

Harney Soil and Water Conservation District Resolution #2021-02

A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES

WHEREAS, Harney Soil and Water Conservation District (“District”) is an Oregon special district which is subject to Oregon’s public contracting laws; and

WHEREAS, ORS 279A.065 (5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that:

(A) Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and

(B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General; and

WHEREAS, the District desires to update its local contracting rules to reflect change in state law and to streamline District contracting practices and procedures;

NOW, THEREFORE, BE IT RESOLVED:

1. That, except as otherwise provided herein, the District hereby adopts the Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”) as the contracting rules for the District, as such Model Rules now exist or are later modified.
2. That the District adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions, in the Model Rules.
3. That the District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.

APPROVED AND ADOPTED on _____

Board Chair

ATTESTED:

District Secretary

EXHIBIT A

PUBLIC CONTRACTING RULES AND PRODECURES

Harney Soil and Water Conservation District Resolution #2021-02

(A) Solicitation Requirements

In addition to any other requirements for solicitations required by law, all requests for proposals or invitations to bid shall include the following requirements:

- (1) Pursuant to ORS 279A.110, the bidder or proposer shall certify in the bid or proposal that the bidder or proposer has not discriminated and will not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.
- (2) Pursuant to ORS 279A.167, the bidder or proposer shall certify that the bidder or proposer has completed Pay Equity Training provided by the Oregon Department of Administrative Services.

(B) Personal Services

(1) Definition

“Personal Services” shall be defined to include those services that require technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects; engineers; surveyors; attorneys; accountants; auditors; computer specialists; artists; designers; performers; GIS specialists; watershed restoration specialists; foresters; grant writers; project managers; program managers; and consultants.

(2) Contracts for Personal Services other than Architectural, Engineering, Surveying, and Related Services:

- (a) A personal services contract for ongoing services, such as but not limited to: accountants; lawyers; auditors; computer specialists; artists; designers; performers; GIS specialists; watershed restoration specialists; foresters; grant writers; project managers; program managers; and consultants; can be awarded on a non-competitive direct appointment basis. Criteria such as past performance, experience, credentials, etc., should be weighed when selecting a contractor.
- (b) A personal services contract for services with a discrete timeline and/or scope of work, totaling less than \$50,000 in either a calendar or fiscal year, may be awarded by direct appointment, without competitive bidding.

- (c) A personal services contract for services with a discrete timeline and/or scope of work, totaling between \$50,000 and \$100,000 in either a calendar or fiscal year, may be awarded after obtaining at least three informal quotes, according to the procedures for Intermediate Procurement described in ORS 279B.070.
- (d) A personal services contract for services with a discrete timeline and/or scope of work, totaling more than \$100,000 in either a calendar or fiscal year shall be awarded using competitive sealed proposals as provided in ORS 279B.060, unless exempted from competitive bidding by resolution of the Board of Directors according to the requirements of ORS 279B.085.
- (e) Personal services contracts exempted from competitive proposal processes may be awarded in any manner authorized by the Board of Director.
- (f) Personal services contracts existing on the effective date of these Rules may be extended by direct appointment, without competitive bidding.

(3) Contracts with Architects, Engineers, Land Surveyors, and Related Services:

- (a) A contract for Architectural, Engineering, Surveying, and Related Services may be entered into by direct appointment if such contract is estimated not to exceed \$50,000 in a calendar year or fiscal year; or 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 these Rules, and the new contract is a continuation of that project.
- (b) Unless otherwise provided in this Section, contracts for Architectural, Engineering, Surveying, or Related Services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060, ORS 279C.110, ORS 279C.120, and these rules.
- (c) All contracts for Architectural, Engineering, Surveying, or Related Services of \$100,000 or more shall be entered into using qualification-based selection, consistent with ORS 279C.110.
- (d) Screening and selection procedures under section (3)(c) may include considering each candidate's:
 - (1) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - (2) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;

- (3) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (4) Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, emerging small businesses or historically underutilized businesses;
 - (5) Availability to the project locale;
 - (6) Familiarity with the project locale; and
 - (7) Proposed project management techniques.
- (e) If the screening and selection procedures under this section (3)(d) result in the District's determination that two or more candidates are equally qualified, the District may select a candidate through any process that is not based on the candidate's pricing policies, proposals or other pricing information.

(C) Delegation

- (1) Except as otherwise provided in these rules, the powers and duties of the ad hoc Selection Committee under the Public Contracting Code must be exercised and performed by the Harney SWCD Board of Directors.
- (2) Unless expressly limited by the Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the District's Manager, or designee (hereinafter "Contract Officers") without further approval of the District's Board of Directors.
- (3) For public contracts that \$99,999 or less including those for Public Improvements, a Selection Committee comprised of at least:
 - (a) One and no more than two members of the Board of Directors who are free of conflicts of interest that will appointed by the Board;
 - (b) The District's Project Staff; and
 - (c) The District Manager will review all responses to the contract solicitation and make recommendations for the Board to carry out.
- (4) The person or entity to whom authority is delegated shall be responsible for ensuring compliance with all applicable public contracting laws, including but not limited to competitive bidding requirements, if any.

(D) Advertising

- (1) Twice per calendar year (approximately April 1st and October 1st) the District will advertise in at least three (3) local papers, advising interested contractors to visit the District's website and/or Facebook weekly for upcoming Public Improvement projects. Solicitations for construction of a Public Improvement project estimated to cost between \$5,000 and \$125,000 shall be posted to the District's website, for a period of at least one (1) week before an award is made This includes solicitations using Bids, Requests for Proposals (RFPs), and Competitive Price Quotes and Competitive Proposals (as described in ORS 279C.400).
- (2) Advertisements for public improvement projects of \$100,000 or more also must be published at least once in a newspaper of general circulation in the area where the contract is to be performed. If a Public Improvement contract is estimated to exceed \$125,000 in price, the project also must be advertised in at least one trade newspaper of general statewide circulation.
 - A. The advertisement and the solicitation for a Public Improvement must state whether the project type is subject to Prevailing Wage Rates (ORS 279C.800 through ORS 279C.870) or the Davis Bacon Act (ORS 279C.360).
 - B. If a site visit is required for a Public Improvement contract, a statement to that effect containing the date, time, and location of the site visit, will be included in the solicitation.
- (3) Advertisements for contracts that are not public improvements and are not Small or Intermediate Procurements must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed, or electronically (on local and/or state websites) if doing so is likely to be cost-effective. The form of advertisement(s) should foster competition among bidders or proposers as much as possible.
 - a. Advertisements must be given at least seven (7) days before the solicitation closing date.
 - b. In addition to advertising requirements, Contract Officers may also directly notify a contractor(s) of an upcoming Contract.

(E) Licensing, Bonding, Insurance

- (1) For Public Improvement projects, all contractors as defined by ORS 701.055(5)(a) & (e) must be licensed with the Construction Contractors Board (CCB), regardless of project type or contract amount. Contracts over \$250,000 require a commercial license.
- (2) All contractors working on a Public Improvement project must be bonded and insured at least to the minimum amounts required by the CCB.
- (3) Per ORS 701.010 (1), landowners or authorized representatives implementing a Public Improvement project on their own land are exempted from Rules D (1) and D (2). However, a Project Implementation Agreement will be required between the landowner and the District.

(F) Small Procurements (Under \$10,000)

- (1) Public contracts for procurement of goods and services that are not Personal Services that are under \$10,000, and public improvements under \$5,000, are not subject to competitive bidding requirements. The Contract Officers shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- (2) The District may amend a public contract awarded as a small procurement beyond the maximum limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price by a sum that is greater than twenty-five percent (25%) of the original contract price.
- (3) Whenever possible, agreements for small procurements shall be in writing.

(G) Intermediate Procurements

- (1) A contract for procurement of goods, or for services which are not Professional Services, estimated to cost between \$10,000 and \$150,000 in a calendar year, or a contract for a Public Improvement project that is estimated to cost between \$5,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- (2) If the proposed contract is expected to exceed \$75,000, both the specifications for the solicitation, and the competitive price quotes or competitive proposals, must be in writing.
- (3) Public Improvement contracts advertised or awarded under this section must still comply with all statutory requirements, including those related to the payment of prevailing wages for public improvements of \$50,000 or more.
- (4) For Public Improvement projects, Contract Officers may request competitive price quotes or competitive proposals for “time and materials” rates, for individual or multiple project components, or for any percentage of the project total.
- (5) Competitive price quotes or competitive proposals for a Public Improvement project are non-binding, unless stated otherwise in the announcement.
- (6) Public Improvement contracts solicited through this section must follow the advertising requirements established through Section (C) of this Resolution.
- (7) With the exception of Competitive Price Quotes and Competitive Proposals advertised according to the process in Section C (4) of these Rules, Public Improvement contracts solicited through this section must include a description of the evaluation criteria and weighting in the announcement.
- (8) All contracts for projects solicited through this section will be in writing, using the template provided by the District’s attorney.

(H) Methods for Awarding Contracts Using Request for Proposals (RFPs)

- (1) In making an award using the Request for Proposal process outlined in ORS 279B.060, the District may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the processes described in ORS 279B.060(6)(b). The evaluation process(es) must be stated in the RFP. OAR 137-047-0261 through 137-047-0263 shall apply to the evaluation of proposals.
- (2) Requests for Proposals solicited through this section must follow the advertising requirements established through Section (C) of this Resolution.

(I) Public Improvement Contracts

- (1) Except as provided in these Rules, all Public Improvement contracts shall be advertised and awarded according to the requirements of the Oregon Revised Statutes (ORS), chapter 279C.
- (2) “Public Improvement” means a project for construction, reconstruction, or major renovation on real property by or for the District. “Public Improvement” does not include:
 - a. Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to project design, management, or inspection.
 - b. Projects implemented by a Landowner on their own property which are funded in whole or in part by grant funds received from the District pursuant to a formal grant-making process.
 - c. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- (3) Solicitation for Bids must comply with the advertising requirements established through Section (C) of this Resolution, as well as all applicable requirements of ORS 279C.365 through ORS 279C.414 and 279C.830.
- (4) All announcements for a Public Improvement project must:
 - a. Describe the public improvement contract;
 - b. State the address and/or website where the specifications for the project may be reviewed
 - c. Specify the date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
 - d. State the date and time after which bids will not be received, which must be at least seven (7) days since the solicitation was posted to the District’s website, published in the newspaper, as appropriate;
 - e. State the name and title of the person designated to receive the bids; and

- f. State the date, time, and place where the District will publicly open the bids.
- (5) Specifications for Public Improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacture or seller, unless the Local Contract Review Board has exempted the product from competitive bidding after making the following written findings:
- a. It is unlikely that the exemption will encourage favoritism in the awarding of the Public Improvement contracts or substantially diminish competition for Public Improvement contracts;
 - b. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency;
 - c. There is only one manufacturer or seller of the product or the quality required; or
 - d. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [ORS 279C.345].
- (6) The District may perform Public Improvement projects using in-house personnel and resources, in accordance with the requirements of ORS 279C.305 through ORS 279C.310.
- (7) Contracts for Public Improvement projects shall comply with all applicable requirements of ORS 279C.500 through ORS 279C.590 and ORS 279C.800, et seq.

(J) Emergency Contracts

- (1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”
- (2) The Board Chair and the Contract Officers have the authority to determine when emergency conditions exist sufficient to warrant an emergency contract and shall so declare in writing. The nature of the emergency shall be documented in writing prior to executing the contract, or as soon as possible thereafter.
- (3) Pursuant to ORS 279B.080, the Board Chair or the Contract Officers may make, or authorize others to make, procurements of goods or services in an emergency, including dispensing with competitive bidding if time is of the essence. The method used for the selection of the contractor shall be documented in writing as soon as is practicable and made part of the District’s files.

(K) Disposal of Surplus Property

- (1) “Surplus Property” is defined as any personal property of the District that has been determined by the District Manager as being of no use or value to the District.

- (2) Disposal of surplus property must be approved by formal board motion.
- (3) Once board approval has been made, the District's Office Manager or designee may dispose of surplus property in the manner that is, in the discretion of the District's Board, deemed most advantageous to the District or the community at large.

(L) Conflict of interest

- (1) It is important for Harney SWCD directors, officers, and staff to be aware that both real and apparent conflicts of interested or dualities of interest sometime occur in the course of conducting the affairs of the District and that appearance of conflict can be troublesome even if there is in fact no conflict whatsoever. SWCD policy requires those with a conflict (or who think they may have a conflict) to disclose the conflict/potential conflict, and prohibit interested board members and staff from voting on any matter in which there is a conflict. If such conflict exist with the Contract Office the contracting decision will be made by the Board.