

HOUSING AND COMMUNITY SERVICES DEPARTMENT

DIVISION 6

~~SCREENING AND SELECTION~~ GENERAL PROCEDURES FOR PUBLIC ~~PERSONAL SERVICE~~ CONTRACTS AND PROCUREMENTS

813-006-0005

Purpose

OAR chapter 813, division 6 is promulgated to establish ~~general~~ the procedures for public contracts and procurements by the Department as well as its other contracting and procurement activities. The Department is exempt from all provisions of the Oregon Public Contracting Code as contained in ORS Chapters 279A, 279B and 279C, except with respect to certain aspects relating to the procurement of goods and services under ORS Chapter 279B. And, the Department has all authority to procure or supervise the procurement, inter alia, of goods, services and personal services for which it is subject to ORS Chapter 279B. Also, most contracting by the Department is not covered by the Oregon Public Contracting Code even if ~~the code~~ it were applicable to the Department. Accordingly, the Department has chosen to fashion its own standards, considerations and procedures with respect to its procurement and contracting activities.

Stat. Auth.: ORS 90.800 – 90.840, 91.886, 317.097, 279A.025, 279A.065, ORS 456.515–
456.725 & 458.210 – 458.650

Stats. Implemented: ORS 90.800 – 90.840, 92.886, 279B, 317.097, 456.515 - 456.725, 307.651
& 458.005 –458.740

813-006-0010

Basic Policy and Approach

(1) The model rules of the Attorney General adopted pursuant to ORS 279A.065 do not apply to the Department. The Department will, however, consider the Attorney General’s model rules for guidance in exercising its contracting and procurement discretion, particularly with respect to

procurements of goods and services under ORS chapter 279B. Other factors that the Department may consider include, but are not limited to:

(a) The subject matter of the proposed contract and appropriate means to ensure successful performance at competitive costs where practical;

(b) Specificity with respect to communication and reservation of rights in any procurement;

(c) Clarity in the naming and description of parties as well as consideration of appropriate preferences;

(~~e~~d) Ascertaining and obtaining appropriate representations and warranties as to the qualifications of parties;

(~~e~~f) Specificity with respect to consideration and applicable time periods;

(~~e~~f) Specificity with respect to terms and covenants, particularly as to standards applicable to the performance of all work or delivery of goods;

(~~f~~g) Identification of remedies and their suitability to protect Department and program interests;

(~~g~~h) Identification of insurance and other risk mitigation terms and the appropriate balance of such measures with potential risks and costs;

(~~h~~i) Requirements for compliance with applicable laws, including those applicable to funding sources and nondiscrimination;

(~~i~~j) Use of appropriate terms with respect to standard provisions such as governing law, venue, waiver, exhibits, merger, etc.

(2) Contracting and procurement procedures, requirements and standards with respect to program loans and similar extensions or advances of funds or other funding awards may be more fully ~~are~~ set forth in the divisions of OAR chapter 813 that specifically address those programs. Relevant general procedures, requirements and standards are set forth herein and in Divisions 001 – 005, particularly Division 005.

(3) Contracting and procurement procedures related to the investment of Department funds and other financial transactions that cannot practically be established, including with resort to the competitive contractor selection procedures of ORS 279B.050 to 279B.085, will be accomplished in consultation with financial advisors, legal counsel and other appropriate professionals. As a general standard, the Department will seek to employ procedures as are practical to introduce competitive efficiencies and sound selections given the particular

circumstances, complex regulations and governing law applicable to such financial and investment transactions.

(4) In contracting for consultant or other personal services, as well as goods or other services, the Department will consider factors including those described above in subsection (1) and employ the following procedures as applicable, except when the Director determines that an emergency or other good cause exists to excuse the Department from one or more of those procedures, such as when the personal services contract involves data processing services. The Department will comply with Executive Department OAR 122-031-0005 or 122-036-0005 for data processing personal services contracts.

(5) The Department will contract for consultant and other personal services: (i) when the specialized skills, knowledge, and resources are not available within the Department; (ii) when the work cannot be done in a reasonable time within the Department's own work force; (iii) when an independent and impartial evaluation of a situation is required by a consultant or other provider with recognized professional expertise and stature in a field; (iv) when it will be less expensive to contract for the work; (v) when the Department is directed by statute or otherwise to contract for services; or (vi) when the Department otherwise determines that contracting for a consultant or other personal services will best serve the purpose of fulfilling its statutory or other duties. The Department may contract for other goods and services necessary or appropriate for the operation of the Department. Contracts will be awarded only after the approval of the Director or his/her designee, subject to minimum limit exceptions.

(6) Agreements for the services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public department usually will be by interagency agreement. Exceptions may be granted by the Director or his/her designee when such an agreement is impractical and when the work will be done on the contractor's own time. Such exceptions normally will be processed as a personal services contract.

(7) The Department will seek to ensure competition and include performance standards to the maximum extent practicable when awarding contracts for goods and services, personal services contracts and, as the department deems appropriate or otherwise required by law, as well as financial assistance awards and related funding agreements (particularly when designed, inter alia, to obtain services in furtherance of a Department-supervised program).

(58) In selecting between two or more equally qualified bidders in a competitive procurement, preference will be given to maximizing program objectives, individuals residing in Oregon and businesses that have an office in Oregon.

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