

RESOLUTION NO. 23-001

A RESOLUTION UPDATING THE
COLUMBIA GATEWAY URBAN RENEWAL AGENCY
LOCAL CONTRACT REVIEW BOARD RULES
(EFFECTIVE FEBRUARY 22, 2023)

WHEREAS, the Oregon Legislative Assembly requires all public bodies to establish, implement, and follow standardized procurement rules pursuant to the Oregon Public Contracting Code;

WHEREAS, ORS 279A.065 authorizes the Agency to prescribe its own rules which include portions of the model rules adopted by the Oregon Attorney General;

WHEREAS, ORS 279A.060 establishes the Agency Board as the Agency's Local Contract Review Board and authorizes it to adopt rules necessary to carry out the provisions of the Oregon Public Contracting Code;

WHEREAS, the Agency Board believes it to be in the Agency's best interest to update the Agency's 2011 Local Contract Review Board Rules to ensure legal sufficiency and satisfy the Agency's modern contracting needs.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY BOARD RESOLVES AS FOLLOWS:

1. Updated Rules Adopted. The *Columbia Gateway Urban Renewal Agency Local Contract Review Board Rules (Effective February 22, 2023) (Rules)* attached to and made part of this Resolution as Exhibit "A" are hereby approved and adopted as the rules for and regulations of the Agency's Local Contract Review Authority. All Agency contracting shall be subject to the Rules.
2. Previous Regulations Repealed. All previous and inconsistent Agency public contracting rules or regulations, including the *Columbia Gateway Urban Renewal Agency Local Contract Review Board Rules (2011)*, are hereby repealed.
3. Future Effective Date. This Resolution shall be effective February 22, 2023.

PASSED AND ADOPTED THIS 21ST DAY OF FEBRUARY, 2023,

Voting Yes	Board Members:	<u>Long, McGlothlin, Richardson, Saldivar, Woods</u>
Voting No	Board Members:	<u>None</u>
Abstaining	Board Members:	<u>None</u>
Absent	Board Members:	<u>Coburn, Peters, two positions vacant</u>

AND APPROVED BY THE CHAIR OF THE BOARD THIS 21ST DAY OF FEBRUARY, 2023.

SIGNED:

ATTEST:



Darcy Long, Chair



Paula Webb, CDD Secretary



**COLUMBIA GATEWAY
URBAN RENEWAL AGENCY**

**Local Contract Review Board Rules
Public Contracting and Purchasing Policy**

Effective February 22, 2023

COLUMBIA GATEWAY URBAN RENEWAL AGENCY
Local Contract Review Board Rules
Effective February 22, 2023

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COLUMBIA GATEWAY URBAN RENEWAL AGENCY

Local Contract Review Board Rules

I. Introduction.

A. Purpose of Purchasing Policy. These Rules are adopted by the Agency Board as the governing body of the Agency to establish the rules and procedures for contracts entered into and purchases made by the Agency. The Agency's policy in adopting these Rules is to utilize public contracting and purchasing practices and methods maximizing the efficient use of Agency resources and the purchasing power of Agency funds by:

1. promoting impartial and open competition;
2. using complete solicitation materials containing a clear statement of contract specifications and requirements; and
3. taking full advantage of evolving procurement methods fulfilling the Agency's purchasing needs as they emerge within various industries.

B. Interpretation of Purchasing Policy. Except as specifically provided in these Rules, public contracts and purchases shall be awarded, administered, and governed according to [ORS Chapters 279A, 279B, and 279C \(Public Contracting Code\)](#) and the Attorney General's Model Public Contract Rules (**Model Rules**), as they now exist. Any ambiguities, uncertainties, or conflicts found in these Rules shall be resolved by the Agency Attorney in writing.

1. In furtherance of the purposes of the objective set forth in *Section I(A)*, the Agency's intent is these Rules be interpreted to authorize the full use of all contracting and purchasing powers described in [ORS Chapters 279A, 279B, and 279C](#).
2. The Model Rules adopted under [ORS 279A.065](#) shall apply to the contracts and purchases of the Agency to the extent they do not conflict with these Rules and other rules and regulations adopted by the Agency.
3. In the event of a conflict between any provisions of these Rules and the Model Rules, the provisions of these Rules shall prevail.

C. Specific Provisions' Precedence over General Provisions. In the event of a conflict between the provisions of these Rules, the more specific provision shall take precedence over the more general provision.

D. Conflicts with Federal Statutes and Regulations. Except as otherwise expressly provided in [ORS Chapters 279A, 279B, or 279C](#), applicable federal statutes and regulations govern when federal funds are involved.

II. Definitions.

A. Specific Definitions. Unless a different definition is specifically provided elsewhere in these Rules, or the Agency Attorney determines specific context clearly requires otherwise, the following terms have the following specified meanings and any term defined in the singular includes the meaning of the plural, and vice versa:

1. **Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services, or public improvements.
2. **Affected person/offeror.** A person whose ability to participate in a procurement is adversely impaired by a Agency decision.
3. **Agency.** The Columbia Gateway Urban Renewal Agency, an Oregon public corporation duly formed and existing pursuant to the provisions of ORS Chapter 457 and a contracting and purchasing agency.
4. **Agency Manager.** The person employed as the City of The Dalles Community Development Director.
5. **Award.** The decision to enter into a contract or purchase order with a specific offeror.
6. **Bid.** A response to an invitation to bid.
7. **Bidder.** A person who submits a bid in response to an invitation to bid.
8. **Business with which a Agency employee is associated.** Any business in which an Agency employee is a director, officer, owner, or employee, or any corporation in which a Agency employee owns or has owned ten percent (10%) or more of any class of stock at any point in the preceding calendar year.
9. **Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
10. **Contract.** See *Public Contract*.
11. **Contractor.** The person who enters into a contract with the Agency.
12. **Contract price.** As the context requires, either:
 - a. the maximum payment the Agency will make under a contract if the contractor fully performs under the contract, including bonuses, incentives, and contingency amounts;

- b. the maximum not-to-exceed payment specified in the contract; or
 - c. the unit prices set forth in the contract.
- 13. *Contracting agency.*** A public body authorized by law to conduct a procurement.
- 14. *Cooperative procurement.*** A procurement conducted by, or on behalf of, one or more contracting agencies.
- 15. *Days.*** Calendar days.
- 16. *Emergency.*** Involves circumstances that:
- a. could not have been reasonably 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 or amendment in order to remedy the condition.
- 17. *Emergency construction contract.*** A contract for emergency work, minor alteration, ordinary repair or maintenance of public improvements, and any other construction contract not defined as a public improvement under these Rules or [ORS 279A.010](#).
- 18. *Findings.*** The justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information including, without limitation:
- a. operational, budget and financial data;
 - b. public benefits;
 - c. value engineering;
 - d. specialized expertise;
 - e. market conditions;
 - f. technical complexity; and
 - g. funding sources.

- 19. *Goods and/or services.*** *Goods* are supplies, equipment, materials, and personal property (including intangible and intellectual property rights and licenses). *Services* are all other services not designated as personal services under these Rules, but generally comprise non-profession-based services (i.e., services for office maintenance). The term *goods and/or services* includes combinations of any of the items identified in the definition for each.
- 20. *Grant.*** An agreement under which, either:
- a. the Agency (as grantee) receives moneys, property, or other assistance (including but not limited to federal assistance characterized as a grant by federal law or regulation), loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets; the assistance received by the Agency is from a grantor for the purpose of supporting or stimulating a program or activity of the Agency; and no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
 - b. the Agency (as grantor) provides moneys, property, or other assistance (including but not limited to federal assistance characterized as a grant by federal law or regulation), loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets; the assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
- 21. *Immediate family member.*** An employee's: spouse, domestic partner, parent or in loco parentis, children, siblings, parents-in-law, siblings-in-law, grandparents, grandchildren, step-parents, and step-children.
- 22. *Offer.*** A bid, proposal, quote, or other response to a solicitation document.
- 23. *Offeror.*** A person who submits an offer.
- 24. *Opening.*** The date, time, and place announced in the solicitation document for the public opening of written sealed offers.
- 25. *Original contract.*** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- 26. *Purchasing agency.*** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.

- 27. *Person.*** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation, or other legal or commercial entity, and any other person or entity with legal capacity to contract.
- 28. *Price agreement.*** A contract for the procurement of goods or services at a set price which has:
- a. no guarantee of a minimum or maximum purchase; or
 - b. an initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.
- 29. *Procurement.*** The act of purchasing, leasing, renting, or otherwise acquiring goods or services, personal services, or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract, and obtain the performance of a contract for goods or services, personal services, or professional services.
- 30. *Proposal.*** A response to a request for proposals.
- 31. *Proposer.*** A person that submits a proposal in response to a request for proposals.
- 32. *Provider.*** As the context requires, a supplier of goods or services, personal services, or professional services.
- 33. *Public contract.*** A sale or other disposal, or a purchase, lease, rental, or other acquisition, by the Agency of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.
- 34. *Public contracting.*** Procurement activities relating to obtaining, modifying, or administering contracts or price agreements.
- 35. *Public improvement.*** A project for construction, reconstruction, or major renovation on real property, by or for the Agency. It neither includes projects for which no funds of the Agency are directly or indirectly used (except for participation incidental or related primarily to project design or inspection) nor emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.

- 36. *Public improvement contract.*** A contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.
- 37. *Qualified pool.*** A pool of contractors who are prequalified to compete for the award of certain contracts or to provide certain types of goods or services.
- 38. *Recycled product.*** All materials, goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. It includes any product potentially disposable as solid waste after completing its life cycle as a consumer item but otherwise is refurbished for reuse without substantial alteration of the product's form.
- 39. *Request for proposals (RFP).*** A solicitation document used for soliciting proposals.
- 40. *Request for qualifications (RFQ).*** A written document issued by the Agency describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the Agency.
- 41. *Revenue-generating agreements.*** Contracts or agreements for revenue-generating services typically awarded to the offeror proposing the most advantageous or highest monetary return to the Agency.
- 42. *Scope.*** The range and attributes of the goods or services described in a procurement document.
- 43. *Services.*** See *goods and/or services*. The following specific definitions apply to the following types of services:
- a. ***Personal services.*** Services, other than professional services, requiring specialized skill, knowledge, and resources in the application of technical or scientific expertise or in the exercise of professional, artistic, or management discretion or judgment.
 - (i) Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.

- (ii) Personal services contracts include but are not limited to the following classes of contracts:
 - (a) Contracts for services performed in a professional capacity, including but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, land use and planning consultant, physician, or broadcaster;
 - (b) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the Agency is or may become interested;
 - (c) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver, or sculptor;
 - (d) Contracts for services that are specialized, creative or research-oriented; and/or
 - (e) Contracts for services as a consultant.
- b. *Professional services.* Architectural, engineering, photogrammetric mapping, transportation planning, and land surveying (A&E) or related services, or any combination of these services, provided by a consultant.
 - (i) *A&E services.* Professional services performed by an architect, engineer, photogrammetrist, transportation planner, or land surveyor and includes architectural, engineering, photogrammetric, transportation planning, or land surveying services, separately or any combination thereof, as appropriate within the context of a section of these Rules.
 - (ii) *Related services.* Personal services, other than A&E services, related to the administration, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to:
 - (a) landscape architectural services;
 - (b) facilities planning services;
 - (c) energy planning services;
 - (d) space planning services;

- (e) environmental impact studies;
- (f) hazardous substances or hazardous waste or toxic substances testing services;
- (g) wetland delineation studies;
- (h) wetland mitigation services;
- (i) Native American studies;
- (j) historical research services;
- (k) endangered species studies;
- (l) rare plant studies;
- (m) biological services;
- (n) archaeological services;
- (o) cost estimating services;
- (p) appraising services;
- (q) material testing services;
- (r) mechanical system balancing services;
- (s) commissioning services;
- (t) project management services; and
- (u) construction management services and owner's representatives' service.

44. *Signed or signature.* Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.

45. *Solicitation.* As the context requires, either:

- a. a request for the purpose of soliciting offers, including an invitation for bid, a request for proposals, a quote request, a request for qualifications, or other similar documents;

- b. the process of notifying prospective offerors of a request for offers; and/or
 - c. the solicitation document.
- 46. *Work.*** The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.
- 47. *Written or in writing.*** Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

III. Authority.

- A. Agency Board as Local Contract Review Board.** The Agency Board is designated as the local contract review board of the Agency and has all the rights, powers, and authority necessary to carry out the provisions of these Rules, the Public Contracting Code, and/or the Model Rules.
- B. Application of Attorney General’s Model Rules of Procedure.** Pursuant to [ORS 279A.065\(6\)](#), the Agency has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules do not apply to the Agency.
- C. Inapplicability of Rules.** These Rules do not apply to:
1. all contracts or agreements to which the Public Contracting Code does not apply;
 2. contracts, intergovernmental, and interstate agreements entered into pursuant to [ORS Chapter 190](#);
 3. grants;
 4. acquisitions or disposals of real property or interests in real property, including permits and lease, license, easement, franchise, and other agreements for the temporary use of Agency-owned property and encroachments upon Agency-regulated public rights-of-way;
 5. procurements from an Oregon Corrections Enterprise program;
 6. contracts, agreements, or other documents entered into, issued, or established in connection with:
 - a. the incurring of debt, including any associated contracts, agreements, or other documents, regardless of whether the obligations they establish are general, special, or limited;
 - b. the making of program loans and similar extensions or advance of funds, aid, or assistance by the Agency to a public or private person for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - c. the investment of funds by the Agency as authorized by law; and
 - d. banking, money management, or other predominantly financial transactions that, by their character, cannot practically be established

under the competitive contractor selection procedures, based upon the findings of the Agency Manager.

7. contracts for employee benefit plans;
8. contracts with newspapers and other publications for the placement of advertisements or public notices;
9. contracts for items where the price is regulated and available from a single source or limited number of sources;
10. insurance contracts;
11. revenue-generating agreements; and
12. federal agreements where applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these Rules, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these Rules; and

D. Authority of Agency Manager. For contracts and purchases covered by these Rules, and when sufficient budgetary resources are either available in the current fiscal year budget for the proposed expenditure or become available after specific Agency Board authorization, the Agency Manager is authorized to:

1. award contracts and amendments without specific authorization by the Agency Board whenever the contract amount is **\$100,000 or less**;
2. execute contracts and amendments with specific authorization by the Agency Board whenever the contract or amendment amount **exceeds \$100,000**;
3. as the purchasing agent for the Agency, the Agency Manager is specifically authorized to:
 - a. purchase goods, services, and/or property without specific authorization by the Agency Board whenever the amount is **\$100,000 or less**; and
 - b. purchase goods, services, and/or property with specific authorization by the Agency Board whenever the amount **exceeds \$100,000**.
4. adopt forms, procedures, computer software, and administrative rules for all Agency purchases regardless of the amount, and:

- a. when adopting the forms, procedures, computer software, or administrative rules, the Agency Manager shall establish practices and policies that:
 - (i) do not encourage favoritism or substantially diminish competition; and
 - (ii) allow the Agency to take advantage of the cost-saving benefits of alternative contracting methods and practices.
- b. the Agency shall use these forms, procedures, computer software, or administrative rules unless they conflict with these Rules.

E. Favorable Terms. Contracts and purchases shall be negotiated on the most favorable terms to the Agency in accordance with these Rules, other adopted ordinances, and Oregon and federal laws, policies, and procedures.

F. Unauthorized Contracts or Purchases. Public contracts entered into or purchases made as authorized herein shall be voidable at the sole discretion of the Agency.

1. The Agency may take appropriate action in response to execution of contracts or purchases made contrary to this provision.
2. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such contracts or purchases.

G. Purchasing from Agency Employees or Employees' Immediate Family Prohibited. No contract shall be knowingly entered with or purchase knowingly made from any Agency employee or employee's immediate family member, or any business with which the employee is associated, unless:

1. the contract or purchase is expressly authorized and approved by the Agency Board after it receives counsel from the Agency Attorney; or
2. the need for the contract or purchase occurs during a state of emergency, and the Agency Manager finds in writing the acquisition from the employee, employee's immediate family member, or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety, and welfare.

IV. Preferences.

- A. **Mandatory Tie Breaker Preference.** If offers are identical in price, fitness, availability, and quality, and the Agency desires to award the contract, the preferences provided in [ORS 279A.120](#) shall be applied prior to the contract award.
- B. **Reciprocal Preference.** Reciprocal preferences must be given when evaluating bids, if applicable under [ORS 279A.120](#).
- C. **Preference for Recycled Materials and Supplies.** Preferences for recycled goods shall be given when comparing goods, if applicable under [ORS 279A.125](#). The Agency Manager may adopt alternative standards to determine if goods are manufactured from recycled materials.

V. General Provisions.

- A. Public Notice.** Unless otherwise specifically provided by these Rules or required by applicable law, any notice required to be published by these Rules may be published using any method the Agency Manager deems appropriate, including but not limited to mailing notice to persons that have requested notice in writing, placing notice on the Agency's website, or publishing an advertisement in statewide trade or local publications. With specific respect to public improvement contracts, the Local Contract Review Board hereby determines electronic advertisements are likely to be cost-effective and authorizes electronic advertisements for all public improvement contracts having an estimated contract price of **\$125,000 or less** pursuant to [ORS 279C.360](#).
- B. Procedure for Competitive Verbal Quotes and Proposals.** Where allowed by these Rules and authorized by the Agency Manager, solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided and may be solicited and received by means including phone, facsimile, or email.
1. The Agency shall make a good faith effort to contact at least three (3) potential providers.
 2. If three (3) potential providers are not reasonably available, fewer will suffice, provided the reasons three (3) potential providers are not reasonably available is documented as part of the procurement file.
- C. Procedure for Informal Written Solicitation.** Where allowed by these Rules, informal written solicitations shall be made by a solicitation document sent by means including mail, facsimile, or email to not less than three (3) prospective providers.
1. The solicitation document shall request competitive price quotes or competitive proposals and include:
 - a. the date, time, and place price quotes or proposals are due;
 - b. a description or quantity of the good or service required;
 - c. any statement of period for which price quotes or proposals must remain firm, irrevocable, valid, or binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. any required contract terms or conditions; and
 - e. any required bid form or proposed format.

2. Price quotes or proposals shall be received by the Agency Manager at the date, time, and place established in the solicitation document.
 - a. The Agency shall keep a written record of the sources of the quotes or proposals.
 - b. If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the Agency Manager shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

D. Procurement Methods for Professional Services and Public Improvements.

Subject only to any conflicting provision of these Rules as determined by the Agency Attorney, the Agency shall apply the Public Contracting Code and the Model Rules when procuring professional services and public improvements and processing protests thereof.

E. Feasibility Determinations for Service Contracts over \$250,000. Prior to beginning a procurement or entering into a service contract (other than contracts for professional services or those services to which [ORS Chapter 279B](#) does not apply) when the estimated contract price **exceeds \$250,000**, the Agency Manager shall demonstrate either:

1. a written cost analysis developed pursuant to [ORS 279B.033](#) and finding the Agency would incur less cost in *conducting the procurement* than in *performing the services with the Agency's own personnel and resources*; or
2. a written determination developed pursuant to [ORS 279B.036](#) and finding performing the services with the Agency's own personnel would *not* be feasible, and the findings may include, for example, the existence of special circumstances or Agency personnel lack specialized capabilities, experience, or technical or other expertise necessary to perform the services when compared to a potential contractor's capabilities, experience, or expertise in the same or a similar field.

The cost comparison analysis and feasibility determinations, along with their supporting records, are public records subject to disclosure pursuant to the Oregon Public Records Law. The Agency Manager's decision described in this subsection is exempt from [ORS Chapter 279B](#)'s judicial review process and its review is instead limited to writ of review by the Circuit Court of the State of Oregon for the County of Wasco pursuant to [ORS Chapter 34](#).

F. Qualified Pools. The Agency may solicit a pool of contractors who are prequalified to compete for the award of certain contracts or to provide certain types of goods or services.

1. **General.** To create a qualified pool, the Agency Manager may invite prospective contractors to submit their qualifications to the Agency for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services, professional services, and public improvements.
2. **Public Notice.** The invitation to participate in a qualified pool shall be publicly noticed. If qualification will be for a term exceeding two (2) years or allowing open entry on a continuous basis, the invitation to participate in the pool must be noticed at least once every two (2) years and shall be posted on the Agency's website.
3. **Solicitation Content.** Requests for participation in a qualified pool shall describe the scope of goods, services, or projects for which the pool will be maintained and the minimum qualifications for participation in the pool, which may include qualifications relating to financial stability, contracts with manufacturers or distributors, insurance, licensure, education, training, experience and demonstrated skills of key personnel (including familiarity with the Agency or the proposed project), access to equipment, and other relevant qualifications important to the contracting needs of the Agency.
4. **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the Agency and all pool participants are parties. The contract shall contain all terms required by the Agency, including terms relating to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission of evidence of continuing qualification on an annual or other periodic basis. The qualified pool contract shall describe the selection procedures the Agency may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any Agency contract.
5. **Use of Qualified Pools.** Subject to the provisions of these Rules concerning contract sourcing methods, the Agency shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants unless the Agency Manager determines the best interests of the Agency in the particular instance would be best served with an alternative procurement method, in which case the pool participants shall be notified and invited to submit competitive offers.
6. **Amendment and Termination.** The Agency Manager or Agency Board may discontinue a qualified pool at any time or may change the requirements for eligibility as a pool participant at any time by delivering written notice to all pool participants.

7. *Protest of Failure to Qualify*. The Agency Manager shall notify any applicant who fails to qualify for pool participation it may appeal a qualified pool decision to the Agency Board pursuant to *Section X(A)*.

G. Retroactive Approval. Retroactive approval of a contract means award or execution of a contract where work was commenced without final award or execution. The Agency Manager may make retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the Agency Manager along with a written request for contract retroactive approval containing:

1. an explanation of the reason work was commenced before the contract was finally awarded or executed;
2. a description of steps taken to prevent similar occurrences in the future;
3. evidence that, but for the failure to finally award or execute the contract, the employee substantially complied with all other steps required to properly select a contractor and negotiate the contract; and
4. a proposed form of contract.

VI. Source Selection Methods for Goods or Services, Other Than Personal or Professional Services.

A. Small Procurements. Contracts for or purchases of goods or services with a contract price of **\$25,000 or less** are small procurements.

1. *Purchases \$5,000 or less.* The Agency may use any procurement method the Agency Manager deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contract price of **\$5,000 or less**.
2. *Purchases between \$5,000 and \$25,000.* The Agency may use competitive verbal quotes or proposals and informal written solicitations (pursuant to the procedures listed in *Sections V(B) and V(C)*, respectively) for small procurements of goods or services with a contract price **between \$5,000 and \$25,000**.
3. *Negotiations.* The Agency may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals or to make modifications making the quote or proposal acceptable or more advantageous to the Agency.
4. *Award.* If a contract is awarded, the award shall be made to the offeror whose verbal quote or proposal the Agency Manager will best serve the interests of the Agency, taking into account price as well as any other relevant considerations, including but not limited to experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
5. *Amendments.* Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price.
6. *Public Notice.* No public notice of small procurements is required.

B. Intermediate Procurements. Contracts for goods or services with a contract price **greater than \$25,000 but less than or equal to \$100,000** are intermediate procurements.

1. *Solicitation.* Intermediate procurements shall be by informal written solicitation pursuant to the procedures listed in *Section V(C)*.
2. *Negotiations.* The Agency Manager may negotiate with an offeror to clarify an informal written solicitation, or to make modifications making the quote, proposal, or solicitation acceptable or more advantageous to the Agency.

3. **Award.** If a contract is awarded, the award shall be made to the offeror whose informal written solicitation the Agency Manager determines will best serve the interests of the Agency, taking into account price or any other relevant considerations, including but not limited to experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
4. **Amendments.** Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price.
5. **Public Notice.** No public notice of intermediate procurements is required.

C. Large Procurements. Contracts for goods or services with a contract price **exceeding \$100,000** are large procurements.

1. Large procurements shall be by competitive sealed bidding pursuant to [ORS 279B.055](#) or competitive sealed proposals pursuant to [ORS 279B.060](#).
2. When using either competitive sealed bidding or competitive sealed proposals, the Agency shall follow the applicable procedures set out in the Model Rules.
3. The Agency shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.

VII. Personal Services Contracts.

A. Classification of Services as Personal Services. In addition to the classes of personal services contracts identified in the definition of personal services contracts, the Agency Manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the Agency Manager shall consider:

1. whether the work requires specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment;
2. whether the Agency intends to rely on the contractor's specialized skills, knowledge, and expertise to accomplish the work; and
3. whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the Agency's needs and result in obtaining satisfactory contract performance and optimal value.
4. *Exception:* A service shall not be classified as personal services for the purposes of these Rules if:
 - a. the work has traditionally been performed by contractors selected primarily on the basis of price; or
 - b. the services do not require specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment.

B. Requests for Qualifications. At the Agency Manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations, or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance. A request for qualifications may require information including but not limited to:
 - a. the contractor's particular capability to perform the required personal services;
 - b. the number of experienced personnel available to perform the required personal services;

- c. the specific qualifications and experience of personnel;
 - d. a list of similar personal services the contractor has completed;
 - e. references concerning past performance; and
 - f. any other information necessary or convenient to evaluate the contractor's qualifications.
2. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time, and location of the meeting.
 3. At the Agency's discretion as described in the request for qualifications, unless the responses to a request for qualifications reasonably establish competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, the Agency shall either:
 - a. notice all respondents who meet the qualifications set forth in the request for qualifications of any required personal services and provide them an opportunity to submit a proposal in response to the request for proposals; or
 - b. notice all respondents who meet the qualifications set forth in the request for qualifications of their relative ranking after the Agency evaluates their qualifications, in which case the Agency will select at least the two (2) top-scoring respondents as exclusively eligible to receive and submit responses to the request for proposals.

C. Direct Negotiations.

1. Personal services may be procured through direct negotiations if:
 - a. the contract price **does not exceed \$200,000** (without including amendments) and the work is within a budgetary appropriation or approved by the Agency Board;
 - b. the confidential personal services (including special counsel) or professional or expert witnesses or consultants are necessary to assist with pending or threatened litigation or other legal matters in which the Agency may have an interest; or
 - c. the nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.

2. **Amendments.** Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment relates to the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price, or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
3. **Public Notice.** No public notice of personal services contracts procured by direct negotiations is required.

D. Informal Written Solicitations. An informal written solicitation process may be used for personal services when the contract price is **less than \$200,000**.

1. An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the Agency Manager determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons three (3) providers are not reasonably available are documented in the procurement file.
2. The solicitation document shall include:
 - a. the date, time and place proposals are due;
 - b. a description of personal services sought or the project to be undertaken;
 - c. any statement of the time period for which proposals must remain firm, irrevocable, valid, and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. any required contract terms or conditions; and
 - e. any required bid form or proposal format.
3. Selection and ranking of proposals may be based on the following criteria:
 - a. Particular capability to perform the personal services required;
 - b. Experienced staff available to perform the personal services required, including the proposer's recent, current, or projected workloads;
 - c. Performance history;
 - d. Approach and philosophy used in providing personal services;

- e. Fees or costs;
 - f. Geographic proximity to the project or the area where the services are to be performed; or
 - g. Such other factors deemed appropriate by the Agency Manager, including a desire to ensure an equitable distribution of work among highly qualified contractors.
4. The Agency Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.
5. **Amendments.** Personal services contracts procured by informal written solicitations pursuant to this section may be amended if the amendment relates to the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price, or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
6. **Public Notice.** No public notice of personal services contracts procured by informal written solicitations pursuant to this section is required.
- E. Requests for Proposals.** A request for proposals shall be used to procure personal services when the contract price **exceeds \$200,000** or the Agency Manager determines the complexity of the project requires a formal competitive process to determine whether a particular proposal is most advantageous to the Agency.
1. **Request for Proposal.** The request for proposal shall include:
- a. notice of any pre-offer conference, including:
 - (i) the time, date and location;
 - (ii) whether attendance at the pre-offer conference is mandatory or voluntary; and
 - (iii) a provision statements made by representatives of the Agency at the pre-offer conference are not binding unless confirmed by written addendum.

- b. the form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received, and any other special information (e.g., whether proposals may be submitted by electronic means);
- c. the name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
- d. a date, time, and place pre-qualification applications (if any) must be filed and the classes of work (if any) for which proposers must be pre-qualified;
- e. a statement the Agency may cancel the procurement or reject any or all proposals;
- f. the date, time, and place of opening;
- g. the office where the request for proposals may be reviewed;
- h. a description of the personal services to be procured;
- i. the evaluation criteria;
- j. the anticipated schedule, deadlines, evaluation process, and protest process;
- k. the form and amount of any proposal security deemed reasonable and prudent by the Agency Manager to protect the Agency's interests;
- l. a description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
- m. if more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
- n. if contracts will be awarded to more than one personal services contractor, an identification of the manner in which the Agency will determine the number of contracts to be awarded or a statement indicating the manner will be left to the Agency's discretion at time of award;
- o. if contracts will be awarded to more than one personal services contractor, an identification of the criteria to be used to choose from the multiple contracts when acquiring personal services;

- p. all required contract terms and conditions, including the statutorily required provisions in [ORS 279B.220](#), [279B.230](#), and [279B.235](#); and
 - q. any terms and conditions authorized for negotiation.
2. **Public Notice.** The Agency Manager shall provide public notice of a request for proposals for personal services.
- a. Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals, unless the Agency Manager determines a shorter interval is in the public's interest or will not substantially impact competition.
 - b. The Agency Manager shall document the specific reasons for any shorter public notice period in the procurement file.
3. **Amendments.** Personal services contracts procured by requests for proposals pursuant to this section may be amended if the amendment relates to the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price, or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

VIII. Alternative Source Selection Methods for Goods or Services & Personal Services.

A. Sole-Source Procurements. A contract may be awarded as a sole-source procurement without competition pursuant to this section.

1. **Determination of Sole-Source.** Before a sole-source contract may be awarded, the Agency Manager shall make written findings the goods or services, personal services, or professional services are available from only one source based on one or more of the following criteria:
 - a. The efficient use of existing goods or services, personal services, or professional services requires the acquisition of compatible goods or services, personal services, or professional services available from only one source;
 - b. The goods or services, personal services, or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;
 - c. The goods or services, personal services, or professional services are available from only one source and are needed for use in a pilot or an experimental project; or
 - d. Other facts or circumstances exist supporting the conclusion the goods or services, personal services, or professional services are available from only one source.
2. **Negotiations.** To the extent reasonably practical, contract terms advantageous to the Agency shall be negotiated with the sole-source provider.
3. **Notice.** The Agency Manager shall post notice of any determination the sole source selection method will be used on the Agency's website not less than ten (10) days prior to the date a sole-source contract will be awarded. The notice shall describe the goods or services, personal services, or professional services to be procured, identify the prospective contractor, and include the date and time when and place where protests of the use of a sole source selection method must be filed.

B. Special Procurements. In its capacity as the Local Contract Review Board, the Agency Board, upon its own initiative or upon request of the Agency Manager, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

1. ***Basis for Approval.*** The approval of a special solicitation method or exemption from competition must be based upon a record before the Agency Board containing:
 - a. the nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - b. the estimated contract price or cost of the project (if relevant);
 - c. findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - d. findings to support the reason approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner not practicably realized by complying with the solicitation requirements otherwise applicable under these Rules;
 - e. a description of the proposed alternative contracting methods to be employed; and
 - f. the estimated date when it would be necessary to let the contract(s).
2. In making a determination regarding a special selection method, the Agency Board may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
3. ***Hearing.*** The Agency shall approve the special solicitation or exemption after a public hearing before the Agency Board.
 - a. At the public hearing, the Agency shall offer an opportunity for any interested party to appear and present comment.
 - b. The Agency Board shall consider the findings and may approve the exemption as proposed or as modified by the Agency Board after providing an opportunity for public comment.

C. Contracts Subject to Award at the Agency Manager’s Discretion. The following classes of contracts may be awarded in any manner the Agency Manager deems appropriate to the Agency’s needs, including by direct appointment or purchase. Except where otherwise provided, the Agency Manager shall make a record of the method of award.

1. *Amendments.* Contract amendments shall not be considered to be separate contracts if made in accordance with these Rules.
2. *Copyrighted Materials and Library Materials.* Contracts for the acquisition of materials entitled to copyright, including but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright if purchased for use as library lending materials.
3. *Personal Property Repair.* Contracts for personal property repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
4. *Government-Regulated Items.* Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
5. *Non-Owned Property.* Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Agency.
6. *Specialty Goods for Resale.* Contracts for the purchase of specialty goods by the Agency for resale to consumers.
7. *Sponsorship Agreements.* Sponsorship agreements, under which the Agency receives a gift or donation in exchange for recognition of the donor.
8. *Structures.* Contracts for the disposal of Agency-owned structures.
9. *Renewals.* Contracts renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
10. *Temporary Extensions or Renewals.* Contracts for a single period of one (1) year or less for the temporary extension or renewal of an expiring and non-renewable (or recently expired) contract, other than a contract for public improvements.
11. *Used Property.* The Agency Manager may contract for the purchase of used property by negotiation if such property is suitable for the Agency’s needs and can be purchased for a lower cost than substantially similar new property.

- a. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the Agency.
 - b. The Agency Manager shall record the findings supporting the purchase.
12. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
13. **Conference/Meeting Room Contracts.** Contracts entered into for meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and Agency-sponsored workshops and trainings.

D. Emergency Procurements. When the Agency Manager determines the Agency's immediate execution of a contract is necessary in response to an emergency, the Agency Manager may execute an emergency contract without competitive selection and award or Agency Board approval as provided in this Section and consistent with [ORS 279B.080](#).

- 1. **Emergency Competition.** Where time permits, the Agency Manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor; otherwise, the Agency Manager may proceed with a direct appointment without competition.
- 2. **Emergency Reporting.** As soon as possible in light of the emergency circumstances, the Agency Manager shall notify the Agency Board and Agency Attorney in writing of the nature of and facts and circumstances surrounding the emergency, the method used for the selection of the particular contractor, and the reasons why the selection method was deemed in the best interest of the Agency and public.
- 3. **Emergency Construction Contracts.** For emergency construction contracts (as defined in *Section II(A)*) the Agency Manager:
 - a. shall ensure reasonably appropriate competition and set a reasonable solicitation schedule under the emergency circumstances; and
 - b. if the emergency construction services are a matter of extreme necessity, may:
 - (i) proceed with a written or verbal request for quotes or make a direct appointment without competition; and
 - (ii) waive the requirement for all or a portion of any payment or performance bond if the time delay needed to obtain the required security interest could result in injury or substantial property damage;

provided, however, the Agency Manager may not waive the separate public works bond requirement for the benefit of the Oregon Bureau of Labor and Industries in enforcing prevailing wage rate and overtime payment requirements consistent with [ORS 279C.836](#).

4. *Emergency Signature Authority and Purchasing Power*. For all emergency procurements, the Agency Manager is specifically authorized to award contracts and amendments without specific authorization by the Agency Board whenever the contract price is **less than \$250,000**.

E. Cooperative Procurements. Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code.

IX. Surplus Property.

- A. General Methods.** Surplus personal property may be disposed of by any of the following methods upon a determination by the Agency Manager the method of disposal is in the best interest of the Agency. Factors potentially considered by the Agency Manager include costs of sale, administrative costs, and public benefits to the Agency.
1. *Intergovernmental Transfer.* Without competition, by transfer or sale to another government department or public agency.
 2. *Auction.* By publicly noticed auction to the highest bidder.
 3. *Bids.* By publicly noticed invitation to bid.
 4. *Liquidation Sale.* By liquidation sale using a commercially recognized third-party liquidator selected in accordance with these Rules for the award of personal services contracts.
 5. *Fixed-Price Sale.* The Agency Manager may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and publicly notice a sale date, and sell to the first buyer meeting the sales terms.
 6. *Trade-In.* By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 7. *Donation.* By donation to any organization operating within or providing a service to Oregon residents, which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. Disposal of Property with Minimal Value.** Surplus personal property which has a value of **less than \$500**, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. The employee making the disposal shall make a record of the value of the item and the manner of disposal.
- C. Personal-Use Items.** An item (or indivisible set) of specialized and personal use with a current value of **less than \$100** may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Agency Manager.

D. Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the Agency shall make, execute, and deliver a bill of sale or similar instrument signed on behalf of the Agency conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

X. Protest and Appeal Procedures.

A. Appeal of Debarment or Prequalification Decision.

1. *Debarment and Disqualification.* The Agency Manager may debar prospective offerors pursuant to [ORS 279A.110](#) or after providing notice and the opportunity for a hearing pursuant to [ORS 279B.130](#). Notwithstanding [ORS 279B.130\(1\)\(b\)](#)'s limitation on debarment terms, the Agency may determine a previously debarred offeror is not responsible prior to award. The Agency may attribute the improper conduct of any person having a contract with a prospective offeror to the prospective offeror for debarment purposes if the impropriety occurred in connection with the person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective offeror. The Agency Manager may disqualify or deny prequalification to any person pursuant to [ORS 279C.440](#) and other Oregon or federal law.
2. *Right to Hearing.* Any person who has been debarred from competing for the Agency's contracts or for whom prequalification has been denied, revoked, or revised may appeal the Agency's decision to the Agency Board as provided in this section.
3. *Filing of Appeal.* The person shall file a written notice of appeal with the Agency Manager within five (5) business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
4. *Notification of Agency Board.* The Agency Manager shall notify the Agency Board of the notice of appeal immediately upon the Agency's receipt.
5. *Hearing.* The procedure for appeal from a debarment or denial, revocation, or revision of prequalification shall be as follows:
 - a. Promptly upon receipt of notice of appeal, the Agency shall notify the appellant of the date, time, and place of the hearing;
 - b. The Agency Board shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the Agency Manager; and
 - c. At the hearing, the Agency Board shall reconsider (without regard to the underlying decision giving rise to the appeal) the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

6. *Decision*. The Agency Board shall set forth in writing the reasons for the decision.
7. *Costs*. The Agency Board may allocate its costs for the hearing between the appellant and the Agency.
 - a. The allocation shall be based upon facts found by the Agency Board and stated in the Agency Board's decision that, in the Agency Board's opinion, warrant such allocation of costs.
 - b. If the Agency Board does not allocate costs, the costs shall be paid by the appellant if the decision is upheld or by the Agency if the decision is overturned.
8. *Judicial Review*. The decision of the Agency Board may be reviewed only upon a petition filed in the Circuit Court of the State of Oregon for the County of Wasco within fifteen (15) days after the date of the Agency Board's decision. The appeal must be filed in accordance with all applicable Oregon law and trial court procedures.

B. Protests and Judicial Review of Special Procurements. An affected person may protest the request for approval of a special procurement as provided in this section.

1. *Delivery and Late Protests*. An affected person shall deliver a written protest to the Agency Manager within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the Agency Manager to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. *Content of Protest*. The written protest shall include:
 - a. identification of the requested special procurement;
 - b. a detailed statement of the legal and factual grounds for the protest;
 - c. evidence or documentation supporting the grounds on which the protest is based;
 - d. a description of the resulting harm to the affected person; and

- e. the relief requested.
- 3. **Additional Information.** The Agency Manager may allow any person to respond to the protest in any manner the Agency Manager deems appropriate by giving such persons written notice of the time and manner whereby any response shall be delivered.
- 4. **Agency Response.** The Agency Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the Agency Manager upholds the protest in whole or in part, the Agency Manager may, in the Agency Manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
 - b. If the Agency Manager upholds the protest in whole or in part, the Agency shall refund the fee required to be delivered with the protest.
- 5. **Judicial Review.** An affected person may not seek judicial review of a denial of a request for a special procurement.
 - a. Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with [ORS 279B.400](#).

C. Protests and Judicial Review of Sole-Source Procurements. An affected person may protest the determination goods or services or a class of goods or services are available from only one source as provided in this section.

- 1. **Delivery and Late Protests.** An affected person shall deliver a written protest to the Agency Manager within seven (7) days after the first date of public notice of a proposed sole-source procurement is placed on the Agency's website, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the Agency Board to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
- 2. **Content of Protest.** The written protest shall include:

- a. a detailed statement of the legal and factual grounds for the protest;
 - b. evidence or documentation supporting the grounds on which the protest is based;
 - c. a description of the resulting harm to the affected person; and
 - d. the relief requested.
3. **Additional Information.** The Agency Manager may allow any person to respond to the protest in any manner the Agency Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
 4. **Agency Manager Response.** The Agency Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the Agency Manager upholds the protest in whole or in part, the proposed sole-source contract shall not be awarded.
 - b. If the Agency Manager upholds the protest in whole or in part, the Agency shall refund the fee required to be delivered with the protest.
 5. **Judicial Review.** An affected person may not seek judicial review of an election not to make a sole-source procurement.
 - a. Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with [ORS 279B.400](#).

D. Protests and Judicial Review of Personal Services Procurements. An affected person may protest the procurement of a personal services contract as provided in this section.

1. **Delivery.** Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the Agency Manager.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the Agency Board to cover the costs of processing the protest.
 - b. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.

- c. Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.
 - d. Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.
2. *Contents of Protest.* The written protest shall specify all legal or factual grounds for the protest as follows:
- a. A person may protest:
 - (i) the solicitation itself on the grounds the contract is not a personal services contract or was otherwise in violation of these Rules or applicable law; or
 - (ii) the award or intent to award on the grounds:
 - (a) all proposals ranked higher than the affected persons are nonresponsive;
 - (b) the Agency failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
 - (c) the Agency abused its discretion in rejecting the affected person's proposal as nonresponsive; or
 - (d) the evaluation of proposals or the subsequent determination of award is otherwise in violation of these Rules or applicable law.
 - b. The protest shall identify and include:
 - (i) the specific provision of these Rules or applicable law alleged to have been violated;
 - (ii) all evidence or supporting documentation supporting its grounds;
 - (iii) a description of the resulting harm to the affected person; and
 - (iv) the relief requested.

3. *Additional Information.* The Agency Manager may allow any person to respond to the protest in any manner the Agency Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
4. *Agency Manager Response.* The Agency Manager shall issue a written disposition of the protest in a timely manner.
 - a. If the Agency Manager upholds the protest in whole or in part, the proposed personal services contract procurement shall be cancelled or the contract shall not be awarded, as the case may be.
 - b. If the Agency Manager upholds the protest in whole or in part, the Agency shall refund the fee required to be delivered with the protest.
5. *Judicial Review.* Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with [ORS 279B.420](#).

E. Protests of Cooperative Procurements. Protests of a cooperative procurement process, contents of a solicitation document, or award may be filed with the Agency only if the Agency is the administering agency and under the applicable procedure described herein.