

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In Re: Local Contract Review Board Ordinance)
ORDINANCE No. 86-5

Local Contract Review Board Ordinance

AN ORDINANCE ESTABLISHING A LOCAL CONTRACT REVIEW BOARD TO REVIEW PUBLIC CONTRACTS UNDER CHAPTER 279 OF THE OREGON REVISED STATUTES: ADOPTING RULES FOR THE BOARD: REPEALING ORDINANCE NO. 86-1 LOCAL CONTRACT REVIEW BOARD ORDINANCE: AND DECLARING AN EMERGENCY.

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

Section 1. Contract Review Board. Pursuant to ORS 279.055, the Board of County Commissioners for Columbia County, Oregon is hereby designated as the local Contract Review Board for Columbia County. Relative to contract concerns of this County, the Board shall have all the powers granted to the State Director of the Department of General Services.

Section 2. Rules. There is hereby adopted by the County for the purpose of establishing rules governing public contracts in the County, the Attorney General's Model Public Contract Rules and Oregon Administrative Rules relating to public contract exemptions, Oregon Administrative Rules Chapters 125 and 127, and Local Rule 1, a copy of which is attached hereto and by this reference incorporated herein. In addition, one copy of the Rule shall be filed in the Office of the County Clerk. These rules shall remain in effect until such time as the County Contract Review Board amends them pursuant to authority granted it under the laws of this state, or until otherwise amended by the Board of County Commissioners.

Section 3. Repealing Ordinance No. 86-1. Enactment of this ordinance shall repeal Ordinance No. 86-1, to the extent it is inconsistent with Oregon Administrative Rules Chapter 127.

Section 4. Emergency. This ordinance being necessary for the immediate preservation and protection of the public peace, health, safety, and general welfare of Columbia County, an emergency is hereby declared to exist and this ordinance shall be in full force upon its passage.

DATED this 2nd day of July, 1986.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Michael J. Supra _____ Aye ___ Nay
Chairman

Jack R. Peterson _____ Aye ___ Nay
Commissioner

Wallace E. Thompson _____ Aye ___ Nay
Commissioner

COLUMBIA COUNTY LOCAL CONTRACT REVIEW BOARD

Rule 1:

Protests. A protest is a written complaint concerning the solicitation or award of a contract. It must be filed with the public contracting officer by a party with a direct financial interest adversely affected by the procurement action. Upon filing with the public contracting officer, the public contracting officer shall review each protest to determine whether it is appropriate to defer the protested procurement action.

- (a) A party with a financial interest which is adversely affected by the procurement decision may file a protest appeal with the Board. A recipient of a subcontract may only file a protest appeal for issues which relate to the award of the subcontract by a contractor.
- (b) Protest appeals must be filed with the Board Secretary, Columbia County, Oregon, as the public contracting officer designated by the Board.
- (c) Protest appeals must (1) be written; (2) include a copy of the public contracting officer's determination of the protest; (3) state the basis for the appeal; and (4) request a determination under this section.
- (d) On filing of the protest appeal with the public contracting officer, the party filing the protest appeal must concurrently transmit a copy of all protest documents and the attachments to all other parties with direct financial interest which may be adversely affected by the determination of the protest appeal.
- (e) The Board will only consider written protest appeals received by the public contracting officer within seven (7) calendar days after the adversely affected party receives the adverse determination.
- (f) Any party which submits a document to the Board during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.
- (g) If the Board does not receive the protest before bid opening or the closing date for receipt of proposals, the Board may dismiss as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for receipt of initial proposals.
- (h) In cases not involving improprieties in solicitation, the Board may dismiss as untimely a protest appeal where the adversely affected party did not file the initial protest within seven (7) calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.
- (i) The Board will determine the briefing schedule and the submission of evidence to determine the schedule and the submission of evidence to determine the appeal. The Board shall have discretion to determine if oral testimony or argument will be heard.
- (j) All decisions of the Board shall be in writing and shall be reviewable only upon a petition for writ of review in the Circuit Court of Columbia County filed within fifteen (15) days after the date of the decision of the Board.

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CHAPTER 127, DIVISION 10 - PUBLIC CONTRACT REVIEW BOARD

[ED. NOTE: Chapter 690, Oregon Laws 1983, Section 20 abolished the Public Contract Review Board and transferred those responsibilities to the Department of General Services. See OAR Chapter 125, Divisions 10, 50 and 300 through 360, for the relative rules.]

DIVISION 10

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Exemptions and Definitions

127-10-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
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Life Cycle Costing

127-10-015 [PCRB 13-1981, f. & ef. 7-1-81;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Exemption of Contracts Under Certain Dollar Amounts

127-10-020 [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 4-1979, f. & ef. 1-3-79;
PCRB 13-1979, f. & ef. 4-2-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Emergency Contracts

127-10-030 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Equipment Repair and Overhaul

127-10-035 [PCRB 42, f. & ef. 11-22-76;
PCRB 37-1979, f. & ef. 7-26-79;
PCRB 31-1980, f. & ef. 12-16-80;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Contracts For Price Regulated Items

127-10-040 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Laboratory and Medical Supply Items

127-10-045 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Auction Sales

127-10-047 [PCRB 51-1979, f. & ef. 11-21-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Allocated Petroleum Products

127-10-050 [PCRB 2, f. & ef. 2-19-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Paper Products

127-10-052 [PCRB 50-1979, f. & ef. 11-21-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts

127-10-055 [PCRB 7-1979, f. & ef. 2-22-79;
PCRB 27-1979, f. & ef. 6-5-79;
PCRB 53-1979, f. & ef. 11-21-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Copyrighted Materials

127-10-060 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Library Aggregate Purchases

127-10-065 [PCRB 16(Temp), f. & ef. 6-18-76;
PCRB 25, f. & ef. 8-18-76;
PCRB 37-1979, f. & ef. 7-26-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Library Periodicals

127-10-068 [PCRB 44, f. & ef. 11-22-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Institutional Bookstores

127-10-070 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Advertising Contracts

127-10-080 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Investment Contracts

127-10-090 [PCRB 1, f. 12-23-75, ef. 1-1-76;

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Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Personal Service Contracts

127-10-092 [PCRB 41-1979, f. & ef. 9-13-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Purchases Under Requirements Contracts

127-10-100 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Requirements Contracts

127-10-110 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
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Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Single Seller of Product Required

127-10-120 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Data Processing Contracts

127-10-130 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Food Service Contracts

127-10-135 [PCRB 17(Temp), f. & ef. 6-18-76;
PCRB 25, f. & ef. 8-18-76;
PCRB 37-1979, f. & ef. 7-26-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Employe Benefit Insurance

127-10-139 [PCRB 52, f. & ef. 12-16-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Insurance Contracts

127-10-140 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Affirmative Action Contracts

127-10-145 [PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Contract Amendments (Including Change Orders and Extra Work)

127-10-150 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Telecommunications Systems Contracts

127-10-155 [GS 6-1983, f. & ef. 11-3-83;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Telecommunications Services and Equipment

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

Specific Exemptions

127-10-160 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

DIVISION 20

BRAND NAMES OR MARKS

Specification of Particular Brand Names or Products

127-20-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Copyrighted Materials

127-20-020 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Single Manufacturer or Compatible Products

127-20-030 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Product Prequalification

127-20-040 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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Brand Name or Mark Exemption Applications
127-20-050 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Conditions of Exemptions
127-20-060 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
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Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84] **DIVISION 30**

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127-40-020 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Mandatory Prequalification
127-40-030 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

SPECIFIC EXEMPTION PROCEDURE

Notice of Application
127-30-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

127-40-040 [Renumbered to 125-10-010 pursuant to
Chapter 690, Oregon Law 1983]

Prequalifications Prior to January 1, 1976
127-40-045 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Board Hearing
127-30-020 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Qualification Statement
127-40-050 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Temporary Rule Exemptions
127-30-030 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Proof of Presumed Qualification
127-40-060 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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127-30-040 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
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Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84] **DIVISION 40**

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127-40-070 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

COMPETITIVE BIDDING PROCEDURE

Statutory Requirements
127-40-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Notice of Revocation of Prequalification
127-40-080 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Receipt and Opening of Bids
127-40-015 [PCRB 6, f. & ef. 4-8-76;

Appeals
127-40-090 [PCRB 1, f. 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84] **DIVISION 50**

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**WAIVER OF SECURITY BID AND
PERFORMANCE BOND**

PCRB 5-1981, f. & ef. 1-28-81;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Bid Security Requirements

127-50-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCRB 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-15-84, ef. 6-15-84]

Union County Exemption For Solid Waste Plan

127-60-005 [PCRB 63, f. & ef. 3-1-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Contracts Under \$10,000

127-50-020 [PCRB 1, 12-23-75, ef. 1-1-76;
PCRB 6, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-15-84, ef. 6-15-84]

Liability Insurance - Linn County

127-60-006 [PCRB 64, f. & ef. 3-1-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

127-50-030 [Renumbered to 125-31-000 pursuant to
Chapter 690, Oregon Laws 1983]

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

127-60-007 [PCRB 74, f. & ef. 4-18-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

127-50-040 [Renumbered to 125-31-005 pursuant to
Chapter 690, Oregon Laws 1983]

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

127-60-008 [PCRB 76, f. & ef. 6-16-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

127-50-050 [Renumbered to 125-31-010 pursuant to
Chapter 690, Oregon Laws 1983]

**DIVISION 60
EXEMPTIONS**

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

127-60-009 [PCRB 77, f. & ef. 6-16-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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127-60-001 [PCRB 3(Temp), f. & ef. 2-19-76;
PCRB 5, f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

127-60-010 [PCRB 94, f. & ef. 8-24-77;
PCRB 40-1978, f. & ef. 6-29-78;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Lane County Resource Recovery Facility Exemption

127-60-002 [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;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Research Vessels Wecoma and Cayuse

127-60-011 [PCRB 93, f. & ef. 8-24-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

127-60-003 [PCRB 31, f. & ef. 9-20-76;
PCRB 51(Temp), f. & ef. 12-16-76;
PCRB 66, f. & ef. 3-18-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

Office of the Secretary of State; Signs for Polling Places

127-60-013 [PCRB 111, f. & ef. 11-7-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

127-60-004 [PCRB 43, f. & ef. 11-22-76;
PCRB 22-1978, f. & ef. 5-24-78;

Oregon Counties; Ballots, Ballot Pages, and Ballot Cards

127-60-014 [PCRB 115, f. & ef. 12-20-77;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

(June, 1985)

STATE PURCHASING
DIVISION

DIVISION 30

STATE PURCHASING

Definitions

125-30-000 The following definitions shall apply to all Oregon Administrative Rules contained in this division, unless the context requires otherwise:

(1) "Cash" - includes U.S. currency, cashier's checks, certified checks, traveler's checks or money orders made payable to the State of Oregon.

(2) "Department" - the State Department of General Services.

(3) "Direct Labor" - includes all work required for preparation, production, processing and packing but does not include supervision, administration, inspection and shipping.

(4) "Handicapped Individual" - a disabled individual who, because of the nature of his/her disabilities, is not able to participate in competitive employment and for whom specialized employment opportunities must be provided.

(5) "Incentive" - a 1% preference applicable to public works contracts in excess of \$50,000.

(6) "Minority Business Enterprise" - a business which is at least 51% owned by a minority individual(s) or women, and whose daily management and control is vested in such individual(s).

(7) "Photographic Identification" - a document which shows the bearer's current name, address and photographic portrait.

(8) "Political Subdivision" - includes divisions or units of local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.

(9) "Qualified Rehabilitation Facility (QRF)" - a non-profit sheltered workshop or non-profit activity center whose purpose is to assist and encourage handicapped individuals and which:

(a) During the fiscal year employs handicapped individuals for not less than 75% of the man hours of direct labor required for the manufacture or provision of its products or services.

(b) Must be either a sheltered workshop certified through the Oregon Vocational Rehabilitation Division or a work activity center certified through the Oregon Mental Health Division.

(10) "Minority Individuals" - Black Americans, Hispanic Americans, Oriental Americans, Native Americans (Indians, Eskimos and Aleuts) and Asian-Pacific Americans.

(11) "Set Aside" - contracts subject to competitive bid and/or award among minority business enterprises only.

(12) "Small Business" - a business which is independently owned and operated and which is not dominant in its field of operations. Small business size is determined by computing annual sales and receipts of the business and any affiliates. A maximum number of employees and the maximum dollar volume of business that a business concern may

do varies from industry to industry as follows to reflect the different characteristics of such industries:

(a) Construction - a business may be considered a "small business" if its annual gross receipts for the three (3) preceding fiscal years do not exceed \$6.5 million.

(b) Manufacturing - a business is considered a "small business" if its total number of employees is less than 100 persons.

(c) Service/Research and Development - a business is a "small business" if its average annual gross receipts for three (3) preceding fiscal years do not exceed \$500,000.

(13) "Small Disadvantaged Business" - eligibility as a small disadvantaged business is first based upon eligibility as a small business as noted in section (12) of this rule. Small disadvantaged business status is based upon a business which is at least 51% owned by minority individual(s) or women, and whose daily management and control is vested in such individual(s).

Stat. Auth.: ORS Ch. 283

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81

[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.]

Bidder Qualification for Public Contracts

125-30-005 (1) The Department of General Services does not require contractors to prequalify prior to bidding on public contracts.

(2) The Department reserves the right prior to awarding any contract to make such investigation as necessary to determine whether a firm is qualified to perform the contract. In accordance with ORS 279.037 a low bidder may be disqualified if:

(a) The bidder does not have sufficient financial ability to perform the contract;

(b) The bidder does not have equipment available to perform the contract;

(c) The bidder does not have key personnel available of sufficient experience to perform the contract; or

(d) The bidder has repeatedly breached contractual obligations to public and private contracting agencies.

(3) If a bidder fails to promptly supply information requested by the Department such failure will also be grounds for disqualification.

Stat. Auth.: ORS Ch. 181, 279, 283, 351 & 358

Hist.: GS 2-1981(Temp), f. 7-30-81, ef. 8-1-81; GS 6-1981, f. & ef. 10-15-81

[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 Policy Governing Bidding and Award of State Purchasing Contracts

125-30-010 (1) An affirmative action policy is hereby established which is designed to promote and insure the participation by minority business enterprises in performing state public works and other selected contracts which are within the jurisdiction of the Department of General Services. Special provisions will be followed in awarding contracts to certified minority business enterprises:

PUBLIC CONTRACT EXEMPTIONS

DIVISION 300

INTRODUCTION AND DEFINITIONS

[ED. NOTE: Chapter 690, Oregon Laws 1983, Section 20 abolished the Public Contract Review Board (OAR Chapter 127) and transferred those responsibilities to the Department of General Services.]

Purpose and Statutory Authority

125-300-000 (1) Purpose. These rules prescribe public contract exemptions for all state agencies and those local political subdivisions that have contracted with the Department of General Services to serve as their public contract review authority as provided in OAR 125-10-005. These rules may be adopted in whole or in part by any political subdivision public contract review authority.

(2) Statutory Authority. These rules are authorized by ORS 279.015(2) and ORS 279.017(2).

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Definitions

125-300-001 as used in this Chapter, unless the context requires otherwise:

(1) "Department" means the Department of General Services.

(2) "Director" means the Director of the Department of General Services.

(3) "Public agency" or "Public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(4) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.

(5) "Requirements contract" means an agreement in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified time period.

(6) "Price agreement" means the same as requirements contract defined above.

(7) "Service" means work performed to meet a demand, especially work that is not connected with manufacturing a product.

(8) "Service Contract" means a contract that calls primarily for a contractor's time and effort rather than for an end product.

(9) "Request for Proposal" means the solicitation of competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

(10) "Public contract review authority" means a local contract review board created pursuant to ORS 279.055 or the Department of General Services if the local political subdivision has contracted with the Department to serve as its public contract review authority as provided in OAR 125-10-005. For State of Oregon agencies, the review authority is the Director of the Department of General Services.

(11) "Personal property" means everything subject to ownership which is not real property and has exchangeable value.

(12) "Personal service contracts" means the types of contracts defined in OAR 125-310-092(1).

(13) "Invitation to bid" means the solicitation of competitive offers in which specification, price and delivery (or project completion) will be the predominant award criteria.

(14) "Competitive bidding" means the issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279.

(15) "Competitive quotes" means the solicitation by the public contracting agency of offers from competing vendors. The solicitation may be by advertisement or by the public contracting agency initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Exemptions

125-300-010 All public contracts shall be based upon formal competitive bidding except the following:

(1) Contracts made with other public agencies or the federal government.

(2) Contracts which are for personal services and are covered by rule 125-310-092.

(3) Contracts specifically exempt under the provisions of the rules in Divisions 310 through 360 of this Chapter.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

OREGON ADMINISTRATIVE RULES
CHAPTER 125, DIVISION 310 - DEPARTMENT OF GENERAL SERVICES

Agency unless an extension is granted pursuant to ORS 279.015(4).

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Equipment Repair and Overhaul

125-310-035 (1) Contracts for equipment repair or overhaul may be let without formal competitive bidding, subject to the following conditions:

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

(b) 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) If the contract exceeds \$10,000, the public contracting agency shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Contracts for Price Regulated Items

125-310-040 Public contracting agencies may, without competitive bidding, contract for the direct 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Laboratory and Medical Supplies

125-310-045 Public contracting agencies are not required to purchase the following specified laboratory and medical supplies 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 supplies 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts

125-310-055 Public contracting agencies are exempt from formal 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Copyrighted Materials

125-310-060 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.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Periodicals

125-310-068 Public contracting agencies may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Items for Resale by Public Educational Agency Student Stores

125-310-070 Public educational agencies operating student stores may, without competitive bidding, purchase personal property for resale within the stores.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchases of Used Personal Property

125-310-075 Public contracting agencies may purchase used personal property for \$10,000 or less without competitive bidding if the agency has determined that the direct purchase without competitive bidding will result in cost savings. For purchases of used personal property over \$10,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Advertising Contracts

125-310-080 Public contracting agencies may purchase advertising without competitive bidding.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Investment Contracts

125-310-090 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.

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Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Personal Service Contracts

125-310-092 (1) The following are personal service contracts:

(a) Contracts for services performed as an independent contractor in a 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; data processing consultant or broadcaster.

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

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

(d) Contracts 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 service 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. Examples are repair and/or maintenance of all types of equipment or structures.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Single Seller of Product Required

125-310-120 Subject to the requirements of rule 125-340-030, 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Food Service Contracts

125-310-135 (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 formal 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 cost, quality of the product and the service to be rendered.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Employee Benefit Insurance

125-310-139 Public contracting agencies may purchase employee benefit insurance without competitive bidding

Stat. Auth.: ORS Ch. 179 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Insurance Contracts

125-310-140 Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by formal competitive bidding or by one of the following procedures:

(1) 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.

(2) Specific Proposals for Insurance Contracts: The public contracting agency may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(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 the 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 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.

PUBLIC CONTRACT EXEMPTIONS

DIVISION 310

GENERAL EXEMPTIONS

Life Cycle Costing

125-310-015 (1) In determining the lowest responsible bidder, in the award of a contract, a public contracting agency may use the concept of life cycle costing if it complies with section (2) of this rule. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

(2)(a) Prior to the time of writing specifications for the product, the public contracting agency shall identify those factors which will have cost implications over the life of the product.

(b) The Invitation to Bid shall set out clearly the factors and methodology to be used in life cycle cost adjustments.

(c) At or after the formal bid opening, the results of life cycle costing adjustments shall be applied to the base bid, and the bidder whose total bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Contracts Under Certain Dollar Amounts

125-310-020 (1) Public contracting agencies may, in their discretion, let public contracts not to exceed \$15,000 for the purchase of goods, materials, supplies and services without formal competitive bidding, if the agency has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with:

(a) The contract is for a single project, and is not a component of or related to any other project.

(b) When the amount of the contract does not exceed \$1,000, the public contracting agency should, where feasible, obtain competitive quotes.

(c) When the amount of the contract is more than \$1,000, but less than \$15,000, the public contracting agency shall obtain a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(2) Public contracting agencies may, in their discretion, let public contracts for trade related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without formal competitive bidding if the agency has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with:

(a) The contract is for a single project, and is not a component of or related to any other project.

(b) When the amount of the contract does not exceed \$1,000, the public contracting agency should, where feasible, obtain competitive quotes.

(c) When the amount of the contract is more than \$1,000, but less than \$10,000, except as provided in subsection (d) of this section the public contracting agency shall obtain a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(d) When the contract is for maintenance or repair of roads, highways or parking lots and is more than \$10,000, but less than \$25,000, the public contracting agency may let the contract without formal competitive bidding if a minimum of three competitive quotes are obtained. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Request for Proposal

125-310-025 Public contracting agencies may, at their discretion, use request-for-proposal competitive procurement methods subject to the following conditions:

(1) Contractual requirements are stated clearly in the solicitation document.

(a) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document.

(b) Criteria used to identify the proposal that best meets the public contracting needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential.

(3) Solicitation document clearly states all complaint processes and remedies available.

(4) Solicitation document states the provisions made for vendors to comment on any specifications which they feel limit competition.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Emergency Contracts

125-310-030 (1) Public contracting agencies may, in their discretion, let public contracts without formal 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 a resolution indicating the existence of the emergency stating with specificity the emergency conditions necessitating the prompt execution of the contract.

(3) Public contracting agencies with a single executive officer must make detailed written findings describing the emergency conditions necessitating prompt execution of the contract.

(4) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emer-

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(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.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Affirmative Action Contracts

125-310-145 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 of 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.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Contract Amendments (Including Change Orders and Extra Work)

125-310-150 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, unit prices or bid alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or

(2) 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. Amendments made pursuant to section (1) of this rule are not included in computing the aggregate amount under this section.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchases of Hospital and Medical Supplies and Equipment

125-310-205 Public contracting agencies which are members of legally established purchasing cooperatives are exempt from the requirements of competitive bidding and the requirements contract provisions of OAR 125-310-300 on purchases of hospital and medical supplies and hospital and medical equipment through the cooperative.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Equipment and Supplies Used in Intercollegiate or Inter-scholastic Athletic Programs

125-310-210 Public contracting agencies are exempt from the prohibition in ORS 279.017 from requiring products by brand name or make or the products of particular manufacturers or sellers in purchasing and contracting for equipment and supplies used in intercollegiate or inter-scholastic athletic programs. The agency shall use as a minimum the request-for-proposal process (OAR 125-310-

025) and shall utilize procedures that will maintain the integrity of ORS 279.015.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchase of Ocean Going Vessels

125-310-215 Public contracting agencies are exempt from the requirements of competitive bidding for purchases made for its ocean going vessels when the ships are in other than home port.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Oregon Counties; Ballots, Ballot Pages, and Ballot Cards

125-310-225 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchases of Cadaveric Organs

125-310-230 Public contracting agencies are exempt from competitive bidding requirements for the purchase of cadaveric organs.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Radio and Television Contracts Used in Athletic Programs

125-310-240 (1) Public contracting agencies are exempt from the requirements of competitive bidding for radio and television services provided athletic programs. As an alternative to competitive bidding, the agencies shall as a minimum use the request-for-proposal process (OAR 125-310-025) and request proposals from all interested vendors of such services. The request for proposal shall include minimum qualifications specifications and shall invite the interested vendors to propose other ancillary services.

(2) Each ancillary service shall be accompanied by a dollar value which reflects current purchase price for the service and a description of its use and application. Contracts may be awarded for not more than three years.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Requirements Contracts

125-310-300 Public contracting agencies may enter into requirements contracts whereby it is agreed to purchase requirements for an anticipated need at a pre-determined price providing the following conditions are complied with:

(1) The contract must be let by competitive procurement process pursuant to the requirements of these rules.

(2) The term of the contract including renewals does not exceed three years.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchases Under Requirements Contracts

125-310-310 (1) When the price of goods and services has been established by a requirements contract pursuant to OAR 125-310-300, public contracting agencies may purchase

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Exemption for Purchase of Cadaveric Kidneys for Transplant Purposes

127-60-015 [PCRB 41-1978, f. & ef. 6-29-78;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Exemption For Chemical Spraying

127-60-016 [PCRB 20-1978, f. & ef. 5-24-78;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Exemption For Metropolitan Service District

127-60-017 [PCRB 49-1978, f. & ef. 8-4-78;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Exemption For Lane County Mass Transit District

127-60-018 [PCRB 6-1979, f. & ef. 1-29-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

127-60-019 [PCRB 26-1979, f. & ef. 6-5-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Crook County Office Copying Equipment Purchases

127-60-020 [PCRB 36-1979, f. & ef. 7-26-79;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Commission for the Blind "Snap Pack" Packaging System

127-60-021 [PCRB 10-1980, f. & ef. 5-20-80;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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

127-60-022 [PCRB 28-1980, f. & ef. 10-10-80;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Purchase of Alcoholic Liquor for Resale

127-60-023 [PCRB 11-1981, f. & ef. 6-5-81;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

DIVISION 80

RULES, REPORTING, AND MEETINGS

Rules

127-80-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Quorum

127-80-020 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
PCR 25-1978, f. & ef. 5-26-78;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Meetings

127-80-030 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Reports

127-80-040 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

DIVISION 90

NOTICES AND AGENDA

Notices

127-90-010 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

Agenda

127-90-020 [PCRB 1, f. 12-23-75, ef. 1-1-76;
Repealed and Readopted by PCR 6,
f. & ef. 4-8-76;
Repealed by GS 1-1984,
f. 6-5-84, ef. 6-15-84]

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the goods and services from the supplier without subsequent competitive bidding.

(2) One public contracting agency may use the requirements contract entered into by another public contracting agency when a formal inter-agency agreement exists between the two agencies.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, cf. 6-15-84

Specific Exemptions

125-310-320 (1) Public contracting agencies may request a ruling from their appropriate public contract review authority exempting a particular contract or contracts from the bidding requirements of ORS 279.015 which are

not otherwise exempted under these rules. The request shall contain the following:

- (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.
- (2) The review authority may require such additional information as is deemed necessary to determine whether a specific contract is to be exempt from competitive bidding.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, cf. 6-15-84

PUBLIC CONTRACT EXEMPTIONS

DIVISION 320

INFORMATION SYSTEM CONTRACTS

Data and Word Processing Contracts

125-320-010 Contracts for acquisition of data and word processing hardware and systems software may be let using alternate competitive procurement methods subject to the following conditions:

(1) If the contract amount does not exceed \$15,000, the public contracting agency shall, as a minimum, follow informal competitive procurement methods. Prior to selection of a vendor, reasonable 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.

(2) If the contract amount exceeds \$15,000, the public contracting agency may use the request for proposal process (OAR 125-310-025) and shall solicit written proposals. Solicitations shall be requested from appropriate vendors appearing on lists compiled by the agency or by advertising in an appropriate trade publication of general circulation when required by statute. The agency shall document the evaluation and award process, which will be part of the public record justifying the award.

(3) If the amount of the contract exceeds \$500,000, in addition to the requirements of section (2) 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) Provide that residual values be considered only if they are clearly ascertainable; and

(c) 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.

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Telecommunications Systems Contracts

125-320-020 (1) Contracts for acquisition of telecommunications system hardware and software may be let using alternate competitive procurement methods subject to the following conditions:

(a) If the contract amount does not exceed \$15,000, the public contracting agency shall as a minimum obtain competitive quotes. Prior to selection of a vendor reasonable 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 \$15,000, the public contracting agency may use the request-for-proposal process (OAR 125-310-025) and shall solicit written proposals. Solicitations shall be requested from appropriate vendors appearing on lists compiled by the agency or by advertising in an appropriate trade publication of general circulation when required by statute.

(2) The telecommunications solicitation authorized in subsection (1)(b) of this rule shall:

(a) State the contractual requirements in the solicitation document;

(b) 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 public contracting agency's needs may include, but are 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 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Telecommunications Services and Equipment

123-320-025 (1) Public agencies may continue the existing telecommunications services and equipment after January 1, 1984 from the current provider, or the appropriate AT & T company assigned such service or product area under the divestiture orders of *United States v Western Electric Co., et. al., No. 82-0192, The District Court, District of Columbia, 1983.*

(2) Any new type service or equipment or any major replacement of existing services or equipment where the rate is not established by federal, state, or local regulatory authority shall be acquired by competitive procurement.

(3) This rule is intended to provide an orderly transition period. The rule is automatically repealed on July 1, 1986.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of General Services.]

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Office Copier Purchases

125-320-030 (1) Public contracting agencies may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying equipment. Except for this multiple award exemption, such agreements shall otherwise conform to the requirements of OAR 125-310-300.

(2) In exercising this exemption the public agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

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**PUBLIC CONTRACT
EXEMPTIONS**

DIVISION 330

STATE AGENCY SPECIFIC

Office of the Secretary of State; Signs for Polling Places
125-330-010 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Commission for the Blind "Snap Pack" Packaging System
125-330-020 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.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Purchases of Alcoholic Liquor for Resale

125-330-030 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

PUBLIC CONTRACT EXEMPTIONS

DIVISION 340

BRAND NAMES OR MARKS

Specifications of Particular Brand Names or Products

125-340-010 (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 OARs 125-310-060 (Copyrighted Materials), 125-340-030 (Single Manufacturer or Compatible Products), 125-340-040 (Product Prequalification), or 125-340-050 (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 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Copyrighted Materials

125-340-020 Public contracting agencies may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Single Manufacturer or Compatible Products

125-340-030 (1) If there is only one manufacturer or seller of a product of the quality required, or if the required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments, or if the efficient utilization of the existing equipment or supplies requires a compatible products 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 \$15,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$15,000, 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 \$15,000 and is not also pursuant to the data and word processing exemption, OAR 125-320-010, the public contracting agency shall

document its actions in the bid file. Such documentation 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 documentation required by subsection (1)(b) and section (2), and such documentation shall be sufficient notice as to subsequent purchases.

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Product Prequalification

125-340-040 (1) When it is impractical to create specific design or performance specification 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.

(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 appropriate contract review authority.

Stat. Auth.: ORS Ch. 279 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Brand Name or Mark Exemption Applications

125-340-050 A public contracting agency may apply for and receive a brand name or mark exemption ruling from the appropriate contract review authority for current and contemplated future purchases. Applications shall contain 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 & 283

Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Conditions of Exemptions

125-340-060 The public contract review authority may grant exemptions if any of the following conditions are met:

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(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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

**PUBLIC CONTRACT
EXEMPTIONS**

DIVISION 350

PROPERTY DISPOSITION

Auction Sales of Personal Property

125-350-010 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Sales of Personal Property

125-350-015 Public contracting agencies may sell personal property, including recyclable or reclaimed materials, without formal competitive bidding if the agency has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

(1) The personal property has been made available to other state agencies and local governmental units in accordance with ORS 283.235, if the seller is the State of Oregon; and

(2) When the current market value per item is deemed to be less than \$1,000, the public contracting agency may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or

(3) When the current value per item is deemed to exceed \$1,000, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction in accordance with OAR 125-350-010. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the public contracting agency may negotiate a sale subject to the following conditions:

(a) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

(b) The sale amount exceeds the highest bid received through the bidding or auction process.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Liquidation Sales of Personal Property

125-350-020 Public contracting agencies may sell personal property through a commercially recognized third party liquidator if the agency has determined that a liquidation sale will result in increased net revenue and the following conditions are complied with:

(1) The personal property has been made available to other state agencies and local governmental units in accordance with ORS 283.235, if the seller is the State of Oregon; and

(2) The selection of the liquidator was conducted, as a minimum, by the competitive request-for-proposal process governed by OAR 125-310-025.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Donations of Personal Property

125-350-025 (1) Public agencies may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities:

(a) Another public agency; or

(b) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or

(c) Any recognized non-profit activity which is certified to receive federal surplus property.

(2) Public agencies may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:

(a) A determination has been made that the property is not needed for other public purposes;

(b) If the property has a current market value of \$250 or more, the donation or sale shall:

(A) Be approved by the public agency's chief executive officer;

(B) Be documented by the agency to be clearly in the public interest;

(c) The agency determines this is the most efficient and cost-effective method for disposing of the property.

(3) The public contracting agency shall maintain a record of all transfers, donations or sales authorized by sections (1) and (2) of this rule.

Stat. Auth.: ORS Ch. 279 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

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**PUBLIC CONTRACT
EXEMPTIONS**

DIVISION 360

**WAIVER OF SECURITY BID AND
PERFORMANCE BOND**

Bid Security Requirements

125-360-010 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

Contracts Under \$10,000

125-360-020 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 & 283
Hist.: GS 2-1984, f. 6-5-84, ef. 6-15-84

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DIVISION 10

**CONTRACTS EXEMPT FROM
COMPETITIVE BIDDING AND
REQUIREMENTS CONTRACTS**

Exemptions and Definitions

127-10-010 All public contracts shall be based upon competitive bidding except the following:

(1) Contracts made with other public agencies or the federal government.

(2) Contracts which are exclusively for personal services. Such contracts may include incidental materials such as written reports, architectural or engineering renderings and similar supplemental materials.

(3) Contracts specifically exempt under the following provisions of these rules:

(a) Rule 127-10-020 — Exemption of Contracts Under Certain Dollar Amounts.

(b) Rule 127-10-030 — Emergency Contracts.

(c) Rule 127-10-040 — Contracts For Price Regulated Items.

(d) Rule 127-10-060 — Copyrighted Materials.

(e) Rule 127-10-070 — Institutional Bookstores.

(f) Rule 127-10-080 — Advertising Contracts.

(g) Rule 127-10-090 — Investment Contracts.

(h) Rule 127-10-100 — Purchases Under Requirements Contracts.

(i) Rule 127-10-120 — Single Seller of Product Required.

(j) Rule 127-10-130 — Data Processing Contracts.

(k) Rule 127-10-140 — Insurance Contracts.

(l) Rule 127-10-145 — Affirmative Action Contracts.

(m) Rule 127-10-150 — Contract Amendments (Including Change Orders and Extra Work).

(n) Rule 127-10-160 — Specific Exemptions.

(4) As used in this section:

(a) "Competitive bidding" means the solicitation by the public contracting agency of competitive offers which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279, and applicable rules of the Public Contract Review Board;

(b) "Competitive quotes" means the solicitation of offers by the public contracting agency from competing vendors. The solicitation may be by advertisement or by the public contracting agency initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

Stat. Auth.: ORS Ch. 279

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

Life Cycle Costing

127-10-015 (1) In determining the lowest responsible bidder, in the award of a contract, a public contracting agency may use the concept of life cycle costing if it complies with section (2) of this rule. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

(2)(a) Prior to the time of writing specifications for the product, the public contracting agency shall identify those factors which will have cost implications over the life of the product.

(b) The Invitation to Bid shall clearly set out the factors and methodology to be used in life cycle cost adjustments.

(c) At or after the formal bid opening, the results of life cycle costing adjustments shall be applied to the base bid, and the bidder whose total bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.

Stat. Auth.: ORS Ch. 279

Hist.: PCRB 13-1981, f. & ef. 7-1-81

Exemption of Contracts Under Certain Dollar Amounts

127-10-020 (1) Public contracting agencies may, in their discretion, let public contracts for the purchase of goods, materials, and supplies which contain no element of personal service, except personal service in connection with the repair and maintenance of office equipment, without competitive bidding if the agency has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are complied with:

(a) The amount of the contract does not exceed \$10,000, is for a single project, and is not a component of or related to any other project.

(b) When the amount of the contract does not exceed \$500, the public contracting agency should, where feasible, obtain competitive quotes.

(c) When the amount of the contract is more than \$500 but less than \$10,000, the public contracting agency must obtain a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(d) No contractor may be awarded in the aggregate within the fiscal year contracts in excess of \$30,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$500 shall not be included.

(2) Public contracting agencies may, in their discretion, let public contracts for construction, maintenance, repair, or any contract containing an element of personal service (other than contracts for repair and maintenance of office equipment which are covered under section (1) and contracts for road, highway, or parking lot maintenance covered under section (3)) without competitive bidding if the agency has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are complied with:

(a) The amount of the contract does not exceed \$5,000, is for a single project, and is not a component of or related to any other project.

(b) When the amount of the contract does not exceed \$500, the public contracting agency should, where feasible, obtain competitive quotes.

(c) When the amount of the contract is more than \$500 but less than \$5,000, the public contracting agency must obtain a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(d) No contractor may be awarded in the aggregate within the fiscal year contracts in excess of \$20,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$500 shall not be included.

(3) Public contracting agencies may in their discretion let public contracts, not to exceed \$25,000, for road, highway, or parking lot maintenance without competitive bidding if the public contracting agency obtains a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.

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 4-1979, f. & ef. 1-3-79; PCRB 13-1979, f. & ef. 4-2-79

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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 127-20-030, 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 impose 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 dereliction 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

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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

1. Insert the maximum dollar amount for each class of work which the applicant declares it is capable of performing.

(Highway, Roads, Streets, Airports)

<u>Class</u>	<u>Max. Dollar Amount</u>
Land Clearing - Highways, Roads, Streets and Airports	_____
Earthwork and Drainage - Highways, Roads, Streets, and Airport Runways	_____
Aggregate Crushing	_____
Aggregate Bases - Highways, Roads, Streets and and Airport Runways	_____
Asphalt Concrete Pavement and Oiling - Highways, Roads, Streets and Airport Runways	_____
Portland Cement Pavement - Highways, Roads, Streets and Airport Runways	_____
Reinforced Concrete, and Structural Steel Bridges and Grade Separation Structures	_____
Painting Steel Bridges and Grade Separation Structures	_____
Miscellaneous Highway Appurtenances (Guardrails, Median Barriers, Curbs, Retaining Walls, Walks, Fences, Riprap)	_____
Signing - Temporary and/or permanent for Highways, Streets and Roads	_____
Illumination - Highways, Streets, Roads, Airports, Parks and Rest Areas	_____
Traffic Signals - Highways, Streets and Roads	_____
Landscaping - Highways, Streets, Roads, Parks and Rest Areas (Roadside seeding, lawns, shrubs, trees, irrigation systems)	_____
Buildings - Highways, Rest Areas, Parks (Toilets, Bathhouses, Maintenance, Sand Sheds)	_____

(Other Public Improvements)

<u>Class</u>	<u>Max. Dollar Amount</u>
Sewer Construction	_____
Sewage Treatment Plants	_____
Sewage Pumping Stations	_____
Water Lines	_____
Water Reservoirs	_____
Water Tanks - Steel, Concrete, Wooden	_____
Electrical Wiring	_____
Building Construction	_____
Building Alteration and Repair	_____
Demolition and Related Excavation and Clearing	_____
Painting and Decorating	_____
Plumbing	_____
Heating	_____
Air Conditioning	_____
Roofing	_____
Sheet Metal Work	_____
Drainage	_____
Well Drilling	_____
Other	_____

2. Indicate the total amount of work, expressed in dollars, which the applicant believes it is capable of undertaking at any one time:

_____ \$ _____

3. BID AND PERFORMANCE SURETY BONDS:

If the contracts for which this prequalification is sought require bid and performance bonds, the applicant shall state the name of the company the applicant expects to provide the bonds and the name, address and telephone number of the surety company.

4. TYPE OF ORGANIZATION

If an Oregon corporation, answer this:

When Incorporated _____

President _____

1st Vice President _____

Secretary _____

Treasurer _____

What officers are authorized to execute contracts _____

5. If a co-partnership, answer this:

Date of Organization _____

State whether partnership is general, limited or association.

(Names of All General Partners)

What officers are authorized to execute contracts _____

If a foreign co-partnership or persons engaging in business in this state under an assumed business name, but not domiciled within this state, state whether or not such partnership or business organization has been registered as may be required in compliance with Chapter 648, Oregon Revised Statutes _____

3. BID AND PERFORMANCE SURETY BONDS:

If the contracts for which this prequalification is sought require bid and performance bonds, the applicant shall state the name of the company the applicant expects to provide the bonds and the name, address and telephone number of the surety company.

64. TYPE OF ORGANIZATION, answer this:

When incorporated, answer this:

When incorporated _____

President _____
1st Vice President _____

Secretary _____

1st Vice President _____

What officers are authorized to execute contracts _____

5. If a co-partnership, answer this:

What officers are authorized to execute contracts _____

Date of Organization _____

State whether partnership is general, limited or association.
Have you filed with the Department of Revenue forms required by

ORS 279.0212

YES

NO

(Names of All General Partners)

What officers are authorized to execute contracts _____

If a foreign co-partnership or persons engaging in business in this state under an assumed business name, but not domiciled within this state, state whether or not such partnership or business organization has been registered as may be required in compliance with Chapter Oregon Revised Statutes _____

* Indicate whether: (P) Prime Contractor, (JV) Joint Venture, (Sub) Subcontractor

** Indicate name, address and phone number including area code.

10. A. How many years has applicant been in business under present name? _____
- B. How many years experience in construction work has applicant had:
 (a) As a prime contractor? _____ (b) As a subcontractor? _____

11. What is the construction experience of the principal individuals in applicant's organization?

Individual's Name	Present Position or Office	Years of Const. Exper.	Magnitude and Type of Work	In What Capacity

12. Indicate type of all contractors licenses held as required by Oregon statutes (e.g. Landscape Contractor)

13. The following space may be used for general remarks and explanations pertaining to the foregoing prequalification statements: (Also explain here any experience claimed which is that of a business organization or entity, other than the applicant, including a business entity superseded by the applicant.)

14. Check the appropriate block identifying applicant.
- _____ Negro _____ American Oriental _____ American-Indian
- _____ Non Minority _____ Spanish Speaking American
- _____ American Eskimo _____ American Aleuts

7. BIDDER'S EQUIPMENT QUESTIONNAIRE

Equipment owned by bidder - for the particular type of work for which prequalification is sought. List only major items. Lump together small equipment and tools.

Quantity, Description and Capacity of Items	Age	Condition
Total Value of Equipment		\$ _____

Does applicant intend to rent equipment? If so, provide a general description _____

Where available? _____

BIDDER'S EXPERIENCE QUESTIONNAIRE

8. List major projects applicant has undertaken in the last five years. (List most recent projects first)

Name and Address of Owner	Name of Project	Class of Work	Contract Amount
1			
2			

9. List the following additional information for projects listed under item 8. (Use same line number)

Date of Completion (If Complete)	Location of Work	* If Project Bonded	Surety Company	Architects or ** Engineering Firms
1				
2				

15. Does applicant want the material submitted herein deemed to be a trade secret pursuant to paragraphs (b) and (e) of subsection (1) of ORS 192.500?

(Check One) _____ Yes _____ No

16. APPLICANT'S AFFILIATIONS

List any organization, owned or controlled by the applicant, or in which the applicant was or is an officer, director or partner, doing business in Oregon under another name.

17. AFFIDAVIT

STATE OF OREGON)
County of _____) ss.

I, _____, being first duly sworn, state that I am _____ of the applicant herein and that the statements (Title) made in this application are true; that should there be any subsequent material reduction in applicant's ability to carry out any project for which applicant desires to submit a bid applicant will give written notice of such change in the designated officer to whom this application is submitted at least ten days prior to the bid opening; and that it is understood that such notice may change the eligibility of applicant to submit the bid.

(Signature)

(Title)

Subscribed and sworn to before me this _____ day of
_____, 19__.

Notary Public for Oregon
My Commission Expires: _____

OREGON ADMINISTRATIVE RULES
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.

[ED. 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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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.

Statutory Authority: ORS Chapter 279
Hist: Filed 12-23-75 as PCRB 1,
Eff. 1-1-76
Repealed and Readopted by PCRB 6,
Filed and Eff. 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.

Statutory Authority: ORS Chapter 279
Hist: Filed 12-23-75 as PCRB 1,
Eff. 1-1-76
Amended by PCRB 6,
Filed and Eff. 4-8-76

Deposits in Lieu of Retainage on Public Contracts

127-50-030 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.

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.

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.

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

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.

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.

Statutory Authority: ORS Chapter 279
Hist: Filed 12-23-75 as PCRB 1,
Eff. 1-1-76
Repealed and Readopted by PCRB 6,
Filed and Eff. 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.

Statutory Authority: ORS 279.420(5)
Hist: Filed 12-23-75 as PCRB 1,
Eff. 1-1-76
Repealed and Readopted by PCRB 6,
Filed and Eff. 4-8-76
Amended by PCRB 106,
Filed and Eff. 9-29-77
Amended by PCRB 4-1978,
Filed and Eff. 3-3-78

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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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 1-24-78
as PCRB 1-1978

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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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 3-1-77 as PCRB 63

Liability Insurance - Linn County

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

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 3-1-77 as PCRB 64

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 4-18-77 as PCRB 74

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 6-16-77 as PCRB 76

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 6-16-77 as PCRB 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 OAR 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

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Public Contract Review Board at the end of each fiscal year.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 8-24-77 as PCRB 94
Amended by PCRB 40-1978,
Filed and Eff. 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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 8-24-77 as PCRB 93

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 11-7-77 as PCRB 111

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 12-20-77 as PCRB 115

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 6-29-78
as PCRB 41-1978

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.

Statutory Authority: ORS Chapter 279
Hist: Filed and Eff. 5-24-78
as PCRB 20-1978

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.

Statutory Authority: ORS 279.015
Hist: Filed and Eff. 8-4-78
as PCRB 49-1978

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, than 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

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