

**ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT
RESOLUTION 16-01 WD**

**A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES
AND PROCEDURES**

WHEREAS, the Arch Cape Domestic Water Supply District (“the District”), an Oregon special district formed pursuant to Oregon Revised Statutes (“ORS”) Chapter 198 and authorized pursuant to ORS Chapter 450, is subject to Oregon’s public contracting laws; and

WHEREAS, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the Model Public Contracting Rules adopted by the Attorney General; **NOW, THEREFORE**, the District’s Board of Directors, acting as both the governing body of the District and as the District’s Local Contract Review Board, hereby resolves as follows:

1. Except as otherwise provided herein, the District hereby adopts the provisions of ORS 279A, 279B and 279C, and the Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”) as the contracting rules for the District, as such Model Rules now exist or are later modified.
2. That the District adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules, and shall supersede and replace any prior public contracting rules adopted by the District.
3. The District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.

APPROVED AND ADOPTED on January 8, 2016.

ATTEST: Sybil



President

EXHIBIT A

PUBLIC CONTRACTING RULES AND PROCEDURES

A. Personal (including but not limited to **Professional**) Services.

- 1) **Definition.** "Personal Services" shall be defined to include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: Architect; engineer; surveyor; photogrammetrist; attorney; bookkeeper; accountant; auditor; computer programmer; artist; designer; consultant; trainer or educator; workshop facilitator; administrative support contractor. The Board of Directors shall have the authority to determine whether a particular service is a "personal and/or professional service" under this definition.
- 2) **Contracts for Personal/Professional Services Other than Architectural, Engineering, Photogrammetrist, Surveying, and Related Services.**
 - a) Personal/professional service contracts do not require a competitive bidding process. Personal/professional services contracts exempted from competitive proposal processes may be awarded in any manner authorized by the Local Contract Review Board, considering such factors, but not limited to, qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment.
- 3) **Contracts with Architects, Engineers, Land Surveyors, and Photogrammetrists.**
 - a) A contract for architectural, engineering, surveying, and photogrammetry services may be entered into by direct appointment (without competitive bidding) if the cost of such services for the project is estimated not to exceed \$100,000.00; or in an emergency; or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.
 - b) Unless otherwise provided in this Section, contracts for architectural, engineering, surveying and photogrammetry services

shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these rules.

- c) All contracts for architectural, engineering, surveying and related service in excess of \$100,000 shall be entered into consistent with ORS 279C.110 (Qualification Based Selection), which substantially provides as follows:

- (1) The District shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required.
- (2) The District may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after selecting a candidate pursuant to the procedures that the District creates to screen and select consultants and to select a candidate.
- (3) The District's screening and selection procedures under this section, regardless of the estimated cost of the services for a project, may include considering each candidate's:
 - (a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - (b) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;
 - (c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 - (e) Availability to the project locale;

- (f) Familiarity with the project locale; and
- (g) Proposed project management techniques.
- d) If, after following screening and selection procedures, the District determines that two or more candidates are equally qualified, the District may select a candidate through any process that is not based on the candidate's pricing policies, proposals or other pricing information.
- e) Unless otherwise provided in these Rules, contracts for Architectural, Engineering and Surveying Services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these Rules.
- f) All contracts for architectural, engineering, surveying and related service shall be entered into consistent with ORS 279C.110.

B. Delegation.

- 1) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the District's Board of Directors.
- 2) Except as provided in these Rules, the District's Board of Directors shall approve any contract entered into by the District. Authority to approve public contracts shall be delegated only by amendment of these Rules or by resolution of the Board.
- 3) The District Manager may enter into any contract, including but not limited to emergency contracts, up to and including a maximum limit of \$5000.00 without prior approval of the Board, provided the amount of such contract and the purpose therefor is contained in the adopted budget of the District.¹
- 4) The District is a party to an Intergovernmental Agreement (IGA), together with the Arch Cape Sanitary District.

C. Special Procurements and Exemptions.

- 5) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085, including adopting findings as required by statute to support the exemption.
- 6) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according

to the procedures described in ORS 279C.335, When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

D. Small Procurements (Under \$10,000, or under \$5,000 for public improvements).

- a. Unless otherwise stated a "procurement" under these Rules means a purchase of goods. It does not include personal/professional services or construction-related activities.
- b. Procurement contracts under \$10,000, and public improvement contracts under \$5,000, are exempt from competitive bidding requirements and may be awarded directly. The Board of Directors or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- c. The District may amend a public contract awarded as a small procurement beyond the stated limits in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.

E. Intermediate Procurements.

- 1) A contract for procurement of goods, or for services which are not Professional Services, estimated to cost between \$10,000 and \$150,000 in a calendar year, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- 2) If the proposed contract is expected to exceed \$25,000, both the specifications for the bid and the bids themselves must be in writing.
- 3) Public improvement contracts advertised or awarded under this section still must comply with all statutory requirements, including those relating to the payment of prevailing wages.
- 4) A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section or to circumvent competitive bidding requirements.

F. Methods for Awarding Contracts Using Requests for Proposal Process.

In making an award using the request for proposal process in ORS 279B.060, the District may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the processes described in ORS 279B.060(6)(b), as well as direct appointment of professional services contracts if direct appointment is determined to be most advantageous to the District. The evaluation process(es) to be used shall be stated in the Request for Proposals. OAR 137-047-0261 through 137-047-0263 shall apply to evaluation of proposals.

G. Emergency Contracts.

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

H. Disposal of Surplus Property.

- 1) "Surplus Property" is defined as any personal property of the District that has been determined by the Board or its designee as being of no use or value to the District.
- 2) The Board, the District Manager, or other designee named by the Board, may dispose of surplus property as in the manner that is, in the discretion of the Board, deemed most advantageous to the District or the community at large, including but not limited to sale, donation, or disposal. The Board of Directors may require the District Manager, or Designee to obtain an appraisal of the property prior to disposition.

I. Appeals of Prequalification Decisions and Debarment Decisions.

- 1) The Local Contract Review Board shall hear all appeals of prequalification and debarment decisions made by the District.
- 2) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply:
 - a. Notices shall be submitted in writing the District Manager. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
 - b. Upon opening of the hearing, the Board Chair shall explain the District's decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Board Chair. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board Chair.
 - c. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board Chair. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board Chair shall close the hearing.
 - d. When issued in writing according to the requirements of ORS 279B.425, the Local Contract Review Board's decision and order shall be final.

J. Public Improvement Contracts.

- 1) Except as provided in these Rules, all public improvement contracts shall be advertised and awarded according to the requirements of Oregon Revised Statutes, chapter 279C.

2) "Public improvement" means a project for construction, reconstruction or major renovation on real property by or for the District. "Public improvement" does not include:

(A) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

- 3) Under Oregon law, any public improvement contract costing \$50,000 or more is subject to payment of prevailing wages, and applicable requirements. [ORS 279C.800, et seq.]
- 4) Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the Local Contract Review Board has exempted the product from competitive bidding after making the following written findings:
- (a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;
 - (b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency;
 - (c) There is only one manufacturer or seller of the product of the quality required; or
 - (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [ORS 279C.345]
- 5) Unless otherwise authorized by these Rules, an advertisement for a public improvement contract must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the District may determine.

If the public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

All advertisements for public improvement contracts must state:

- (a) The public improvement project;
- (b) The office where the specifications for the project may be reviewed;
- (c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

- (d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
 - (e) The name and title of the person designated for receipt of bids;
 - (f) The date, time and place that The District will publicly open the bids; and
 - (g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act. [ORS 279C.360]
- 6) A solicitation for a public improvement shall comply with all applicable requirements of ORS 279C.365 through ORS 279C.414.
- 7) Contracts for public improvements shall comply with all applicable requirements of ORS 279C.500 through ORS 279C.590.

K. Purchases from Federal Catalogues. Subject to applicable Board approval requirements stated in these Rules, The District may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

L. Electronic Advertising. Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Board shall determine when electronic publication is appropriate, and consistent with The District's public contracting policies. However, regardless of electronic or other advertisement, if a public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.