

Eugene School District 4J

Code: **DJC**
Adopted: 2/23/05
Orig. Code(s): None

Special (Class) Procurements for Public Contracts (other than contracts for public improvements)

Effective March 1, 2005, the entirely new revision of state procurement statute (ORS Chapter 279) goes into effect. With that revision, all previous exemptions (some of which are now called special procurements) promulgated under ORS Chapter 279 expire, and new exemptions (some of which are called special procurements) must be promulgated. ORS Chapter 279 has been renamed the Public Contracting Code of the State of Oregon, and has been divided into three sections. ORS Chapter 279A are general provisions for all public contracts; ORS Chapter 279B are provisions governing public contracts other than contracts for public improvements.

The following special (class) special procurements are based on rules formerly adopted by the Eugene School District, based on a former template prepared by the Oregon School Boards Association, drafted from formerly adopted rules of the Oregon Department of Administrative Services (DAS), exempting certain public contracts or classes of public contracts from competitive bidding. Rules in their entirety were formerly found in Oregon Administrative Rules, Chapter 125, Divisions 300-360.

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

- Contracts which have been specifically exempted under ORS 279A.025(2), including but not limited to the following. For the Board's information, {exemptions in italics indicate those now exempted by statute, which prior to March 1, 2005, required a separate class or contract specific exemption}.
 - (a) *Contracts between contracting agencies or between contracting agencies and the federal government*
 - (b) Insurance and service contracts, subject to ORS 414.115 through 414.145
 - (c) Grants
 - (d) Contracts for professional or expert witnesses or consultants to provide services relating to litigation or legal matters
 - (e) Acquisition or disposal of real property or interest in real property
 - (f) *Sole-source expenditures when rates are set by law or ordinance for purposes of source*
 - (g) *Contracts for the procurement or distribution of textbooks*
 - (p) Energy saving performance contracts
 - (q) *Contracts, agreements, or other documents entered into, issued or established in connection with:*
 - (A) *Incurring debt, including bonds*
 - (B) *Making loans*
 - (C) *Investing funds*
 - (r) *Contracts for employee benefits plans subject to ORS 243.105 through 243.565*

- (s) Any other public contacting of public body specifically exempted from the code by another provision of law.
- *Contracts for personal services*
 - *Specific exemptions granted by the Board of Directors in its role as the LCRB*
 - Contracts covered by class special procurements, as authorized by the provisions of ORS 279B.085. Pursuant to ORS 279B.085(3), the Local Contract Review Board (LCRB) is authorized to approve findings which demonstrate that the special procurements will (a) be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and (b) (A) result in substantial cost savings to the contracting agency, or (B) otherwise substantially promote the public interest in a manner that could not practicably be realized with requirements that are applicable under ORS 279B.055 (competitive sealed bids). ORS 279B.060 (competitive sealed proposals). ORS 279B.065 (small procurements-under \$5,000), or ORS 279B. 070 (intermediate procurements-between \$5,000 and \$150,000).
 - ORS 279B specifies two other methods of source selection: ORS 279B.075 Sole-source procurements, and ORS 279B.080 Emergency procurements.

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

- A. In connection with contracts for public improvements, 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 279B.085(3)(a) &(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.
- 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:

- 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 over \$5,000 but does not exceed \$150,000, 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 amount of the purchase exceeds \$150,000, the product or service shall be obtained through competitive bidding unless a specific exception 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 \$100,000, this shall be stated in the advertisement for bids or proposals.

Findings of Fact/Conclusion of Compliance with Law (Brand Names or Products, “or Equal,” Single Seller and Sole Source)

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 (3)(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. In addition, as required by ORS 279C.335(2)(b) the awarding of a public improvement contract subject to the above described exemption should result in substantial cost savings by virtue of the ability to reduce solicitation costs when it is known that comparable products are not available, or when specifying another product solely to meet a competition requirement might lead to lower initial cost but longer lifetime cost.

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 Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279B.085(3)(a) &(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.

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 is one newspaper of general circulation in the Eugene area, the Register Guard. 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 Register Guard. 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 weekly trade newspaper, the Business Journal, all as required by ORS 279C. (This is one of the few situations where ORS 279C and ORS 279B cross-reference. ORS 279C makes requirements for public notifications in newspapers. The procurement of those notifications is governed by ORS 279B).
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 place 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 (Advertising Contracts, Purchase of)

Due to limited competition and unique nature of sources, it is unlikely that this class special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts, as required by ORS 279B.085(3)(a). Further, any contracts awarded under this special procurement would result in a cost savings available to the district as required by ORS 279B.085(3)(b)(A), 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 Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279B.085(3)(a)&(b)(A) and determined that awarding a contract this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.

Findings of Fact

1. Sales of advertising for student activities are generally non-general 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 (Advertising Contracts, Sale of)

These findings indicate that 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 (3)(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 279B.085(3)(b)(A) is not an issue. This special procurement of a class of contracts complies with the requirements of law.

IV. 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 sources; 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 Local Contract Review Board (LCBR) for the district, has made the findings required by ORS 279B.085(3)(a)&(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.

C. The following limitations apply to this rule:

1. If the contract is over \$5000 but less than \$150,000, 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 \$150,000, 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 by means of special procurement from the competitive bidding or proposal requirements, or other appropriate methods of source selection of ORS 279B, to submit to the LCRB for approval for approval under the conditions of ORS 279B.085(3)(a)&(b)(A).

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 \$150,000, the district will either seek formal competitive bids or proposals, 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 (Equipment Repair and Overhaul)

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 279.085 (3)(a), because the District is required to make a good faith effort to ensure that other viable means are not available before employing this special procurement. 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, and such justification will become part of the public record of the contract.

The awarding of public contracts pursuant to this special procurement will result in a cost savings to the district, as required by ORS 279B.085 (3)(b)(A), 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.

V. COPYRIGHTED MATERIALS

- A. The district may, without competitive bidding or proposals 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 instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or their designated distributor. (ORS 279A.025 separately and specifically exempts textbook purchases from competitive procurement requirements.)
- B. The Board, acting as the Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279B.(3)(a)&(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.

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 license. 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. An instructional materials 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. (Although, pursuant to ORS 279A.025, textbook purchases are exempt from competitive procurement, other non-textbook instructional materials would be addressed by this special procurement.)

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 (Copyrighted Materials)

This special procurement will not encourage favoritism or substantially diminish competition in the awarding of public contracts as required by ORS 279B.085(3)(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 special procurement will result in optimal value to the district, as required by ORS 279B.085(3)(b)(A), when it needs to purchase copyrighted materials and there is only one known supplier for such goods.

VI. 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 Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279B.(3)(a)&(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote the public interest.

- 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. 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 special procurement will encourage favoritism in the awarding of public contracts or diminish competition for such contracts. 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 because the normal method of product selection is too cumbersome and costly to pursue, or otherwise substantially promote the public interest.

VII. REQUIREMENTS CONTRACTS (BLANKET PURCHASE ORDERS, PRICE AGREEMENTS)

- A. The district, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of 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 Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote public interest.
- 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 pre-determined price or price discount from a price list, provided the contract is let by a competitive procurement process pursuant to the requirements of ORS 279A and ORS 279B.
- 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 279A and 279B, 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 279A and 279B; 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. Under the authority of ORS 279A and 279B, the district may use the requirements contract entered into by a public agency of another state, or that of the U.S. government when:
1. The original contract substantially 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.
- H. The term of any district requirements contract, including renewals, shall not exceed five years unless otherwise exempted as a special procurement pursuant to ORS 279B.085.

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 paperwork, 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 (Requirements Contracts (Blanket Purchase Orders, Price Agreements))

It is unlikely that this special procurement will result in favoritism in the awarding of public contracts or diminish competition for such contracts. 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, or otherwise substantially promote the public interest. 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.

VIII. USED PERSONAL PROPERTY OR EQUIPMENT, PURCHASE

- 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 Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote public interest.
- C. For purchases of used personal property or equipment costing less than or equal to \$150,000, 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 \$150,000 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. If practical, the District will also advertise the proposed procurement.
- E. Notwithstanding any of the above, the District may use or dispose of personal property subject to the provisions of ORS 279A. 185.

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 special procurement will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts. 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 \$150,000, the district will advertise its need, if practical.

The use of this special procurement will result in a cost savings to the district as required by ORS 279B.(3)(a)&(b)(A). 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.

IX. 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 \$150,000, the district shall, as a minimum, follow rules for intermediate procurement. 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 \$150,000, the district shall determine and use the best procurement method, pursuant to the public contracting code and these rules, and shall solicit written proposals with the requirements of district 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 \$150,000, 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 Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote public interest.

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 rules governing special procurements and obtain at least three informally solicited quotes for purchases less than or equal to \$150,000.
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 special procurement will encourage favoritism in the award of district contracts or substantially diminish competition for district contracts. 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 \$150,000, the district will advertise its need.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. 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.

X. 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 \$150,000, the district shall at a minimum (attempt to) competitive quotes, as per the rules for intermediate procurements. 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 records of the district.
 - 2. If the contract amount exceeds \$150,000, the district shall determine and use the best procurement method, pursuant to ORS 279A and B, and District rules.
- B. The Board, acting as the Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote public interest.
- 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 279B.055.

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 hard-ware 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 procedures governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases over \$5,000 but less than or equal to \$150,000.
5. If a purchase of telecommunications hardware or software is expected to cost more than \$150,000, the district will use a formal competitive bidding or proposals.
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 (Telecommunications Systems-Hardware and Software Contracts)

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. The purchase of telecommunications hardware and software will be made in accordance with other competitive bidding rules herein. If the anticipated purchase is over \$150,000, the district will advertise its need.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. 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.

XI. 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 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 Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish

competition and will result in a cost savings to the district or otherwise substantially promote public interest.

- 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 Lane 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 rules governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than or equal to \$150,000.

4. If a purchase of service is expected to cost more than \$150,000, 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.
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 special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. 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 \$150,000, the district will advertise its need, issue a written solicitation document and invite written bids or proposals to be furnished in response.

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 use of this special procurement will result in a cost savings to the district as required by ORS 279B.085(3)(b)(A). 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.

XII. 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 to 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 Local Contract Review Board (LCRB) for the district, has made findings required by ORS 279B.085(3)(b)(A) and determined that awarding a contract under this special procurement is unlikely to encourage favoritism or substantially diminish competition and will result in a cost savings to the district or otherwise substantially promote public interest.
- C. The district shall not contract pursuant to this special procurement 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 with 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.

Conclusions of Compliance with Law (Hazardous Material Removal; Oil Cleanup)

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 (3)(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 special procurement will result in a cost savings to the district in these situation, as required by ORS 279B.085 (3)(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.

END OF POLICY

Legal Reference(s):

[ORS Chapter 279](#)

[OAR 125-310-0005](#) to -0500

[OAR 125-360-0010](#) to -0030

[OAR 125-030-0000](#) to -0100

[OAR 125-320-0010](#) to -0025

[OAR 137-030-0000](#) to -0155

[OAR 125-300-0000](#) to -0100

[OAR 125-330-0030](#) to -0700

[OAR 137-035-0000](#) to -0080

[OAR 137-040-0000](#) to -0590

Oregon Attorney General's Model Public Contract Rules Manual, Department of Justice (January 2001).

Cross Reference(s):

DJ - Purchase of Supplies, Service and Equipment