

## Legislative Branch Contracting Rules

### 1. Overview

a. Application. Except as provided in Rule 12, the Legislative Branch Contracting Rules apply to all procurements that a legislative entity conducts.

b. Definitions. As used in the Legislative Branch Contracting Rules:

(1) "Contract" means an agreement between a legislative entity and one or more other persons for sale or other disposal, or a purchase, lease, rental or other acquisition, of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" excludes grants. "Contract" excludes employment agreements.

(2) "Contract price" means the maximum monetary obligation that a legislative entity may incur under a contract, including bonuses, incentives and contingency amounts, if all parties fully perform under the contract.

(3) "Contractor" means a person with whom a legislative entity enters into a contract.

(4) "Intermediate procurement" means a procurement with a contract price that exceeds \$10,000 but does not exceed \$150,000.

(5) "Large procurement" means a procurement with a contract price that equals or exceeds \$150,000.

(6) "Legislative entity to a contract" or "legislative entity" means any entity within the legislative branch that enters into a contract.

(7) "Legislative branch" means the Legislative Assembly and all legislative agencies.

(8) "Procurement" means the act of entering into a contract, including each function and procedure that a legislative entity undertakes in order to enter into a contract, administer the contract and obtain performance of the contract.

(9) "Small procurement" means a procurement with a contract price that does not exceed \$10,000.

## **2. Policy**

a. The legislative branch adopts the following policy goals:

(1) Contracting carried out by legislative entities should further the policy goals set forth in ORS 279A.015.

(2) Legislative entities should ensure that the widest possible range of potential bidders or proposers have the opportunity to compete for a contract, including minority-owned businesses, woman-owned businesses, businesses owned by service-disabled veterans, and businesses owned by members of other historically underrepresented or disadvantaged groups. Legislative entities should conduct outreach programs and make other affirmative efforts to ensure equal opportunity for such groups.

(3) Legislative entities should collaborate, formally or informally, with Legislative Counsel throughout a procurement. The degree of Legislative Counsel's involvement in a procurement should be proportional to the cost, complexity and uniqueness of the procurement. To promote such collaboration, legislative entities should:

(a) Consult Legislative Counsel at the beginning of an intermediate or large procurement to discuss the need for the procurement and the nature of the contract that the legislative entity envisions.

(b) Apprise Legislative Counsel of unusual or unexpected developments during the course of a procurement.

## **3. Contracting Authority**

a. All contracts must be signed on behalf of the legislative entity by a person with contracting authority as described in paragraph b. of this rule.

b. The following persons have contracting authority:

(1) Any person within the legislative branch who is authorized by statute to enter into contracts, to the extent and for the purposes authorized by statute, including, without limitation:

(a) The Legislative Counsel, pursuant to ORS 173.160;

(b) The Legislative Fiscal Officer, pursuant to ORS 173.420;

(c) The Natural Resources Policy Administrator, pursuant to ORS 173.620;

- (d) The Legislative Administrator, pursuant to ORS 173.720; and
- (e) The Legislative Revenue Officer, pursuant to ORS 173.820.

(2) The President of the Senate and the Speaker of the House of Representatives, for small procurements only.

(3) The Secretary of the Senate, the Chief Clerk of the House of Representatives and the caucus leaders, for small procurements only.

(4) Any person to whom a person described in paragraph b.(1), (2) or (3) of this rule explicitly delegates contracting authority.

#### **4. Small Procurements**

- a. A legislative entity may conduct a small procurement in any manner that the legislative entity deems practical or convenient, including by direct selection or award. The legislative entity may not amend a contract procured under this rule if the amended contract price will exceed \$12,500.
- b. A legislative entity may not artificially divide or fragment a procurement so as to constitute a small procurement.

#### **5. Intermediate Procurements**

- a. A legislative entity may conduct an intermediate procurement in accordance with the procedures set forth in this rule. The legislative entity may not amend a contract procured under this rule if the amended contract price will exceed \$150,000 or 125% of the contract price prior to any amendments, whichever is greater.
- b. A legislative entity may not artificially divide or fragment a procurement so as to constitute an intermediate procurement.
- c. A legislative entity may conduct an intermediate procurement by informally soliciting at least three competitive price quotes or competitive proposals from prospective contractors. The legislative entity must keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, the legislative entity may proceed with fewer than three, but must make a written record of the efforts the legislative entity made to obtain the quotes or proposals.
- d. If a legislative entity awards a contract procured under this rule, the legislative entity shall award the contract to the prospective contractor whose quote or proposal will best serve the interests of the legislative entity, taking into account considerations of price, experience,

expertise, product functionality, suitability for a particular purpose and contractor responsibility as described in ORS 279B.110.

## **6. Large Procurements**

- a. Except as provided in Rules 4, 5, 9, 10, and 11, legislative entities shall conduct procurements in accordance with the procedures set forth in this rule.
- b. A legislative entity conducting a procurement under this rule shall award the contract by competitive sealed bidding under Rule 7 or by competitive sealed proposals under Rule 8.
- c. Before executing a contract resulting from a large procurement, legislative entity shall obtain legal sufficiency approval of the contract from Legislative Counsel in accordance with paragraph 14.

## **7. Competitive Sealed Bidding**

- a. If a legislative entity conducts a procurement by competitive sealed bidding, the legislative entity shall conduct the procurement in substantial accordance with ORS 279B.055 and the administrative rules promulgated thereunder.
- b. A legislative entity may disregard a statute or rule relating to competitive sealed bidding if:
  - (1) The statute or rule applies to the legislative entity only by operation of paragraph a. of this rule;
  - (2) The legislative entity determines that disregarding the statute or rule is in the best interest of the legislative branch; and
  - (3) The legislative entity obtains written approval from the President of the Senate or the Speaker of the House of Representatives to disregard the statute or rule.

## **8. Competitive Sealed Proposals**

- a. If a legislative entity conducts a procurement by competitive sealed proposals, the legislative entity shall conduct the procurement in substantial accordance with ORS 279B.060 and the administrative rules promulgated thereunder.
- b. A legislative entity may disregard a statute or rule relating to competitive sealed proposals if:
  - (1) The statute or rule applies to the legislative entity only by operation of paragraph a. of this rule;

(2) The legislative entity determines that disregarding the statute or rule is in the best interest of the legislative branch; and

(3) The legislative entity obtains written approval from the President of the Senate or the Speaker of the House of Representatives to disregard the statute or rule.

## **9. Sole-source Procurements**

a. A legislative entity may conduct an intermediate or large procurement by direct selection or award if the legislative entity makes a written determination that the goods or services that are the subject of the contract are available from only one source.

b. The legislative entity's written determination of the sole source must be based on written findings that may include the factors set forth in ORS 279B.075(2).

c. Before executing a contract procured under this rule, the legislative entity shall give public notice of the proposed contract. The legislative entity must publish the public notice:

(1) On the Oregon Procurement Information Network (ORPIN); or

(2) In at least one newspaper of general circulation in the area where the contract is to be performed.

d. The public notice described in paragraph c. of this rule must:

(1) Describe the goods or services that are the subject of the contract;

(2) Identify the proposed contractor;

(3) Describe a procedure for protesting the proposed contract;

(4) Provide a deadline for protesting the proposed contract that is at least seven calendar days after the first publication of the public notice.

e. If, as a result of protest, the legislative entity receives information that is pertinent to the legislative entity's written determination of a sole source, the legislative entity shall revise its written determination to account for the pertinent information.

f. The legislative entity must negotiate with the sole source to obtain contract terms advantageous to the legislative entity, to the extent reasonably practical.

## **10. Emergency Procurements**

- a. In cases of emergency, a legislative entity may conduct procurements by any method that ensures competition that is reasonable and appropriate under the emergency circumstances.
- b. A legislative entity conducting a procurement under this rule shall document, in writing, the nature of the emergency and the method used for selecting the contractor.

## **11. Direct Award for Certain Professional Services Contracts**

- a. Notwithstanding Rules 5 and 6, a procurement for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, as those terms are defined in ORS chapter 279C.100, may be conducted in accordance with this rule.
- b. Contracts for services described in paragraph (a) of this rule with a contract price that does not exceed \$100,000 may be directly awarded to a contractor.
- c. Contracts for services described in paragraph (a) of this rule with a contract price that does not exceed \$250,000 may be directly awarded to a contractor if the work to be performed under the contract is substantially related to work that the contractor previously performed under a separate contract and, as a result, the contractor has special knowledge of or familiarity with the work to be performed.
- d. A legislative entity conducting a procurement under this rule shall document, in writing, its reasons for selecting the contractor.

## **12. Option to follow Public Contracting Code**

- a. A legislative entity may elect to conduct a procurement in substantial accordance with the Public Contracting Code, as defined in ORS 279A.005, in lieu of the Legislative Branch Contracting Rules.
- b. Rules 3 and 14 apply to a legislative entity that conducts a procurement under this rule.

## **13. Required Contract Provisions; Exemptions**

- a. A legislative entity shall include the following provisions in all written contracts, except for contracts resulting from small procurements:
  - (1) A provision that identifies a specific source of funding for payments due under the contract and limits the contractor's recovery under the contract to that source.

(2) A representation and warranty by the contractor that is materially identical to the provision described in ORS 279B.045 (relating to tax compliance).

(3) A provision that is materially identical to the provision described in ORS 279B.230 or ORS 279C.530 (relating to payment for medical care and providing workers' compensation).

(4) A provision that is materially identical to the provision described in ORS 279B.235 or ORS 279C520 (relating to hours of labor, discussions regarding compensation, and retaliation).

b. Notwithstanding paragraph a. of this rule, a legislative entity is not required to include the provisions described in paragraphs a. and (4) of this rule if the contract is solely for the disposal or acquisition of goods.

## **14. Legal Sufficiency Review and Approval of Contracts**

a. Before executing a contract resulting from a large procurement, a legislative entity shall obtain legal sufficiency approval of the contract from Legislative Counsel.

b. Upon request by a legislative entity, Legislative Counsel shall review contracts for legal sufficiency. If Legislative Counsel determines that a contract is legally sufficient, Legislative Counsel shall send written approval of the contract to the legislative entity.

c. Legislative Counsel shall approve a contract for legal sufficiency if Legislative Counsel determines that:

(1) The subject matter, promised performance and consideration of the contract are within the legislative entity's legal authority.

(2) The contract, on its face, includes all the required elements for a valid contract.

(3) The contract includes all provisions required by the Legislative Branch Contracting Rules.

(4) There is no likelihood that the contract will result in the state incurring debt beyond the constitutional limitation, nor does the contract impermissibly attempt to bind a future legislature to make appropriations necessary to meet contract obligations or avoid breach.

(5) The contract allows the state to terminate for cause and in other appropriate circumstances and includes adequate provisions for the legislative entity to pursue contract remedies in the event of the contractor's default or breach.

(6) The statement of work, or other comparable terms, are sufficiently clear and definite to enable the legislative entity to evaluate the contractor's performance.

(7) The contract is to be executed by a person who has contracting authority.

d. Approval of a contract for legal sufficiency does not preclude the legislative entity or the State of Oregon from asserting any legally available claim or defense arising from or relating to the contract.

e. Legislative Counsel may request review of a contract by the Department of Justice if Legislative Counsel determines that such review would be in the best interest of the legislative branch.

f. Legislative entities may request legal sufficiency review from Legislative Counsel of contracts resulting from small or medium procurements.

**Legislative Assembly Adoption:**

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