

# QUICK REFERENCE GUIDE TO PUBLIC CONTRACTING IN OREGON

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## Key Terms

**Local Contract Rules, or Local Rules**: Contracting Rules adopted by resolution of the District’s Board of Directors. May specifically adopt the Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”) or specifically decline to adopt them and adopt different rules.

**Local Contract Review Board (“LCRB”)**: The District’s board of directors, exercising specific contracting authority granted under the Public Contract Code. The Board of Directors must specifically delegate this authority elsewhere, but very rarely ever does.

**Oregon Revised Statutes (“ORS”)**: Oregon’s code of laws.

**Oregon Administrative Rules (“OAR”)**: Rules adopted by state agencies.

**Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”)**: Administrative rules for public contracting adopted by the Oregon Attorney General. They apply to state agencies specifically but will apply to other types of public entities (like special districts) by default unless the entity’s governing board specifically declines to adopt them. They can be found in OAR Chapter 137, Divisions 46 through 49.

**Public Contracting Code**: Oregon’s laws governing public contracting, specifically ORS chapters 279A, 279B, and 279C.

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## Step One: Is it a public contract?

“Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Does not include:

- Grants
- Contracts for the purchase or sale of real estate
- Intergovernmental agreements (IGAs)
- Contracts for which no district funds are used

**If “no,” the Public Contracting Code does not apply.**

**If “yes,” assume it is a public contract and that it is subject to competitive bidding, and move on.**



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## Step Two: Is it exempt from competitive bidding?

- A. **By Rule:** As specifically provided in the applicable section of the **Local Public Contracting Rules**.
- B. **By Resolution:** By resolution of the LCRB (“Special Procurement”). [See Step Eleven.]
- C. **By Statute:** Included in one of the following statutory exemptions:
  - A. Sole-Source, Fixed Price. Sole-source expenditures where the rate or price is established by law or ordinance for source selection [ORS 279A.025(2)(f)].
  - B. Investments. The investment of funds as authorized by law, and other financial transactions that by their character cannot practically be established under the competitive contractor selection procedures of ORS 2798.050 to 2798.085 [ORS 279A.025(2)(q)(C)].
  - C. Certain Contracts with Non-Profits. Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals under ORS 279.835 to ORS 279.855. [ORS 279A.025(4)].
  - D. “Piggyback” Contracts. Contracts for purchase or lease of personal property entered into by another public agency that allows for “piggybacking” onto the contract terms, according to the requirements of ORS 279A.205 through 279A.215 (“Cooperative Procurements”).

If “yes,” follow applicable bidding and purchasing processes.

If “no,” move on.



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## Step Three: Is it an emergency?

**Local Rules** define what constitutes an emergency. For example:

“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.”

**To allow for an exemption from competitive bidding in an emergency, Local Rules must describe the process used to award a contract in an emergency.**

**If “yes,” award the contract as described in the Local Rules.**

- Pro tip: Recommend incorporating ORS 279B.080 (procurements) and OAR 137-049-0150 (public improvements) into **Local Rules**.

**If “no,” move on.**



**Step Four:**  
What kind of contract is it?

**Public contracts in Oregon fall into one of the following categories:**

- A. Personal Services (professional services)
- B. Procurements (purchase of goods, or services that are not Personal Services)
- C. Public Improvements (construction)
- D. Surplus property (disposing of things you don't need).

**The contracting process varies, depending on the type of contract.**

**Once the type of contract is determined, move on.**



## **Step Five:**

What is the expected dollar amount of the contract?

**Within each category of contract, the contracting process may vary, depending on the amount of the contract.**

**Once the estimated dollar amount is determined, move on.**



## **Step Six:** Is it a contract for professional services?

**This is defined by your Local Public Contracting Rules. For example:**

Personal Services” include those services that require specialized 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 include, but are not limited to: Architect, engineer; surveyor; photogrammetrist; attorney; accountant; auditor; computer programmer; artist; designer; performer; consultant; outreach educator; and workshop facilitator.

**If “yes”:**

- A. Contracts with architects, engineers, surveyors, and photogrammetrists that are over \$100,000 must be competitively bid and are subject to qualification-based selection (“QBS”) processes. Refer to applicable statutes in ORS chapter 279C if necessary.
  
- B. Other types of professional services are awarded as provided in the **Local Rules**. Follow those rules.

**If “no,” move on.**



## **Step Seven:**

Is it a contract to purchase goods, or services other than personal services?

**This is called a “procurement” under the Public Contracting Code.**

**If “yes”:**

- A. If the dollar amount is under \$10,000, no competitive process is required. Get the best deal you can for the District.
- B. If the dollar amount is between \$10,000 and \$150,000, obtain at least three competitive quotes from qualified vendors. Written quotes are always recommended; required if bids will exceed \$75,000.
- C. If more than \$150,000, contract must be advertised and competitively bid unless the LCRB grants an exemption by resolution. May use an invitation to bid or a request for proposals. Consult applicable statutes in ORS chapter 279B.

**If “no,” move on.**





## **Step Eight:**

### **Is it a contract for construction?**

**This is called a “public improvement” under the Public Contracting Code. A public improvement for \$50,000 or more is called a “public work.”**

#### **If “yes”:**

- A. If the dollar amount is under \$5,000, no competitive process is required. Get the best deal you can for the District.
- B. If the dollar amount is between \$5,000 and \$100,000, obtain at least three competitive quotes from qualified vendors. Written quotes are always recommended; required if bids will exceed \$75,000.
- C. If more than \$100,000, contract must be advertised and competitively bid unless the LCRB grants an exemption by resolution. Consult applicable statutes in ORS chapter 279C.
- D. If more than \$50,000, prevailing wages must be paid, regardless of the method of making the award. The advertisement or request for bids, and the contract itself, must state this requirement. Consult applicable statutes in ORS chapter 279C.
- E. If it is more than \$100,000, a bid bond, performance bond, and payment bond are required.

#### **If “no,” move on.**



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## Step Nine:

### Are you disposing of surplus property?

Selling of publicly owned property is considered a “public contract” under the Contracting Code. It must be competitively bid and sold to the highest bidder unless the **Local Rules** provide for a different process.

The **Local Rules** should define “surplus property.” For example:

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

The **Local Rules** should describe how surplus property may be disposed of, e.g., donated, thrown away, sold at auction, etc.

If “yes,” follow **Local Rules**. If “no,” start over. It either isn’t a public contract, or you missed a step.

If the contract is ready to award, move on.



## Step Ten:

### Who has the authority to award the contract?

**The Board of Directors must approve all contracts, unless they have delegated this authority elsewhere, such as to the Executive Director, Fire Chief, or General Manager.**

**The **Local Rules** may describe the scope of delegation for approval of contracts, including assigning dollar limits to this authority.**

- A. If there is no **Local Rule** delegating authority to approve contracts, or if the **Local Rule** specifically requires it, the Board of Directors must approve all contract awards.
- B. If some authority is delegated in the **Local Rule**, follow the **Local Rule**.
- C. Recommend including authority to act in an emergency within the Delegation Rule.



## **Step Eleven:** **Exempting Contracts from Competitive Bidding by Resolution**

**The Board of Directors, acting as the Local Contract Review Board, may exempt certain contracts or classes of contracts from competitive bidding requirements after adopting written “findings” to support the exemption, holding a public hearing (for construction contracts), and adopting a resolution declaring the exemption.**

**For procurements, a similar process applies if the Board wants to obtain an item from a single source (i.e., sole-source).**

- A. For sole-source procurements, see ORS 279B.075.
- B. For other procurements (“Special Procurements”), see ORS 279B.085.
- C. For public improvements, see ORS 279C.335.

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