

InterMountain Education Service District

Code: **DJCA**
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Personal Services Contracts

The Oregon Revised Statute (ORS) 279A.065 allows a public agency to enter into personal service contracts and to create procedures for the screening and selection of persons to perform personal services.

The Local Contract Review Board of InterMountain ESD has determined it to be appropriate to adopt such procedures.

1. Definitions

The listed terms shall have the following meanings:

a. "Personal services" include:

- (1) Services generally requiring specialized skills, knowledge, or resources, the application of technical or scientific expertise, the exercise of professional, artistic or management discretion or judgment, or the exercise of business acumen;
- (2) Services referred to in ORS 279C.100, which are architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services,
- (3) Services performed in a professional capacity, including, but not limited to, the services of an accountant, auditor, banker, attorney, physician or dentist, and data processing consultant;
- (4) Services for human custodial care services, educational services, transportation services, mental or physical health services, social services or child care services; and
- (5) Services in the nature of artistic skills.

Notwithstanding anything stated within these rules a "personal services" shall not include services provided pursuant to a contract which is primarily for the purpose of buying products, personal property, equipment, supplies, or materials.

Pursuant to ORS 279A.065(3) "personal services" for these rules shall not include the services of a single Construction Manager/General Contractor acting as such.

- b. "Consultant": the provider or prospective provider of personal services under a personal service contract.
- c. "Proposal": a competitive written offer submitted in response to a Request for Proposals.
- d. "Related services": those personal service defined as related services in ORS 279C.100(8) which are services other than architectural, engineering, photogrammetric mapping, transportation planning service, and land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning

services, project management services, and owner's representation services or land-use planning services;

- e. "Request for Proposals": a written document soliciting competitive written proposals, describing the project or work, and setting forth the criteria and method to be used to select the best proposal.

2. Policy

It is the policy of InterMountain ESD to select as expeditiously as possible, but in compliance with all applicable laws and these rules, the most qualified consultants based on their demonstrated competence and qualifications to perform the professional services required at a fair and reasonable price, and to discourage improper favoritism.

3. Attorney General's Model Rules

Except as otherwise provided for herein, the model rules of the Oregon Attorney General shall not apply to the procurement of personal services for InterMountain ESD.

4. Choice of Procurement Methods

- a. For all personal services other than architectural, engineering, photogrammetric mapping, transportation planning service, land surveying services, and related services, InterMountain ESD may use any procurement method set forth herein, including direct appointment, regardless of the amount of the expected cost of the services to be rendered.
- b. For all related services when the cost of the services is not expected to exceed \$250,000, InterMountain ESD may use any procurement method set forth herein, including direct appointment. When the expected cost for related services will exceed \$250,000 but not exceed \$400,000, InterMountain ESD may use either the informal or formal procurement procedures set forth herein. When the expected costs will exceed \$400,000 then the formal procurement procedures set forth herein shall be used.
- c. For architectural, engineering, photogrammetric mapping, transportation planning service, and land surveying services and when the expected contract price of the services is not expected to exceed \$100,000, InterMountain ESD may use any procurement method set forth herein, including direct appointment. When the expected cost for such services will exceed \$100,000 but not exceed \$250,000, InterMountain ESD may use either the informal or formal procurement procedures set forth herein. When the expected costs for such services will exceed \$250,000 then the formal procurement procedures set forth herein shall be used.
- d. For any and all personal services necessitated by reason of an emergency declared by InterMountain ESD, InterMountain ESD may use any procurement method set forth herein, including direct appointment, regardless of the amount of the expected cost of the services to be rendered.
- e. Notwithstanding any of the foregoing, InterMountain ESD may enter into a contract for any personal services directly with a consultant if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under rules adopted by InterMountain ESD and the new contract is a continuation of the project, provided however that it is first found that the policy set forth in Section 2 hereof is furthered by doing so.

5. Procurement Methods

The various methods authorized and required by these rules are as follows:

a. Direct appointment.

Direct appointment procedures shall include at least:

- (1) Identification of a consultant, with or without advertisement, that in InterMountain ESD's discretion is determined to be qualified and competent to do the work in furtherance of the policy set forth in Section 2 above; and
- (2) Either the execution of a formal contract setting forth the consultant's performance obligations, the payment methodology, and such other terms as are deemed appropriate, or the issuance of an informal appointment as long as such appointment is terminable by InterMountain ESD at will and a formal contract is not otherwise required by law.

b. Informal appointment.

Informal appointment procedures shall include at least:

- (1) Identification of three prospective consultants, with or without advertisement (but if three cannot be identified a lesser number may be used if advertisement is used), followed by contacting such consultants telephonically, by mail, electronically, in person, or through a combination thereof, consistently explaining to each the nature of the work or project, and requesting proposals of a form which InterMountain ESD deems appropriate under the circumstances, but which at least allows InterMountain ESD to evaluate the proposers according to the following criteria:
 - (a) Particular capability to perform the services for the project being considered;
 - (b) Number of experienced staff available to perform the services required by the project, including such consultant's recent, current, and projected workloads;
 - (c) Performance history on past projects for public or private clients;
 - (d) Geographic proximity to the project; and
 - (e) Cost, where cost consideration does not violate Section 7 hereof.
- (2) Selection of the consultant based upon a fair evaluation and ranking of the proposals.
- (3) A written contract dealing with at least the following terms and such others as InterMountain ESD may deem appropriate:
 - (a) The consultant's tasks, staffing, and a performance schedule;
 - (b) A contract price which is fair and reasonable to the public body, taking into account the estimated value, scope, complexity, and nature of the professional services;
 - (c) All appropriate terms and conditions for the proper execution of the work and for the protection of InterMountain ESD's interests.
- (4) If this process fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure set forth above.

c. Formal appointment.

Formal appointment procedures shall include at least:

- (1) The development of a Request for Proposal (“RFP”), notice of which is advertised as set forth in Section 6 hereof followed by mailing the RFP to interested consultants.
- (2) The RFP shall include:
 - (a) General background information, including a description of the project, the specific consultant services sought, and the time period in which the project is to be completed;
 - (b) The evaluation process and the criteria which will be used to select the consultant;
 - (c) The closing date of the solicitation and the delivery locations for consultant proposals;
 - (d) The date and time for interviews, if planned;
 - (e) Reservation of the right to seek clarifications of each consultant’s proposal, and Subject to Section 7 hereof the right to negotiate a final contract which is in the best interests of InterMountain ESD, considering cost effectiveness;
 - (f) Reservation of the right to reject, based on written findings, any or all proposals if there is good cause, and to cancel the solicitation, if doing so would be in the public interest;
 - (g) A sample of the contract the consultant will be expected to execute; and
 - (h) Any other information which is determined to be necessary to evaluate, rank and select consultants, including, if desired, a request for the following information:
 - (i) The consultant’s particular capability to perform the services required for the project, and the consultant’s recent, current, and projected work load;
 - (j) The number of consultant’s experienced staff available to perform the professional services required by the project, including such persons’ specific qualifications and experience;
 - (k) A list of similar projects completed by the consultant with references concerning past performance; and
 - (l) Such other criteria as InterMountain ESD may consider important for the particular project or work.
- (3) A pre-proposal meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such meeting, if held, may or may not be mandatory at the discretion of InterMountain ESD.
- (4) Reviewing and ranking proposals according to criteria stated above and any additional criteria stated in the RFP. Ranking may also include:
 - (a) References and recommendations from past clients, public and private;
 - (b) Status and quality of any required licensing or certification (legally required licenses or certifications are a condition precedent to an award of a contract);
 - (c) Consultant’s knowledge and understanding of the project as shown through the consultant’s proposed approach to the project’s staffing and scheduling needs, and suggested alternatives to any perceived design and construction problems to the extent relevant to the procurement;
 - (d) Results from oral interviews, if conducted;
 - (e) Design philosophy and project approach where relevant;

- (f) Availability of any specially required resources or equipment.
- (5) A written contract dealing with at least the following terms and such others as InterMountain ESD may deem appropriate:
 - (a) The consultant's tasks, staffing, and a performance schedule;
 - (b) A contract price which is fair and reasonable to the public body, taking into account the estimated value, scope, complexity, and nature of the professional services;
 - (c) All appropriate terms and conditions for the proper execution of the work and for the protection of InterMountain ESD's interests.
- (6) If this process fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure as provided for herein.

6. Advertisement.

When advertisement is required by these rules, or such measures are elected, advertisement shall meet the following standards:

- a. All advertisements shall appear at least three times for three successive weeks in at least one newspaper of general circulation in the district boundaries of InterMountain ESD. In order to increase the potential for attracting responses, InterMountain ESD may publish notice of the solicitation in a trade publication published regionally with the number of publications and frequency thereof to be determined at InterMountain ESD's discretion.
- b. The last required advertisement shall be at least fourteen calendar days before the deadline for submission of responses.
- c. The advertisement shall briefly describe the project or office to be filled, the professional services sought, where copies of the solicitation may be obtained, and the deadline for submitting a response.

7. Price negotiations.

Pursuant to ORS 279C.110, InterMountain ESD shall not ask for or use pricing or cost information in selecting consultants providing architectural, engineering, photogrammetric mapping, transportation planning service, or land surveying services until after making a selection of candidates based upon the consultant's qualifications, and if an agreement as to price and cost is not reached with the first ranked consultant, InterMountain ESD may negotiate with the lesser ranked consultants (in their order of ranking) until such an agreement is reached.

For the procurement of all other personal services, consultant price information may be sought and used in the selection process at any time.

8. Rejection of all proposals.

InterMountain ESD may at any time during the solicitation or negotiation process reject all consultant proposals and cancel the solicitation without liability therefor, after determining that there is good cause for rejecting all proposals and that it would be in the public interest to do so.

9. Consultant responsibility for costs.

Under no circumstances shall the contract review board or InterMountain ESD be responsible for any consultant costs and expenses incurred in submitting responses to a solicitation under any part of these rules. All prospective consultants or personal service contractors who respond to solicitations do so at their own costs and expense.

10. Protest procedures.

All protests regarding any aspect of the solicitation or selection hereunder shall be determined through the process set forth in OAR 137-048-0240.

END OF POLICY

Legal Reference(s):

[ORS Chapters 279A, 279B and 279C](#)
[ORS 334.125](#)
[ORS 670.600](#)

[OAR 459-010-0030](#)

INTERNAL REVENUE SERVICE, PUBLICATION 1779: INDEPENDENT CONTRACTOR OR EMPLOYEE.

Cross Reference(s):

DJC - Bidding Requirements