**PERSONAL SERVICES CONTRACT POLICY**

For non-state agencies (such as special districts), "personal services" are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts, and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists, architects, engineers, land surveying and related services (procured under ORS 279C.105 or 279C.110}.

Note: The Attorney General's Public Contracting Code and Model Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no "default" rules for personal services contracts. A district that wants to enter into personal services contracts without competitively bidding those contracts, must adopt rules for doing so.

**Purpose**

The purpose of this policy is to establish guidelines for authorization regarding personal services contracts, governed by State statues, primarily ORS 279A and 279C, as modified and adopted by the Board of Directors.

**Policy**

District is subject to the Model Rules adopted by the Attorney General under ORS 279A, 2798, and 279C, which includes Division 46, 47, 48 and 49 in the Attorney General's Public Model Rules for contracting activities. Division 46 and 47 are applicable to Personal Services contracts, while Division 48 rules are limited to professional services to be performed by a licensed Architect or a Registered Professional Engineer (A&E). The following policy governs all personal services contracts; subset apply only to A&E Contracts, and are identified as such.

**Definition**

Personal services shall be defined to 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 shall include, but are not limited to: architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The District Manager or his/her designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

Personal service contracts do not require a competitive bidding process. When screening or selecting a personal service contractor, the District will consider qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment. The selection is based primarily on these factors rather than price.

**Selection Process for Personal Service Contracts other than A&E**

# Informal Selection Process (Under $ \_

When the estimated cost of Consultant Services is not expected to exceed $ \_, proposals may be awarded that are solicited informally, either orally or in writing. If it is practicable, proposals shall be solicited from a sufficient number of qualified prospective proposes to ensure that no fewer than three qualified proposes submit proposals. If fewer than three qualified proposes submit proposals, the efforts made to solicit proposals shall be documented in the District's files. The selection may be based on criteria including, but not limited to, each proposer's:

* 1. Particular capability to perform the services required;
  2. Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;
  3. Performance history;
  4. Approach and philosophy used in providing services;
  5. Fees or costs; and
  6. Geographic proximity to the project or the area where the services are to be performance.

Price may be considered, but need not be the determining factor. Proposals may also be solicited using a written request for proposal, at the District's discretion.

1. Formal Selecting Process (Over $ \_

The formal procedure shall be used whenever the estimated cost of Consultant exceeds

$\_\_\_\_\_. Consultation Services may be obtained using the formal selection

procedure set forth in OAR 137-047-0255 or 137-047-0260.

Architect, Engineer, and related Services are a special class of Personal Services Contracts, which are defined by ORS 279C.100 and are subject to special provisions of these rules.

**Selection Process for A&E Consultants**

# Direct Appointment Process (Under $50,000)

Consulting Services may be entered into a contract directly, when the estimated cost does not exceed $50,000, as set forth in OAR 137-048-0200.

1. Informal Selection Process (Under $150,000)

When the estimated cost of Consultant Services is not expected to exceed

$150,000, the informal selection procedure set forth in OAR 137-048-0210; shall be used.

1. Formal Selecting Process (Over $150,000)

The formal procedure shall be used whenever the estimated cost of Consultant Services exceeds $150,000, using the formal selection procedure set forth in OAR 137-048-0220.

**Procedures**

The following procedures must be used for solicitation of A&E contracts:

**Competitive Procurement**

1. Direct Appointment Process

A&E Consultation Services may be appointed directly without completing the competitive procurement process if the contract is under $50,000. The appointment can include, but not be limited to: District's current list of consultants (OAR 137-048-0120); or another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement.

1. Informal Selection Process

When the estimated cost is equal to or less than $150,000 the following informal selection process should be used:

* 1. Written Solicitation - Solicitations inviting written proposals shall be sent to a minimum of five (5) prospective A&E Consultants to include at least:
     1. Description of project
     2. Anticipated contract performance schedule
     3. Conditions or limitations
     4. Date and time proposals are due
     5. Criteria upon qualified consultant will be selected
     6. Statement that proposers are responding at their own expense
     7. Statement directing proposers to protest procedures set forth in Division 48 of these rules.
  2. Review Proposals - All proposals shall be reviewed and the three most qualified consultants selected and ranked.
  3. Competitive Informal Selection - The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking based on criteria which include, but not limited to consultant's capacity to perform; number of experienced staff; performance history; project approach and design philosophy; compensation information; geographic proximity to the project.
  4. Negotiate Scope of Services- The District shall discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to a compensation and performance schedule with the highest ranked consultant.

Note: If the scope of a project is revised during negotiations and the estimated cost of the consultant's services exceeds $150,000, then the informal process will be terminated and the services of a qualified consultant shall be solicited using the formal selection process below.

1. Formal Selection Process

This formal procedure shall be used whenever the estimated cost of A&E consultant services exceeds $150,000.

* 1. Advertising - The Board of Directors must authorize the advertisement to bid for

goods and services when services exceed $150,000. All rules related to advertising must be followed.

* + 1. Request for Qualifications (RFQ) - Used to develop a short list of at least three qualified Consultants. Must be followed by a Request for Proposal.
    2. Request for Proposal (RFP) - Whether or not preceded by an RFQ, the RFP shall describe or contain project description, evaluation process, whether interviews are anticipated, closing date and time, reservation to reject any or all proposals, contract requirements, and a sample contract.
       1. Procuring Departments shall create a Request for Proposals (RFP) to include at a minimum:
          1. Background information and project description;
          2. Evaluation Criteria for Selection;
          3. Conditions or Limitations;
          4. Whether interviews are possible;
          5. Proposal Due Date;
          6. Reservation of the right to: seek clarification, negotiate, and reject any and all proposals;
          7. Statement that Proposers responding at own expense;
          8. Protest Procedures
          9. Special Contract Requirements;
          10. Statement of whether a pre-Proposal meeting will be held;

(xii) Sample Contract

* + - 1. District shall advertise each RFP at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14) calendar days before the closing date of the RFP.
  1. Pre-proposal meeting - May be held for all interested consultants to discuss the proposed project and the required consultant services.

1. RFP Analysis - Consultant selection committee shall review, score and rank all responsive proposals according to the criteria included in the RFP.
2. Contract Negotiations - Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement.
3. Contract Award - Only the Board of Directors has the authority to award a contract for services.
4. Solicitation Requirements

All formal solicitations require an RFP or RFQ, and must be in writing and advertised at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14} calendar days before the closing date of the RFP or RFQ. Upon completion of contractor selection and competitive procurement procedures, refer to Purchasing Authority Policy.

**General Origin of Rules**

The following table shows the statutory or other legal basis for personal services contracting activities. For other statutory or legal basis for competitive procurement, see OAR 137-047.

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| --- | --- |
| **Rule**  **Personal Services Contracts**  Authority  **A&E Consultant Selection Procedures**  Application  Definitions  List of Interested Consultants  Applicable Selection Procedures  Direct Appointment Procedures  Informal Selection Procedures  Formal Selection Procedures  Ties Among Proposers  Protest Procedures  Solicitation Cancellation  Two-Tiered Selection Procedures for Public Improvement  Prohibited Payment Methodology  Expired or Terminated Contracts, Reinstatement  Contract Amendments | **Origin**  ORS 279A.055  137-048-0100  137-048-0110  137-048-0120  137-048-0130  137-048-0200  137-048-0210  137-048-0220  137-048-0230  137-048-0240  137-048-0250  137-048-0260  137-048-0300  137-048-0310 |