

ORDINANCE NO. 752

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, AMENDING ORDINANCE NO. 732, TITLED "CABLE COMMUNICATIONS FRANCHISE WITH THE CANBY TELEPHONE ASSOCIATION".

WHEREAS, the City Council is considering changing the grade of video broadcast equipment to 1/2 inch to keep pace with the technological advances in the industry and to provide such equipment for greater service given dollar amount invested; and

WHEREAS, The Canby Telephone Association proposes and the City Council is considering changing Section 13 (B) of Ordinance No. 732 allowing the payment of the annual franchise fee to be paid within thirty (30) days of the end of the subject quarter; and

WHEREAS, The Canby Telephone Association proposes and the City Council is considering changing Section 11 (A) of Ordinance No. 732 allowing the amounts required for local access equipment purchase to be reduced since a changeover to 1/2 inch video equipment will result in substantial costs savings of approximately forty (40%) percent; NOW, THEREFORE,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

The below listed Sections of Ordinance No 732 are revised and amended as follows:

Section 11    Local Origination and Access

Revise page 6 of Section 11 (A) to read as follows; QUOTE:

(A) The full capacity studio shall allow the production of a simple or elaborate community access programs. The studio shall be equipped with lower broadcast, one-half (1/2) inch video equipment. The equipment shall include all equipment typically found in a video production studio, including a film chain, captioning equipment, and an editing system. All equipment quality, quantity and capability should be such that a well balanced and logical video/audio production strategy can be maintained throughout the franchise period.

Grantee shall provide a studio and facilities that include the following lists of equipment or other makes of one-half (1/2) inch video equipment of equivalent capability.       :UNQUOTE.

Revise page 8 of Section 11 (A) to read as follows; QUOTE:

Grantee shall not be responsible for more than a total of \$105,000 in initial equipment costs within twelve (12) months of the effective date of this ordinance; however, the City reserves the right to require Grantee to provide a total of \$145,000 in equipment for origination and access after the initial twelve month period, and at the descretion of the City, should the above listed equipment total less than \$145,000. Grantee is responsible for replacement and repair of the equipment throughout the term of the franchise so as to ensure the equipment is maintained in good working order. :UNQUOTE.

Section 13 Franchise Fee

Revise page 8 of Section 13 (B) to read as follows; QUOTE:

(B) The annual franchise fee shall be paid by Grantee to the City in quarterly installments to the City Recorder each fiscal quarter. All such payments shall be due and paid within thirty (30) days of the end of the subject quarter. :UNQUOTE

SUBMITTED to the Canby City Council and read for the first time at a regular meeting thereof on the 15th day of August, 1984, and scheduled for a second reading and action of the Canby City Council at a regular meeting thereof to be held on September 5, 1984, commencing after the hour of 7:30 o'clock p.m., at the Council meeting chambers at the Canby City Hall in Canby, Oregon.

  
Marilyn K. Perkett, Deputy Recorder

ENACTED by the Canby City Council at a regular meeting thereof on September 5, 1984, by the following votes: YEAS 6 NAYS 0

  
Michael L. Gabrión, Mayor

ATTEST:

  
Bud Atwood, Acting City Administrator

**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 127, DIVISION 10 — PUBLIC CONTRACT REVIEW BOARD**

**Emergency Contracts**

**127-10-030** (1) Public contracting agencies may, in their discretion, let public contracts without competitive bidding if an emergency exists and the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

(2) Public contracting agencies, required to act by governing body, shall adopt, by majority vote, a resolution indicating the existence of the emergency stating with specificity the emergency conditions necessitating the prompt execution of the contract. The public contracting agency shall immediately forward to the Public Contract Review Board a copy of the resolution together with a statement of the amount of the contract and the name of the contractor.

(3) Public contracting agencies with a single executive officer must make detailed written findings describing the emergency conditions necessitating prompt execution of the contract. A copy of the findings together with the amount of the contract and the name of the contractor shall be immediately forwarded to the Public Contract Review Board.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Equipment Repair and Overhaul**

**127-10-035** (1) Contracts for equipment repair or overhaul may be let without competitive bidding, subject to the following conditions:

(a) The service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(b) The service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

(2) The public contracting agency shall promptly report to the board all contracts for equipment repair or overhaul pursuant to this exemption in which the amount exceeds \$10,000. The report shall include:

(a) A brief description of the contract; and

(b) The name of the company or individual performing the contract, the basis of the selection; and

(c) The total dollar amount of the contract; and

(d) The reasons why competitive bids or quotes were deemed to be impractical.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 42, f. & ef. 11-22-76; PCRB 37-1979, f. & ef. 7-26-79; PCRB 31-1980, f. & ef. 12-16-80

**Contracts For Price Regulated Items**

**127-10-040** Public contracting agencies may, without competitive bidding, contract for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Laboratory and Medical Supply Items**

**127-10-045** All public contracting agencies are exempt from competitive bidding requirements to the extent that they are not required to purchase the following specified laboratory and medical supply items on the basis of a single award to the lowest responsible bidder but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supply items affected by this rule are:

(1) Drugs, biologicals, blood fractions, and blood components.

(2) Intravenous solutions and associated supplies for administration.

(3) Microbiologicals, biochemicals, and diagnostic reagents.

(4) Surgical dressings.

(5) Heart valves.

(6) E.E.G., E.K.G., electrodes, charts, and associated supplies.

(7) Sterilizing wraps.

(8) Catheters, medical tubes, and associated supplies.

(9) Surgical and orthopedic instruments.

(10) Hearing Aids.

(11) Pacemakers.

(12) Dental Supplies.

(13) Laboratory small package chemicals.

(14) Biology supplies.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 108, f. & ef. 11-3-77; PCRB 2-1978, f. & ef. 1-25-78; Renumbered from 127-60-012; PCRB 74-1978, f. & ef. 11-17-78

**Auction Sales**

**127-10-047** Personal property may be sold at auction if the agency responsible for the sale determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 51-1979, f. & ef. 11-21-79

**Allocated Petroleum Products**

**127-10-050** Public contracting agencies may purchase petroleum products without competitive bidding if such purchase is required to be made from a particular supplier as a result of a mandatory allocation from the Federal Energy Administration pursuant to 10 CFR Section 211.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 2, f. & ef. 2-19-76; PCRB 6, f. & ef. 4-8-76

**Paper Products**

**127-10-052** All public contracting agencies are exempt from competitive bidding requirements for the purchase of paper products if the agency seeks competitive quotes from as many vendors as is practicable and retains written justification for the purchase made.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 50-1979, f. & ef. 11-21-79

**Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts**

**127-10-055** All public contracting agencies are exempt from competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if the agency seeks competitive quotes from a majority of vendors in the area, makes its purchase from the least expensive source, and retains written justification for the purchase made.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 7-1979, f. & ef. 2-22-79; PCRB 27-1979, f. & ef. 6-5-79; PCRB 53-1979, f. & ef. 11-21-79

**Copyrighted Materials**

**127-10-060** If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the public contracting agency may contract for the purchase of the goods without competitive bidding.

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**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Library Aggregate Purchases**

**127-10-065** Purchases by public contracting agencies of library materials for libraries pursuant to the exemption of rule 127-10-020 (Contracts Under \$10,000) are exempt from the \$20,000 aggregate restriction of that rule.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 16(Temp), f. & ef. 6-18-76; PCRB 25, f. & ef. 8-18-76; PCRB 37-1979, f. & ef. 7-26-79

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Library Periodicals**

**127-10-068** Public contracting agencies may purchase for libraries subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 44, f. & ef. 11-22-76

**Institutional Bookstores**

**127-10-070** Institutions with the Department of Higher Education and community colleges may, without competitive bidding, purchase personal property for resale for bookstores operated by them.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Advertising Contracts**

**127-10-080** Public contracting agencies may purchase advertising without competitive bidding. Such contracts shall be awarded in the manner provided by ORS 279.051.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Investment Contracts**

**127-10-090** Public contracting agencies may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by a public agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Personal Service Contracts**

**127-10-092** (1) The following are personal service contracts:

(a) Contracts for services performed as an independent contractor in the professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; or broadcaster.

(b) Contracts for services as an artist in the performing or fine arts, including but not limited to photographer, filmmaker, painter, weaver, sculptor.

(c) Contracts for services of a specialized, creative and research oriented, noncommercial nature.

(d) Contract for services as a consultant.

(e) Contracts for educational and human custodial care services.

(2) The following are not personal service contracts:

(a) Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product.

(b) A contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.

(c) Contracts for trade-related activities considered to be labor and material contracts.

(d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 41-1979, f. & ef. 9-13-79

**Purchases Under Requirements Contracts**

**127-10-100** When the price of goods and services has been established by a requirements contract pursuant to rule 127-10-110, public contracting agencies may purchase the goods and services from the supplier without subsequent competitive bidding.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Requirements Contracts**

**127-10-110** (1) Public contracting agencies may enter into requirements contracts whereby it is agreed to purchase requirements or an anticipated need at a pre-determined price providing the following conditions are complied with:

(a) The contract must be let by competitive bidding pursuant to the requirements of Chapter 279, Oregon Revised Statutes and applicable rules of the Public Contract Review Board.

(b) The term of the contract including renewals does not exceed two years.

(c) The contract is subject to no less than 30 days cancellation by the supplier.

(2) Public contracting agencies may request specific exemptions from the foregoing conditions in accordance with rule 127-10-160.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Single Seller of Product Required**

**127-10-120** Subject to all the requirements of rule 127-10-030, public contracting agencies may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

**Stat. Auth.:** ORS Ch. 279  
**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Data Processing Contracts**

**127-10-130** (1) Contracts for acquisition of data processing hardware and systems software may be let without competitive bidding using competitive procurement methods subject to the following conditions:

(a) If the contract amount does not exceed \$10,000 the public contracting agency shall follow informal competitive procurement methods. Prior to selection of a vendor reason-

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able efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the agency.

(b) If the contract amount exceeds \$10,000 the public contracting agency shall solicit written proposals from appropriate vendors appearing on the list compiled by the Data Systems Division, Executive Department, State of Oregon or shall publish an advertisement in a major trade publication of general circulation. The agency shall prepare both a detailed and a summary report of the evaluation process, which reports will be part of the public record justifying the award.

(c) If the amount of the contract exceeds \$500,000, in addition to the requirements of subsection (1)(b) of this rule, the public contracting agency shall:

(A) Provide an opportunity for vendors to review requirements and, prior to submitting proposals, comment on any specifications which they feel limit competition;

(B) Define the roles of any evaluation committee, explain its evaluation criteria, and state all complaint processes and remedies available;

(C) Clearly state the contractual requirements in the solicitation document;

(D) Provide that residual values be considered only if they are clearly ascertainable; and

(E) Provide that cost of conversion will be minimized by the agency. Vendors competing in this category of procurement shall be given the opportunity to review the evaluation of their proposal before final management review and selection. If there is less than a 1% difference between the performance/cost ratio of the highest ranked proposals, appropriate consideration must be given to the procurement of equipment which will encourage competition.

(2) Public contracting agencies shall report to the Board all contracts for data processing pursuant to this exemption in which the amount exceeds \$10,000. Reports shall be filed by July 15 of each year. The report shall include:

(a) The name of the company, and, if applicable, the name of the retail vendor; and

(b) The reasons why the agency did not believe that competitive bidding was appropriate; and

(c) A description of the reasons why the contractor was selected and other proposals rejected.

If the purchase or acquisition was made pursuant to this exemption and OAR 127-10-120 and 127-20-030 in lieu of the information required by those sections the information may be included in this annual report.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76; PCRB 42-1979, f. & ef. 9-13-79; PCRB 6-1982, f. & ef. 2-4-82

#### **Food Service Contracts**

**127-10-135** (1) For purposes of this rule food service means a contract in which the contractor agrees to perform for a public contracting agency all of the following functions: the purchase, preparation, and service of meals and related services.

(2) Contracts for food services may be let without competitive bidding subject to the following conditions:

(a) Prior to the selection of a contractor the public contracting agency has made reasonable efforts to inform known companies providing food services of the subject matter of the contract and solicit proposals including public advertisements in at least one newspaper of general circulation in the area where the contract is to be performed.

(b) The contractor is selected on the basis of the most competitive offer considering both cost and the quality of the product and the service to be rendered.

(3) Public contracting agencies shall report to the Board all contracts for food service pursuant to this exemption in which the fee exceeds \$10,000. Reports for the period January 1, 1976, to July 1, 1976, shall be filed on July 15, 1976. Thereafter reports for the period July 1 to June 30 shall be filed by July 15 of each year. The report shall include:

(a) A description of the contract including the name of the company.

(b) The reasons why the agency did not believe that competitive bidding was appropriate.

(c) A description of the reasons why the contractor was selected and other proposals rejected.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 17(Temp), f. & ef. 6-18-76; PCRB 25, f. & ef. 8-18-76; PCRB 37-1979, f. & ef. 7-26-79

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

#### **Employe Benefit Insurance**

**127-10-139** Public contracting agencies may purchase employe benefit insurance without competitive bidding.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 52, f. & ef. 12-16-76

#### **Insurance Contracts**

**127-10-140** (1) Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by competitive bidding or by one of the following procedures:

(a) Agent of Record: The Public Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

(A) Prior to the selection of an agent of record, the Public Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area where the contract is to be performed. The advertisement shall generally describe the nature of the insurance that the Public Contracting Agency will require. If the amount of the annual premium for insurance other than employe benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

(B) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(C) In selecting an agent of record the Public Contracting Agency shall select the agent(s) most likely to perform the most cost effective services.

(b) Specific Proposals For Insurance Contracts: The Public Contracting Agency may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts:

(A) The Public Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with that contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area where the Public Contracting Agency is located. If the amount of annual premium for insurance other than employe

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benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

(B) The Public Contracting Agency shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

**(2) Reporting Requirements:**

(a) Public Contracting Agencies selecting alternative subsection (1)(a) of this rule (Agent of Record) shall, within 30 days after the selection of an agent of record, report to the Board the name of the agent, the number of agents that offered to provide the service, and the reasons for the selection.

(b) Public Contracting Agencies selecting alternative subsection (1)(b) of this rule (Specific Proposals For Insurance Contracts) shall report to the Board all insurance contracts purchased under this alternative. Reports for the period January 1, 1976, to July 1, 1976, shall be filed July 31, 1976. Thereafter, reports for the period July 1 to June 30 shall be filed by July 31 each year. The reports shall include:

(A) A description of the contract;

(B) The name of the company and the name of the agent;

(C) The reasons why the Agency did not believe that competitive bidding was appropriate;

(D) A description of the reasons why the insurance agent and insurance carrier were selected and other proposals rejected.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76; PCRB 18(Temp), f. & ef. 6-18-76; PCRB 25, f. & ef. 8-18-76; PCRB 4-1981, f. & ef. 1-28-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Affirmative Action Contracts**

**127-10-145** (1) Public contracts may be let without competitive bidding if the letting of the contract is pursuant to a specific affirmative action plan. Affirmative action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason or race, color, religion, sex, national origin, age, or physical or mental handicap, including, but not limited to, personnel practices of contractors, "set-aside" programs and minority business enterprises.

(2) Prior to awarding any contracts pursuant to this exemption, Public Contracting Agency shall submit to the Board in writing a description of its affirmative action plan.

(3) Public contracting agencies shall report to the Board all contracts which are let pursuant to this exemption. Reports for the period January 1, 1976 to July 1, 1976, shall be filed on July 15, 1976. Reports for the period after July 1, 1976, shall be filed by July 15 of each year. The report shall include:

(a) A description of the contracts including the amount thereof and the name of the contractor and a general description of the type of work to be performed or service or product purchased.

(b) A description of the affirmative action goal or goals to be accomplished.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 6, f. & ef. 4-8-76

**Contract Amendments (Including Change Orders and Extra Work)**

**127-10-150** Any contract amendment for additional work including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor

without competitive bidding subject to the following conditions:

(1) The original contract was let by competitive bidding and imposes a binding obligation on the parties covering the terms and conditions of the additional work resulting in cost increase; or

(2) If the amendment has the effect of creating a new contract, the amount of the aggregate cost increase resulting from all amendments shall not exceed 10% of the initial contract, or 20% of the initial contract when the initial contract is for a face amount not exceeding \$100,000 and is for the remodeling, repair, or rehabilitation of a building or buildings. Amendments made pursuant to section (1) of this rule will not be included in computing the aggregate amount under this section.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76; PCRB 15-1978, f. & ef. 5-12-78

**Telecommunications Systems Contracts**

**127-10-155** Contracts for acquisition of telecommunications system hardware and software may be let without competitive bidding using Request-For-Proposal competitive procurement methods subject to the following conditions:

(1) The exemption does not apply to telephone instruments and accessories, unless acquired as an integral part of a telecommunications system acquisition.

(2) Telecommunications proposals for state agencies shall be issued only through the Department of General Services, Purchasing Division, unless otherwise specifically delegated by the Division.

(3) The Purchasing Division shall solicit written proposals from appropriate vendors appearing on the list maintained by the Division and shall be publicly advertised.

(4) The telecommunications solicitation shall:

(a) Clearly state the contractual requirements in the solicitation document;

(b) Clearly state the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the state's needs may include but is not limited to cost, quality, service, compatibility, product reliability, operating efficiency, and expansion potential;

(c) State the provisions made for vendors to comment on any specifications which they feel limit competition.

**Stat. Auth.:** ORS Ch. 279

**Hist:** GS 6-1983, f. & ef. 11-3-83

**Telecommunications Services and Equipment**

**127-10-156** [GS 9-1983(Temp), f. & ef. 12-23-83]

**Specific Exemptions**

**127-10-160** (1) Public contracting agencies may apply to the Public Contract Review Board for a ruling under rules 127-30-010 through 127-30-040 exempting a particular contract or contracts from competitive bidding requirements of ORS 279.015 which are not otherwise exempted under these rules. The application shall be by letter addressed to the Board containing the following information:

(a) The nature of the project;

(b) Estimated cost of the project;

(c) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;

(d) Proposed alternative contracting and purchasing practices to be employed; and

(e) The estimated date by which it would be necessary to let the contract.

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(2) The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from competitive bidding.

**Stat. Auth.:** ORS Ch. 270

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76



DIVISION 20

BRAND NAMES OR MARKS

**Specification of Particular Brand Names or Products**

127-20-010 (1) Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under rules 127-20-020 (Copyrighted Materials), 127-20-030 (Single Manufacturer or Compatible Products), 127-20-040 (Product Prequalification), or 127-20-050 (Brand Name or Mark Exemption Applications).

(2) If there is no other practical method of specification, public contracting agencies may designate a particular brand name, make, or product "or equal", but this practice should be avoided whenever practicable.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Copyrighted Materials**

127-20-020 Public contracting agencies may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Single Manufacturer or Compatible Products**

127-20-030 (1) If there is only one manufacturer or seller of a product of the quality required, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, a public contracting agency may specify such particular product subject to the following conditions:

(a) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price but also other items of expense such as costs related to quality or conversion.

(b) Prior to awarding the contract, the public contracting agency has made reasonable effort to notify all known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$10,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$10,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.

(2) If the amount of the purchase exceeds \$10,000, and is not also pursuant to the data processing exemption, rule 127-10-130, the public contracting agency shall by letter notify the Public Contract Review Board of the specification. Such notice shall include:

(a) A brief description of the proposed contract or contracts.

(b) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the public contracting agency to notify and invite proposals from competing vendors.

(3) If the public contracting agency intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed two years, it may so state in the notice required by subsection (1)(b), and section (2), and

such statement shall be sufficient notice as to subsequent purchases.

(4) The Public Contract Review Board may review the notices required by section (2) and direct the public contracting agency to cease and desist from such purchasing practices or impose such conditions on the practice as it determines advisable to comply with ORS 279.017. Such orders shall only be effective as to subsequent purchases.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76; PCRB 37-1979, f. & ef. 7-26-79

**Product Prequalification**

127-20-040 (1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, a public contracting agency may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product prequalification procedure:

(a) The agency has made reasonable efforts to notify all known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include advertisement in a trade journal of state-wide distribution when possible. In lieu of advertising an agency may notify vendors and manufacturers appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.

(b) The agency permits application for prequalification of similar products up to 15 days prior to advertisement for bids on the product.

(2) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the agency shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in rule 127-40-090.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Brand Name or Mark Exemption Applications**

127-20-050 A public contracting agency may apply for and receive a brand name or mark exemption ruling from the Public Contract Review Board for current and contemplated future purchases. Applications shall be made by letter addressed to the Board containing the following information:

(1) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.

(2) The brand name, mark, or product to be specified.

(3) The reasons the agency is seeking the exemption.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Conditions of Exemptions**

127-20-060 The Board will grant exemptions if any of the following conditions are met:

(1) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.

(2) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.

(3) The exemption is requested for the purchase of a particular product to be used in an experimental project.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76



**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 127, DIVISION 30 — PUBLIC CONTRACT REVIEW BOARD**

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**DIVISION 30**

**SPECIFIC EXEMPTION PROCEDURE**

**Notice of Application**

**127-30-010** Upon receipt of an application for an exemption ruling under rule 127-10-160 or 127-20-050, the Chairperson of the Board shall cause a notice of intention to adopt a rule requesting data, views, and arguments to be published in the Secretary of State's Administrative Law Bulletin, and may also set the matter for public hearing to receive data, views, and arguments.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Board Hearing**

**127-30-020** The application will be placed on the Board's agenda for the next Board meeting, and in the exercise of discretion, the Chairperson may also set additional public meetings to receive data, views, and arguments. The application will be considered by the Board within not more than 40 days after receipt of the application.

**Stat. Auth.:** ORS Ch.

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Temporary Rule Exemptions**

**127-30-030** In appropriate cases the Board may grant an exemption as a temporary rule pursuant to ORS 183.335(2).

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Unanimous Consent Calendar**

**127-30-040** The Chairperson of the Board may, in the exercise of discretion, notify the members of the Board that an application for exemption has been made and that if no objections are received to the exemption within seven days of the Chairperson's notice, the exemption will be considered granted by unanimous consent and the Chairperson may, in the exercise of discretion, deem the exemption adopted as a temporary rule. Exemptions so adopted will be placed on the Board's agenda as a unanimous consent calendar for ratification or adoption as a permanent rule by the Board at the next meeting of the Board.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

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**CHAPTER 127, DIVISION 40 — PUBLIC CONTRACT REVIEW BOARD**

**DIVISION 40**

**COMPETITIVE BIDDING PROCEDURE**

**Statutory Requirements**

127-40-010 Public contracting agencies are required to award contracts to the lowest bidder except in the following circumstances:

(1) The bidder has failed to substantially comply with either the specifications or any statutory requirement relating to public contracting.

(2) The bidder is disqualified by the agency pursuant to the applicable statutes and rule 127-40-020.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Receipt and Opening of Bids**

127-40-015 In any contract which is subject to competitive bidding as defined in rule 127-10-010 the advertisement must state the time and date when bids will be publicly opened. The bids should be sealed and shall not be examined or opened by anyone until the time of the public opening as specified in the advertisement. Such bids are not public records under ORS 192.500 et seq. until the public opening.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 6, f. & ef. 4-8-76

**Disqualification of Bidders**

127-40-020 Bidders may be disqualified on any of the following grounds:

(1) Lack of financial ability. If a performance bond is required to insure performance of a contract, proof that the bidder can acquire a surety bond in the amount required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting agency may require such information as it deems necessary to determine the bidder's financial ability. In determining whether a surety company is to be considered "good and sufficient" the public contracting agency may utilize the list maintained by the U.S. Department of Treasury of surety companies acceptable on federal bonds; Best's Ratings, published by A.M. Best Company; or information maintained by the Oregon State Department of Transportation.

(2) The bidder lacks the available equipment or key personnel with sufficient experience to perform the contract.

(3) The bidder has repeatedly breached contractual obligations.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Mandatory Prequalification**

127-40-030 Prequalification. Public contracting agencies desiring to require mandatory prequalification of contractors for classes of public improvements pursuant to ORS 279.039 must adopt a rule and file a copy with the Board.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Prequalification Application**

127-40-040 Prequalification statements required by rule adopted pursuant to ORS 279.039 and prequalification requests submitted pursuant to ORS 279.041 shall be in the form of Exhibit 1.

[E.D. NOTE: The Exhibit referred to in the above rule is not printed in the Oregon Administrative Rules Compilation. Copies are available from the adopting agency.]

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 2, f. & ef. 2-19-76; PCRB 6, f. & ef. 4-8-76; PCRB 9-1981, f. & ef. 5-20-81

**Prequalifications Prior to January 1, 1976**

127-40-045 In case of a prequalification that has been granted prior to January 1, 1976, the agency may, in its discretion, deem that prequalification to continue for its remaining term.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Qualification Statement**

127-40-050 Upon establishment of prequalification the public contracting agency shall issue a qualification statement.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Proof of Presumed Qualification**

127-40-060 A copy of the qualification statement provided by rule 127-40-050 accompanied by a copy of the contractor's application for prequalification will constitute proof of prequalification for purposes of the presumption established by ORS 279.047.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Notice of Denial of Qualification**

127-40-070 If the public contracting agency does not qualify the applicant, it shall notify the applicant.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Notice of Revocation of Prequalification**

127-40-080 Upon discovery that a person prequalified is no longer qualified, the public contracting agency shall send a notification of proposed revocation of qualification.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Appeals**

127-40-090 (1) A contractor or bidder may appeal to the Public Contract Review Board any of the following:

(a) Notice of denial of qualification.

(b) Notice of conditions varying from application for prequalification.

(c) Notice of revocation of prequalification.

(d) Notice of product disqualification under rule 127-20-040.

The appeal must be filed with the public contracting agency. The person appealing subsections (a) through (d) above must notify the public contracting agency within three days after receipt of the notice referred to above of his intention to appeal. The notice of intention to appeal need not be in any particular form so long as it is in writing addressed to the public contracting agency and received within three business days after the contractor or bidder has received notice of subsections (a) through (d).

(2) Upon receipt of the notice of appeal the agency shall forward to the Board the contractor's prequalification application, the notice of refusal of bid or prequalification or revocation, and the record of investigation by the agency upon which the agency based its refusal or revocation, together with the notice of appeal. The burden of sustaining the refusal,

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disqualification, or revocation is upon the public contracting agency.

(3) For purpose of appeals, three members of the Board shall constitute a quorum. Meetings for appeal purposes may be held on five days notice to members.

(4) At any time prior to the meeting of the Board, a public contracting agency may reconsider its revocation or disqualification.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

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CHAPTER 127, DIVISION 50 — PUBLIC CONTRACT REVIEW BOARD

DIVISION 50

**WAIVER OF SECURITY BID AND  
PERFORMANCE BOND**

**Bid Security Requirements**

127-50-010 A public contracting agency may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Contracts Under \$10,000**

127-50-020 A public contracting agency may, in its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.029 if the amount of the contract for the public improvement is less than \$10,000.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, 12-23-75, ef. 1-1-76; PCRB 6, f. & ef. 4-8-76

**Deposits in Lieu of Retainage on Public Contracts**

127-50-030 (1) When a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities will be held by the custodian in fully transferable form and under the control of the public body.

(2) Non-negotiable securities so deposited shall have proper instruments attached to enable the public body to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(3) The custodian bank or trust company will issue a safekeeping receipt for the securities to the public contracting agency. The receipt will describe the securities, the par value, the name of the contractor, and project number or other project identification.

(4) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.

(5) Securities deposited in the manner described above will be released by the bank or trust company only upon the written instructions and authorization of the public contracting agency.

(6) In lieu of the above, an escrow agreement mutually acceptable to the contractor and the public contracting agency and the bank or trust company may be used.

Stat. Auth.: ORS Ch. 297

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Approved Securities Acceptable in Lieu of Retainage Fees**

127-50-040 (1) Bills, certificates, notes, or bonds of the United States.

(2) Other obligations of the United States or its agencies.

(3) Obligations of any corporation wholly owned by the federal government.

(4) Indebtedness of the Federal National Mortgage Association.

(5) General obligation bonds of the State of Oregon or any political subdivision thereof.

(6) Time Certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.

(7) Corporate bonds rated "A" or better by a recognized rating service.

(8) General obligation improvement warrants issued pursuant to ORS 287.502.

(9) Irrevocable letters of credit from a bank doing banking business in Oregon.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76; PCRB 106, f. & ef. 9-29-77; PCRB 4-1978, f. & ef. 3-3-78

**Retainage Deposited in Interest-Bearing Account**

127-50-050 (1) When a contractor elects to have an interest-bearing account established for deposit of retainage in a bank, savings bank, trust company, or savings association, the account will be established by the public contracting agency for the benefit of and under the control of the public contracting agency, with interest accruing to the contractor.

(2) When the account is established, proper instruments shall be furnished to the bank, savings bank, trust company, or savings association to prohibit withdrawal or transfer of the funds in the account except upon written instructions and authorization of the public contracting agency, and to enable the public contracting agency to close the account if in the judgment of the public contracting agency the contractor has not fulfilled the contract obligations.

(3) The bank, savings bank, trust company, or savings association will issue to the public contracting agency a receipt acknowledging the deposit and, on the initial receipt, describing the account, the provision for interest, the name of the contractor, and the full name under which the account is established.

(4) The amount deposited and accrued interest will be released by the bank, savings bank, trust company, or savings association only upon the written instructions by the public contracting agency.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76

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DIVISION 60

EXEMPTIONS

**General Services Office Copying Equipment Purchases**

**127-60-001** (1) Contracts for the purchase or acquisition of office copying equipment may be let by the Department of General Services without competitive bidding subject to the following conditions:

(a) The Department of General Services may solicit "Requests For Proposals" from interested vendors of office copying equipment and enter into multiple price agreements or requirements contracts for either the purchase or lease of such equipment. Except for the competitive bidding requirement, such agreements shall otherwise conform to the requirements of rule 127-10-110.

(b) When acquiring equipment for a given state agency or group of agencies, the Department shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy for each application.

(2) The Department of General Services shall report to the Board all contracts for office copiers pursuant to this exemption in which the purchase or annual rental exceeds \$2,500. Reports for the period of January 1, 1976 to July 1, 1976, shall be filed on July 15, 1976. Thereafter, reports for the period July 1 to June 30 shall be filed by July 15 of each year. The report shall include:

(a) The name of the company and, if applicable, the name of the retail vendor; and

(b) A description of the reasons why the particular brand was selected.

If the purchase or acquisition was made pursuant to this exemption and rules 127-10-120 and 127-20-030, in lieu of the information required by those rules, the information may be included in this annual report.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 3(Temp), f. & ef. 2-19-76; PCRB 5, f. & ef. 4-8-76

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Lane County Resource Recovery Facility Exemption**

**127-60-002** (1) Lane County is specifically exempt from the requirements of competitive bidding for the purpose of obtaining services to design, build, operate, and maintain a Resource Recovery Facility to process solid waste, recover ferrous metals, and to manufacture a light fuel fraction for use as supplemental fuel in boilers.

(2) As an alternative to competitive bidding the county may utilize the Request for Proposal presented to the Board and may:

(a) Reject any or all proposals.

(b) Issue subsequent requests for proposals, if desired.

(c) Not award a contract for solid waste processing and resource recovery.

(d) Accept that proposal which Lane County deems the most advantageous for the public and Lane County.

(e) Waive any irregularities or informalities in any proposal.

(f) Negotiate with bidder to further amend, modify, refine, and delineate the proposal. This may include, but is not limited to, the right to alter the specifications and production requirements for both the light fuel fraction and ferrous metals or consider alternatives within the framework of the requested proposal. This further includes any aspect of the proposal

relating to financing, construction of capital improvements, resource recovery, interface with Central Receiving Station, operations, disposal of recovered and nonrecovered material, and marketing.

(g) Negotiate and accept without re-advertising, the proposal of any other bidder, in the event of default within bid bond period of a selected bidder, or the refusal of a selected bidder to enter a contract with Lane County.

(3) In the event Western Waste Corporation is unable to provide a performance bond meeting Oregon requirements in the amount of 100% of the total capital cost for construction of the Resource Recovery Facility, or in the event Western Waste assigns its rights as bidder to Allis Chalmers, then and in that event, Lane County may contract directly with Allis Chalmers Corporation for the design, construction, equipping, and guaranteeing performance of a Resource Recovery Facility on a turnkey basis.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 4(Temp), f. & ef. 4-8-76; PCRB 7, f. & ef. 4-27-76; PCRB 46(Temp), f. & ef. 12-6-76; PCRB 65, f. & ef. 3-3-77

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Educational Service Center For School District No. 1, Multnomah County**

**127-60-003** (1) Construction contracting. The District is exempt from the competitive bidding requirements of ORS 279.015 and the rules of this Board for the construction and sale-and-lease-back of its proposed Educational Service Center (the "Project") on the basis of one or more of the following contracts (the "Construction Contracting Methods") or any combination thereof:

(a) Single contract competitively bid for cost plus fee within guaranteed maximum price; scope documents; fast-track construction schedule. This alternative contemplates that competitive bids would be taken on a contract to build the entire Project and the general contractor to whom the contract is awarded would thereafter let the necessary subcontracts for construction on the fast-track method. The general contractor would bid on a cost plus fee basis within a guaranteed maximum price for the entire Project. The bidding competition would be on the fee and the guaranteed maximum price. In lieu of conventionally complete working drawings and specifications, the bidding for the overall contract for the Project would be based upon what are termed "scope documents" utilizing refined design development drawings and outline specifications. Further, in the following instances, portions of the Project for which the usual detailed specification, are not available at the time of bidding may be assigned dollar allowances by the architects so that all bids would be calculated on the same estimated figures: hardware; carpets; landscaping; light fixtures; toilet accessories; kitchen equipment; special finishes including painted super-graphics, vinyl wall coverings, fabric wall coverings; air balancing; fire protection systems; casework/millwork; job sign; interior/exterior graphics; loose equipment and furnishings; movement of Pacific Power & Light Company's transmission facilities from Project site; and offsite property development. Cost would be subject to audit. Except as otherwise provided in this rule, subcontracts, although let on a phased schedule, would nonetheless be awarded on a lump-sum, fixed-price basis by the general contractor and the applicable contract documents would be complete in the usual sense at the time each subcontract is bid. Subcontracts for the mechanical and electrical portions of the Project may be let for bid based upon documents which are as complete as or more complete than refined design development drawings and outline specifications ("scope documents") and, upon written approval by the

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District, may be awarded by the general contractor on the basis of cost-plus-fee within a guaranteed maximum price. An informal competitive bidding process would occur whereby the subcontractors and their costs would be subject to approval of both the general contractor and the "owner". However, the subcontracts would not be "public contracts" under ORS 279.011 to ORS 279.358 and, because the general contractor is ultimately responsible for performance, the general contractor would be entitled to select the qualified bidders and would not be required to accept what is nominally the lowest bid.

(b) General Contractor-Construction Manager; Partially Complete and Partially Scope Documents; Fast-Track Construction Schedule. This alternative is the same as subsection (1)(a) of this rule, except as follows: The general contractor would bid:

(A) Its fee as general contractor for the entire Project;

(B) A guaranteed maximum price for only the General Conditions work which would be based on scope documents as above described; and

(C) Fixed price on the portion of the Project for which conventionally complete drawings and specifications are available at that point, including at least the site work.

For those portions of the Project included in the guaranteed maximum price, the subcontracting method would be the same as in construction contracting, alternative subsection (1)(a) of this rule. For the balance of the Project not covered by either the guaranteed maximum price bid or a fixed price bid from the general contractor — i.e., representing the phases of the Project (other than General Conditions work) for which the conventional document(s) have not been prepared at the time of bidding for the general contractor — subcontracts would be separately bid on a fixed-price basis as the conventional bidding documents become available. As to such latter phases, the general contractor would serve essentially as a construction manager and the bidding and contracts would follow the formalities required by ORS 279.011 to 279.358. However, there would also be a performance and payment bond for the entire Project under ORS 279.029 except that the amount thereof would be based on the estimate of the architects as to the total construction cost of the Project.

(2) Sale-and-Lease-Back. The District is further exempt from such competitive bidding requirements for the sale of the land and a lease-purchase agreement in accordance with ORS 332.155(1) and (4) when:

(a) The construction contract is bid competitively under ORS 279.011 to 279.358, or pursuant to the exemption described in this rule pertaining to the construction contracting; and

(b) Such sale and lease-purchase agreement is negotiated in conjunction with either of the following methods:

(A) Financing construction and carrying lease is arranged between the District and a Financier:

(i) Financial commitment. Under this alternative, the District would arrange in advance or concurrently with the bidding process for the long-term financing in the form of a commitment to furnish the construction money and other costs — either as needed during construction or (if the general contractor furnishes its own interim financing) upon completion — and lease the facility to the District under a lease-purchase agreement. The District would sell or transfer the land to the financial institution or group (the "Financier") either directly or (as described in subparagraph (2)(b)(A)(ii) of this rule) through the general construction contractor. On the strength of the financing commitment, the District would independently arrange for the construction of the project under the bidding procedures described in subsection (1)(a) or (b) of this rule or a combination thereof.

(ii) Relationships during construction. The District may assign its interest in the construction contract or contracts to

the Financier or it may retain the obligations of "owner" thereunder. Or, if the District wishes to avoid the construction risk itself, the Financier may be the initial "owner" in the construction contract. Or, the terms of the specifications in the construction contract bidding may in form require the general contractor temporarily to fill the role of the "developer" as under financing Method No. 1 in the District's Application for Exemptions, but with a pre-arranged ultimate assignment of the lessor's interest and transfer title to the land to the Financier.

(B) Financing construction and carrying lease is arranged by a nonprofit corporation. Under this alternative also, the District would arrange separately for financing of the Project and carrying of the lease and for actual construction of the Project. However, the role of the Financier would be filled by a nonprofit corporation formed under the general laws of Oregon for the exclusive purpose of providing the necessary financing and leasing the Project to the District. The corporation would serve much the same function as the Financier in paragraph (2)(b)(A) of this rule, but the investment funds would be arranged in the following manner: On the strength of the District's commitment to lease the Project from the corporation, the corporation would issue revenue bonds contemporaneously with the award of the construction contract in an amount sufficient to fund the purchase of the land and Project costs. The bonds would be payable over the period of the lease. The "rent" would be calculated on the basis of the same type of factors as with the Financier method in paragraph (2)(b)(A) of this rule plus a net cost of funding the interest falling due on the bonds during construction; in other words, the rent would be defined as sufficient to pay the principal and interest on the bonds and related cost throughout the term of the lease. The possible alternative relationships concerning the construction responsibilities and temporary role of the general contractor would be the same as for the Financier method in subparagraph (2)(b)(A)(ii) of this rule.

(3) If the exemption granted under section (2) of this rule (pertaining to financing methods) is utilized, then in order to stimulate competition, the District shall follow the following negotiating procedures:

(a) The District will invite more specific quotations of the effective interest rates than it has heretofore received. It will supply those genuinely interested in becoming the developer (under financing Method No. 1 in the District's Application for Exemptions) or Financier, including at least the two largest banks in Oregon, with all readily available information concerning the Project which they may reasonably request. At the same time, it will keep the prospective Financiers and the investment bankers advised concerning whether it appears reasonably possible that the other methods under consideration may be competitive.

(b) The District will tentatively abandon further efforts at negotiations under any one of the three financing methods under consideration only if the School Board of the District, in public session, determines that it is not reasonably possible that such financing method would be competitive with the remaining method or methods under consideration. In determining whether to abandon the Financier method, candidates for the role of Financier will be asked to quote an interest rate which, as adjusted, will be good for a period of 30 days. The initially-quoted interest rate will be proportionally adjusted automatically to reflect changes in the most recent Bond Buyer's Index of 20 Municipal Bonds (published weekly by the Daily Bond Buyer) which occur between the date of the quote and the date of the District's execution of the commitment to lease. However, the District will not be prevented from using the Financier method or considering a particular candidate merely because any such interest rate is in fact quoted as good

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only for a period of less than 30 days or is not adjustable or is adjustable on some other basis.

(c) Should it tentatively abandon the private developer method (financing Method No. 1 in the District's Application for Exemptions) or the Financier method on the expectation of a given interest rate and terms which are more favorable than those actually and in good faith quoted by the private developers or Financiers, and should it later appear upon receipt of the firm offer that the rates and terms offered are not more favorable than those quoted under the previously abandoned methods and that such is not explainable by intervening changes in generally prevailing interest rates, the District will either:

(A) Waive exemption under section (2) of this rule and submit the lease-purchase agreement to bid; or

(B) Make further application to the Board.

(d) The determinations under subsections (3)(a), (b), and (c) of this rule as to reasonableness, reasonable possibilities, genuineness and good faith, what rate changes are explainable and what rates and terms are most favorable shall be made solely by the School Board of the District and shall be final.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 31, f. & ef. 9-20-76; PCRB 51(Temp), f. & ef. 12-16-76; PCRB 66, f. & ef. 3-18-77

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Purchase of Hospital and Medical Supplies and Hospital and Medical Equipment**

127-60-004 Public contracting agencies which are members of the Oregon Association of Hospitals and Oregon Hospitals Group Purchasing Cooperative are exempt from the requirements of competitive bidding and the requirements contract provisions of rule 127-10-110 on purchase of hospital and medical supplies and hospital and medical equipment through the Cooperative.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 43, f. & ef. 11-22-76; PCRB 22-1978, f. & ef. 5-24-78; PCRB 5-1981, f. & ef. 1-28-81

**Union County Exemption For Solid Waste Plan**

127-60-005 (1) The County Court of Union County is exempt from the requirements of competitive bidding for purposes of implementation of its Solid Waste Management Plan as outlined in its request to the Public Contract Review Board. As an alternative to competitive bidding, the county will utilize the following alternatives:

(a) Proposals will be solicited from persons and firms indicated in the County's correspondence with the Public Contract Review Board.

(b) A request for proposals will be published in at least one edition of the Daily Journal of Commerce prior to the award of a contract.

(2) In awarding the contract, the County may reject any or all proposals and may accept the contract proposal which the County Court agrees is in the best interest of the County considering the type, cost, amount of the contract, and such other factors the County may deem appropriate.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 63, f. & ef. 3-1-77

**Liability Insurance — Linn County**

127-60-006 Linn County is exempt from the process of competitive bidding for the purchase of liability insurance.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 64, f. & ef. 3-1-77

**State Board of Higher Education Rehabilitation Work Exemption**

127-60-007 The Oregon State Board of Higher Education is exempt from the requirements of competitive bidding for preparatory and experimental phases, including demolition, of rehabilitation work to be performed within nine residential buildings at Portland State University. As an alternative to competitive bidding, the Board is authorized to contract with Portland Student Services, Inc., lessee. The Board may contract with the lessee for this work up to a maximum of \$30,000. This exemption will expire June 30, 1979.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 74, f. & ef. 4-18-77

**Department of Higher Education — Equipment and Supplies used in Intercollegiate Athletic Programs**

127-60-008 The Department of Higher Education is exempt from the prohibition in ORS 279.017 from requiring products by brand name or mark or the products of particular manufacturers or sellers in purchasing and contracting for equipment and supplies used in intercollegiate athletic programs. As an alternative the Department will utilize the procedures presented to the Public Contract Review Board in the Department's proposal of February 15, 1977.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 76, f. & ef. 6-16-77

**Rogue Valley Transportation District — Exemptions For Public Transportation Service**

127-60-009 The Rogue Valley Transportation District is exempt from the requirements of competitive bidding for the purpose of contracting for a public transportation service within the District's boundaries. As an alternative to competitive bidding the District is authorized to request proposals from all interested contractors. After receipt of the proposals the District shall then determine whether the taxpayers of the District would benefit most by bidding or by negotiation and proceed accordingly. The District shall provide the Public Contract Review Board with a report of the action it has taken.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 77, f. & ef. 6-16-77

**Department of Higher Education; Exemption for Purchase of Five Commodity Food Items**

127-60-010 (1) The Oregon Department of Higher Education is exempt from the \$20,000 aggregate of section 127-10-020(4) for the purchase of the following food commodities for all colleges and universities in the State System:

(a) Fresh fruits and vegetables;

(b) Frozen fruits and vegetables;

(c) Bakery products;

(d) Frozen pre-portioned convenience meat and fish, special meats and entrees.

(2) A report is to be furnished to the Public Contract Review Board at the end of each fiscal year.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 94, f. & ef. 8-24-77; PCRB 40-1978, f. & ef. 6-29-78

**Research Vessels Wecoma and Cayuse**

127-60-011 The Department of Oceanography, Oregon State University, is exempt from the requirements of competitive bidding for its research vessels, the Wecoma and Cayuse, for purchases made when the ships are in other U.S. and foreign ports.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 93, f. & ef. 8-24-77



OREGON ADMINISTRATIVE RULES  
CHAPTER 127, DIVISION 60 — PUBLIC CONTRACT REVIEW BOARD

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127-60-012 [Renumbered to 127-10-045]

**Office of the Secretary of State; Signs for Polling Places**

127-60-013 The Office of the Secretary of State is exempt from competitive bidding requirements for the purchase of signs for the identification of polling places.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 111, f. & ef. 11-7-77

**Oregon Counties; Ballots, Ballot Pages, and Ballot Cards**

127-60-014 Oregon Counties are exempt from competitive bidding requirements for the printing of ballots, including ballot pages and labeling of ballot cards.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 115, f. & ef. 12-20-77

**Exemption for Purchase of Cadaveric Kidneys for Transplant Purposes**

127-60-015 The Department of General Services, on behalf of the University of Oregon Health Sciences Center, is exempt from competitive bidding requirements for the purchase of cadaveric kidneys for transplant purposes.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 41-1978, f. & ef. 6-29-78

**Exemption For Chemical Spraying**

127-60-016 The Junction City Water Control District is exempt from competitive bidding requirements, after further attempts have been made to secure competitive quotes from the Portland Metropolitan and Corvallis areas, for the chemical spraying of a variety of weeds, brush, and grasses. This rule will remain in effect through October 1978.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 20-1978, f. & ef. 5-24-78

**Exemption For Metropolitan Service District**

127-60-017 The Metropolitan Service District of Portland is exempt from competitive bidding requirements for the purchase and sale of animals at the Washington Park Zoo.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 49-1978, f. & ef. 8-4-78

**Exemption For Lane County Mass Transit District**

127-60-018 The Lane County Mass Transit District is exempt from competitive bidding requirements for the purchase of fuel. This exemption expires December 31, 1979.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 6-1979, f. & ef. 1-29-79

**Department of General Services, Printing Division; Rebinding of Books and Binding of Periodicals**

127-60-019 The Department of General Services, Printing Division, is exempt from competitive bidding requirements for rebinding of books and binding of periodicals for libraries. This exemption expires July 1, 1982.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 26-1979, f. & ef. 6-5-79

**Crook County Office Copying Equipment Purchases**

127-60-020 (1) Contracts for the purchase or acquisition of office copying equipment may be let by Crook County without competitive bidding subject to the following conditions:

(a) Crook County shall solicit "Requests for Proposals" from interested vendors of office copying equipment and may enter into multiple price agreements or requirements contracts for the purchase, lease or maintenance of such equipment. Except for the competitive bidding requirement, such agreements shall otherwise conform to the requirements of OAR 127-10-110.

(b) When acquiring equipment, the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy for each application.

(2) The County shall annually, prior to July 15, report to the Board all contracts for office copiers pursuant to this exemption in which the purchase or annual rental exceeds \$10,000. The report shall include:

(a) The name of the company and, if applicable, the name of the retail vendor; and

(b) A description of the reasons why the particular brand was selected.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 36-1979, f. & ef. 7-26-79

**Commission for the Blind "Snap Pack" Packaging System**

127-60-021 The Commission for the Blind is exempt from competitive bidding requirements for the purchase of equipment and materials involved in the "Snap Pack" packaging system, developed by the Volvo Company of Sweden, for use by the Oregon Industries for the Blind, as authorized by the Emergency Board on November 9, 1979.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 10-1980, f. & ef. 5-20-80

**University of Oregon, Department of Intercollegiate Athletics; Exemption for Sale of Television Broadcast Rights**

127-60-022 The University of Oregon, Department of Intercollegiate Athletics, is exempt from competitive bidding requirements for contracts, not exceeding one year, involving sale of television broadcast rights of intercollegiate athletic events. This exemption terminates August 1981.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 28-1980, f. & ef. 10-10-80

**Purchase of Alcoholic Liquor for Resale**

127-60-023 In the purchase of alcoholic liquor for resale, the Oregon Liquor Control Commission is exempt from the requirements of competitive bidding and the statutory restriction on the purchase of a product by brand name.

Stat. Auth.: ORS Ch. 279  
Hist: PCRB 11-1981, f. & ef. 6-5-81

**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 127, DIVISION 90 — PUBLIC CONTRACT REVIEW BOARD**

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**DIVISION 90**

**NOTICES AND AGENDA**

**Notices**

**127-90-010** Notices of amendment, adoption, or repeal of rules including contract exemption rulings and of meetings of the Public Contract Review Board and the agenda of the meetings shall be sent to the following, at least seven days prior to the meeting:

(1) Press; Associated Press, United Press International, and Daily Journal of Commerce.

(2) Local Government Organizations; League of Oregon Cities, Association of Oregon Counties, Oregon Community College Assembly, Oregon School Board Association.

(3) Management and Labor; Association of Oregon Industries, Associated General Contractors, Oregon Construction Industry Council, Oregon AFL-CIO, Oregon State Buildings Trades Council.

(4) Oregon Association of Insurance Agents; Oregon Public Purchasing Association.

(5) Any persons requesting notice pursuant to ORS 183.335(3).

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Agenda**

**127-90-020** The agenda of the meetings of the Board shall include the following:

(1) Unanimous consent calendar pursuant to rule 127-30-040 including a brief description of the contract exempted and the amount of the contract.

(2) Consideration without hearing of pending applications for exemption. The agenda will list all proposed pending exemptions with a brief description of proposed exemptions including the amount of the contract.

(3) Consideration with hearing of pending applications for exemption rulings.

(4) Contested case hearings of appeals of disqualification or revocation of prequalification, including the name of the contractor and the grounds of the proposed disqualification or revocation of prequalification.

**Stat. Auth.:** ORS Ch. 279

**Hist:** PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 127, DIVISION 80 — PUBLIC CONTRACT REVIEW BOARD**

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**DIVISION 80**

**RULES, REPORTING, AND MEETINGS**

**Rules**

**127-80-010** Roberts Rules of Order, excepting that seconds will not be required, will govern proceedings of the Board where they do not conflict with these rules or statutory provisions. The Attorney General's Model Rules under the Administrative Procedures Act shall be followed where they do not conflict with applicable statutory provisions or these rules.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Quorum**

**127-80-020** A majority of the members of the Board shall constitute a quorum. Exercise of the Board's authority shall be by majority vote of the entire Board.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76; PCRB 25-1978, f. & ef. 5-26-78

**Meetings**

**127-80-030** (1) The applicable provisions of the Public Meetings Law shall control the notice and character of

meetings of the Board.

(2) Meetings of the Board may be held by conference telephone call after required public notice. The Chairperson shall conduct the meeting using a speaker telephone attachment.

(3) On urgent or perfunctory matters, the Chairperson may, by telephone, poll the members of the Board. Electronic Transcripts of the polling calls will be made and retained. In the course of a poll, any member may request the matter be discussed by conference call or deferred to a meeting.

(4) Prior to conference calls or telephone polls, the press and public, including persons directly interested in the subject matter of the poll, shall be given reasonable notice that they may be present in the office of the Chairperson at the time of the meeting or poll.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76

**Reports**

**127-80-040** All reports required to be submitted to the Board by these rules or statute shall be directed to the mailing address of the principal office of the Chairperson.

Stat. Auth.: ORS Ch. 279

Hist: PCRB 1, f. 12-23-75, ef. 1-1-76; Repealed and Readopted by PCRB 6, f. & ef. 4-8-76