any student activity or District program, including athletics, if the value of the services totals more than \$150,000, regardless of whether the District is paying or receiving revenue under the Contract.

(b) **Specific and Ancillary Services.** The solicitation document used to invite bids or proposals to furnish radio or television services to District programs must include the minimum bidder or qualifications and service specifications and will conform to the other requirements of the applicable Procurement method. The solicitation document may invite interested bidders or Proposers to offer other ancillary services. Each ancillary service, if offered, must be accompanied by a proposed amount that reflects the current purchase price for the service and a description of the service and its use and application.

(c) **Term of Contract.** A Contract for radio or television services may be awarded for up to five years.

(18) Donated Goods or Services. The District may directly negotiate a Contract with a person to perform services or provide goods or services regardless of dollar amount, if:

(a) The person has agreed to donate the goods or services; and

(b) The person enters into a license or agreement with the District whereby the person agrees to comply with any requirements that the District deems necessary or beneficial to protect the District.

(c) **Findings/Compliance.** It is unlikely that Contracts with persons who donate goods or services will encourage favoritism because the District will not be making payments to the donor and, in many circumstances, the donor will be approaching the District with an offer to donate the goods or services. Because donations to the District serve the public interest, this Rule promotes the public interest in a manner that could be practicably realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(19) Manufacturer Direct Purchases.

(a) The District may purchase goods directly from a manufacturer if a large-volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.

(b) **Findings/Compliance.** Manufacturer direct purchases are permitted when another applicable special Procurement or other exemption applies, such as under emergency Procurements, single seller Procurements and sole source Procurements.

(20) Purchases Through Federal Programs.

(a) The District may purchase certain authorized goods and services through General Service Administration federal programs or federal Contracts, provided that the District has federal authorization to purchase through the federal program and the federal Contract was solicited in a manner substantially equivalent to the requirements of OAR Division 47 and the Public Contracting Code.

(b) **Findings/Compliance.** It is unlikely that this special Procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The District will only enter into Contracts that result from open competitive bidding or proposal processes that are substantially equivalent to the requirements of OAR Division 47. Because the federal government has incurred the administrative costs associated with conducting the Procurement, entering into the Contract can be reasonably expected to result in substantial cost savings. In addition, cost savings are likely to result from the federal government's purchasing power and the increased competition among prospective contractors for federal government Contracts.

(21) Purchase Under Contracts Solicited by Nonprofit Procurement Organization of Which the District Is a Member. The District may purchase goods and/or services under a Contract or Procurement solicited by a Nonprofit Procurement Organization of which the District is a member. For the purposes of

this Special Procurement, such a Procurement Organization will be considered to be an “Administering Contracting Agency” and a “Contracting Purchasing Group” under OAR 137-46-0400 through 137-46-0480. Such Procurement must otherwise comply with the requirements for permissive, joint, or interstate cooperative Procurements, as applicable.

(22) Secure, Specialized Transportation for Special Needs Students.

(a) The Superintendent may contract directly for transportation services for special needs students where such transportation need requires a transportation service with skills or equipment tailored to the needs of the particular special needs student or class of special needs students. For the purposes of this special Procurement, a “special needs student” is a student with special physical, mental, developmental, or security needs such that District transportation, public transportation, or other private general transportation providers (taxicabs, town car services, charter services, etc.) cannot provide safe, beneficial, or timely service. The Superintendent is hereby authorized to enter into Contracts for secure, specialized transportation, in any dollar amount, and will report the nature and amount of the Contract to the School Board.

(b) **Findings/Compliance.** It is unlikely that this special Procurement will encourage favoritism in the awarding of public Contracts or substantially diminish competition for such Contracts as required by ORS 279B.085(4)(a). The need for special needs transportation services often cannot be anticipated by the District and generally requires specialized equipment to meet the needs of the students. To the extent that time and circumstances permit, the District is required to make a good faith effort to secure competitive quotes. There is a strong public interest in providing reasonable accommodations for special needs students, and this special procurement will substantially promote the public interest in a manner that could be practicably realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

(23) Expedited Contracting Process in Order to Access State or Federal Funds. The Superintendent may waive any or all of the solicitation procedures under this Division 47 in the following circumstances:

(a) The state or federal government has adopted a program or made funding available to assist the District in acquiring goods and services and has attached a deadline to have a Contract in place in order for the District to access or be eligible for those funds.

(b) The Superintendent determines that compliance with the solicitation procedures in this Division 47 could jeopardize the District’s ability to access or be eligible for such funding.

(c) The Superintendent provides for an alternative contracting process that seeks to encourage competition and maximize cost savings.

(d) The reasons for and extent of the waiver are documented in the Procurement file.

(e) The Superintendent is hereby authorized to enter into Contracts subject to this Special Procurement in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract is over the Superintendent’s delegated authority in Rule 46-0170.

(f) **Findings/Compliance.** Access to State or federal funds occasionally is limited due to time constraints. In order to gain access to such funds, it is necessary to expedite the Procurement process and award the Contract immediately. It is unlikely that such Procurements will encourage favoritism because the District will implement procedures to maximize competition under the circumstances. Because such funding programs are directed at achieving public interest goals, this Rule promotes the public interest in a manner that could be practicably realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279B.085

DIVISION 50

SURPLUS PROPERTY

50-0100

Surplus Property Definitions.

In addition to the definitions contained in ORS 279A.250 and Rule 46-0110, the following definitions apply to these Rules on Surplus Property:

- (1) **“Bid”** means a competitive Offer to purchase advertised Surplus Property at a price specified by the bidder.
- (2) **“Cash”** includes U.S. currency, cashier’s checks, certified checks, traveler’s checks, money orders made payable to the District, or approved credit cards.
- (3) **“Direct Labor”** includes all Work required for preparation, production, processing and packing of Surplus Property, but does not include supervision, administration, inspection or shipping.
- (4) **“Employee’s Household”** means all persons residing with employee.
- (5) **“Employee’s Immediate Family”** means the children, step-children, parents, step-parents, grandparents and spouse of employee, separately or in any combination thereof.
- (6) **“Government Agency”** means every federal and state officer, board, commission, department, institution, branch or agency of federal or State Government.
- (7) **“Invitation to Bid”** means a competitive Offer to bid on Surplus Property available for public sale and is also known as a bid advertisement.
- (8) **“Not-for-Profit Organization”** is defined in ORS 279A.250(2) and means a nonprofit corporation as defined in ORS 307.130.
- (9) **“Photographic Identification”** means a document that shows the bearer’s current name, address, and photographic portrait.
- (10) **“Political Subdivision”** includes divisions or units of Oregon local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.
- (11) **“Private Not-for-Profit Agencies”** means those Agencies meeting the criteria specified in the Oregon Administrative Rules.
- (12) **“Property”** is defined in ORS 279A.250(3) and means personal property.

Stat. Auth.: ORS 283.060; ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.250

50-0110

Eligibility of Government Agencies, Political Subdivisions and Nonprofit Organizations.

Prior to offering Surplus Property for public sale, the District may make Surplus Property available to the following:

- (1) Public school districts;
- (2) Private schools;
- (3) Federal or state agencies;
- (4) Political Subdivisions of the federal or state government; and
- (5) Any nonprofit organization qualified to acquire property as determined by the District.

Stat. Auth.: ORS 283.060; ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.260

50-0120

Surplus Property Acquisition.

- (1) Recipients of Surplus Property must have funds available at the time the property is acquired, and pay all costs and charges incidental to the acquisition within 30 calendar days from the date of the invoice. Invoices outstanding in excess of 90 calendar days may result in suspension of purchasing privileges until such invoices have been paid in full.
- (2) Surplus Property must be available to qualified organizations (those organizations referenced in Rule 50-0110) prior to public sale. Nonqualifying private entities and private citizens, separately or combined, must not be eligible to acquire Surplus Property except at public sales.
- (3) Surplus Property acquired by qualified organizations must be used in the conduct of their official public programs and not for resale or distribution unless otherwise preapproved by the District.

Stat. Auth.: ORS 279A.065 (5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.260; ORS 279A.280

50-0130

Public Sales for Disposal of Surplus Personal Property.

- (1) **Conduct.** The District must conduct public sales for the disposal of Surplus Property not sold or transferred pursuant to Rules 50-0110 and 0120. Methods of disposal may include, but are not limited to: internet auctions, oral auctions, sealed bid sales and fixed price retail sales, separately or in any combination thereof.
- (2) **Eligibility.** Members of the general public may participate as buyers at public sales. No employee of the District, whether full-time, part-time, temporary or unpaid (volunteer), member of the Employee's Household or Employee's Immediate Family, or any person acting on the employee's behalf may participate in public sales if the employee has had any role in declaring the item surplus, processing the item or related paperwork, or offering it for sale.
- (3) **Conduct of Internet Auctions.**
 - (a) The District may offer Surplus Property for public sale on the internet using its own website or the services of an internet auction provider. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;
 - (b) The District reserves the right to reject any and all Bids regarded as not in the best interests of the public;
 - (c) All items must be sold to the highest bidder. All Property must be offered "As-Is, Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose. Terms and conditions of the sale will be made a part of the internet posting. A purchaser or disappointed bidder will have no recourse against the District, or any of its respective officers, employees or agents. All sales will be final.
- (4) **Payment.**
 - (a) Full payment must be made within 10 calendar days from the date of the auction's close unless otherwise specified in the public Invitation to Bid.
- (5) **Claiming Items Purchased.**
 - (a) Items not paid in full by the time specified in the sales terms and conditions will be canceled;
 - (b) **Unclaimed Property.** Property paid for but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall be retained by the District;
 - (c) **Title.** Title to Property sold will be transferred to the purchaser when full and final payment is made, unless otherwise specified by the District. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. The District rejects any liability once a purchaser takes possession of a vehicle.

(6) **Failure to Comply.** The District may establish criteria to debar participants from internet auctions and other sales pursuant to this Rule. Such criteria shall be based on:

- (a) Conviction of fraud;
- (b) Unsatisfactory internet auction service ratings;
- (c) Failure to claim purchases; or
- (d) Other documented activities determined by the District to warrant debarment.

Based upon these criteria, the District may debar participants from internet auctions and participation in other sales.

(7) **Conduct of Auctions and Sealed Bid Sales.**

(a) The District must advertise the date, time and location of public auction or sealed Bid sales. A public Invitation to Bid shall be available at the auction site or sales location one week before an auction or sealed Bid sale. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;

(b) The District reserves the right to reject any and all Bids regarded as not in the best interests of the public;

(c) All items must be sold to the highest bidder. All Property will be offered “As-Is, Where-Is” with no warranty or other guarantee as to its condition or fitness for use. A purchaser or disappointed bidder will have no recourse against the District or any of its respective officers, employees or agents. All sales will be final.

(d) The District may require a Bid security check (payable to the “District”) equal to at least 10 percent of the Bid to accompany all sealed Bids. The Invitation to Bid shall define any Bid security requirements. The Bid security of unsuccessful bidders will be returned within 30 calendar days following a Bid Opening. The successful bidder’s Bid security will be applied as partial payment on Property purchased.

(8) **Payment.**

(a) Full payment must be made on the day of the sale for all purchases unless the Invitation to Bid states otherwise. In those instances where full payment is not required, a 10 percent down payment is required on the day of the sale. The time limit for making full payment, and the place where payment must be made, will be specified in the public Invitation to Bid;

(b) Payment by personal check may be accepted, at the absolute discretion of the District, when presented with two pieces of acceptable identification, one of which must be a Photographic Identification. Other acceptable identification may include major credit cards, a valid driver’s license, or a valid voter’s registration card. The District reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by Cash, cashier’s check or money order.

(9) **Claiming Items Purchased.**

(a) Items not paid in full by the time specified in the sales terms and conditions will be canceled and Bid security forfeited;

(b) Property paid for but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall be retained by the District unless prior Written approval is obtained from the District;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the District. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. If payment is made by personal check, the title must be released to the vehicle purchaser in 21 calendar days, or when the check clears the bank. The District rejects any liability once a purchaser takes possession of a vehicle;

(10) **Failure to Comply.** In addition to Section (6) of this Rule, the District may debar participants from state sales based upon the following criteria:

- (a) Failure to observe the procedures set forth in the sales terms and conditions; or

(b) Payment for purchase or Bid security with a personal check, which is dishonored by a payer's financial institution.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.280

SELLING GOODS OR SERVICES

50-0200

Policy; Applicability; Methods

(1) **Policy.** A sound and responsive Public Contracting system, pursuant to ORS 279A.015, may include both purchasing and selling activities. By definition, a Public Contract includes sales by Agencies pursuant to ORS 279.010(uu). The policies of ORS 279A.015 apply to public selling activities.

(2) **Applicability.** This Rule applies to the sales of Goods or Services. The sale of Goods or Services includes but is not limited to: concessions and personal property.

(3) **Methods.** The District must use a method, as feasible for selling, pursuant to ORS 279B.055 through ORS 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts anticipated.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070

Stats. Implemented: ORS 279A.010(x); ORS 279A.015; ORS 279A.050(1), (2); ORS 279A.065(5)(a)