

TUALATIN VALLEY FIRE AND RESCUE

PURCHASING

SECTION 9

<u>SECTION</u>	<u>PAGE</u>
9.1 General	2
9.2 Responsibility and Authority	3
9.3 Purchasing Policy and Procedures	4
9.4 Sales to Outside Agencies	11
9.5 Standardization	12
9.6 RENUMBERED TO BOARD POLICY 4.18	
9.7 DELETED	
9.8 Federal Grant Procurement	13
9.9 Approval	22

SECTION 9.1 GENERAL

The District recognizes that effective purchasing practices can cause significant savings. It supports the integration of the statutory requirements of public sector purchasing delineated in Oregon Revised Statutes and Oregon Attorney General Model Rules.

DATE: February 25, 1997

REVISED: June 24, 2014

REVIEWED: June 25, 2024

The Fire Chief or designee is responsible for the procurement of all goods and services as described in Board Policy Section 9.3, and for establishing procedures to sell goods and services as described in Board Policy Section 9.4.

DATE: February 25, 1997

REVISED: March 16, 2010

REVIEWED: June 25, 2024

A. Public Contracting Code

1. Oregon public contracting is governed by Oregon Revised Statutes (ORS) Chapters 279A, 279B, and 279C - the Public Contracting Code.
2. In accordance with ORS 279A.065(5), the District adopted the Oregon Attorney General Model Rules, Oregon Administrative Rules (OAR) Chapter 137, Divisions 46, 47, 48, and 49 as it applies to Local Contracting Agencies, effective March 1, 2005 and as later amended, as its public contracting rules, unless otherwise stated in this policy (hereinafter referred to as the “Model Rules”). Where appropriate, by Local Contract Review Board (LCRB) 2005-02, the LCRB has made all required findings and approvals necessary to authorize the adoption of the Model Rules. Written copies of the Model Rules or the Public Contracting Code referenced in this policy will be provided upon request.

B. Delegation of Contract Authority and Amendment Authority

1. Delegation of contract authority for all public contracts shall be as follows:
 - a. Except as otherwise provided in these rules, the Board must approve any public contract that exceeds \$100,000.
 - b. On behalf of the District, all public contracts may be executed by the Fire Chief or designee or as specified by the Board.
 - c. The Fire Chief or designee may execute public contracts as provided in *Board Policy 3 Budget and Finance, Section 3.4 Budget Administration*.
 - d. The Fire Chief or designee may enter into Emergency Procurement contracts as provided in Section H of this policy.
2. Delegation of contract amendment authority shall be as follows:
 - a. An amendment is an agreement to change or extend the terms or conditions of an existing contract or agreement without changing the initial purpose or scope of the contract or agreement. The Fire Chief or designee is authorized to approve contract amendments subject to the specific provisions and thresholds of the Model Rules.

b. The District shall report to the Board at the next regularly scheduled board meeting whenever:

- 1) A contract amendment exceeds 25% cumulative over the original contract amount of any public contract previously approved by the Board.
- 2) A contract exceeds the threshold in B.1.a. due to an amendment.

C. Contract Award Preferences

1. The District shall award contracts based on the order of precedence pursuant to OAR 137-046-0300.
2. The District shall apply the reciprocal preference when evaluating bids pursuant to OAR 137-046-0310.
3. The District shall apply the recycled materials preference when evaluating bids pursuant to OAR 137-046-0320.

D. Goods and Services Procurement

The District shall award contracts for goods and services pursuant to Division 47 of the Model Rules, except where Division 47 references the 279B.070 Intermediate Procurement threshold of \$250,000, the District shall remain at \$150,000.

E. Construction Procurement

The District shall award contracts for construction services pursuant to Division 49 of the Model Rules.

F. Sole Source Procurement

The District shall make sole source procurements pursuant to OAR 137-047-0275. Pursuant to ORS 279B.075 *Sole Source Procurement*, the Fire Chief or designee is designated by the Board to determine in writing that goods or services, or classes of goods or services are available from only one source.

G. Cooperative Procurement

The District may participate in, sponsor, conduct, or administer Joint Cooperative Procurements, Permissive Cooperative Procurements, and Interstate Cooperative Procurements pursuant to OAR 137-046-0400 through 137-046-0480.

H. Emergency Procurement

1. “Emergency” means circumstances that:
 - a. Could not have been reasonably foreseen;
 - b. Create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety; and
 - c. Require prompt execution of a contract to remedy the condition.
2. The District may award a contract as an Emergency Procurement as follows:
 - a. Goods and services pursuant to OAR 137-047-0280.
 - b. Construction services pursuant to OAR 137-049-0150.
3. Proclaimed Emergency or Disaster Procurement. The District must follow the Section 9.8 Federal Grant Procurement procedures for procuring property and services under a Federal award.
4. The Fire Chief or designee shall report to the Board all Emergency Procurements that exceed \$100,000 at the earliest opportunity.

I. Personal Services Procurement

1. Personal Services shall include those that require specialized technical, creative, professional, or communications skills or talents unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of service depends on attributes that are unique to the service provider. Examples include, but are not limited to: agents of record, architects and engineers or related services, financial advisors, attorneys, accountants, auditors, computer programmers, investment brokers, insurance brokers, real estate brokers, artists, designers, performers, instructors, underwriters, temporary employee agencies, and consultants.
2. Except as otherwise provided in this policy, Division 47 of the Model Rules shall govern the procurement of Personal Services. Personal services do not include Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or Related Services (see paragraph 3). Generally, Personal Services in this category shall be formally solicited by request for proposal (RFP) pursuant to OAR 137-047-0250 through 137-047-0290, except:
 - a. Personal Services Contracts with an estimated price/fee less than or equal to \$25,000 within a fiscal-year period may be procured through direct negotiation with the selected consultant.

- b. Personal Services Contracts with an estimated price/fee greater than \$25,000 to less than or equal to \$150,000 within a fiscal-year period may be procured through an informally written solicited process.
 3. Division 48 of the Model Rules shall govern the procurement of Personal Services contracts for the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or Related Services (as defined in ORS 279C.100).
 4. Exemptions:
 - a. Knowledge and Trust. Regardless of dollar amount, the District may enter into personal services contracts without competitive bidding when the nature of the services to be performed requires an ongoing, long-term relationship of knowledge and trust.
 - b. Sole Source. Regardless of dollar amount, the District may enter into personal services contracts without competitive bidding when the District, by and through the Fire Chief or designee, has made a sole source determination pursuant to rules set forth in OAR 137-047-0275.
 5. Contract Extensions. Existing personal service contracts may be extended by direct appointment and pursuant to the contract terms and conditions.
- J. Federal Grant Procurement.

The District must follow Section 9.8 Federal Grant Procurement procedures for procuring property and services under a Federal award.
- K. Special Procurements And Exemptions:
 1. The LCRB shall approve special procurements pursuant to OAR 137-047-0285.
 2. The LCRB shall approve public improvement contract exemptions pursuant to OAR 137-049-0130 and 137-049-0620.
 3. Special procurements and exemptions are adopted by LCRB Resolutions.
- L. Protest Resolution
 1. Except where specifically required by the Model Rules, the Procurement and Contracts Administrator shall have the authority to resolve protests submitted by persons for:
 - a. Exemptions and special procurements;

- b. Solicitation process and documents; or
 - c. Notice of intent to award a contract.
- 2. If a protest is not successfully resolved by the Procurement and Contracts Administrator, the Fire Chief or designee shall resolve the protest with District.
 - 3. legal counsel involvement, if required.

M. Review of Prequalification and Debarment Decisions

Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the LCRB:

- 1. Notices shall be submitted in writing to the Fire Chief or designee. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
- 2. Upon opening of the hearing, District staff shall explain the District's decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Board President. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board President.
- 3. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board President. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board President shall close the hearing.
- 4. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

N. Intergovernmental Agreements

An Intergovernmental Agreement (IGA) is any agreement made between two or more public agencies, by direct contract or agreement, for services or to jointly exercise any powers common to the agencies, or with one another for joint or cooperative action, under the authority provided by ORS Chapter 190.

All IGAs must be approved by the Board of Directors.

Staff will categorize IGAs into either of three types as follows; each type will be appropriately presented to the Board as indicated:

1. Type 1 - Agenda Item IGAs:

IGAs that have a financial impact to the District of \$25,000 or greater (whether paid or received by the District) will be presented to the Board under an Agenda Item for discussion and approval. The Board will approve these IGAs individually and will authorize the Fire Chief or designee to execute the IGA. Examples include: Mutual Aid IGAs and Annexation Agreements.

2. Type 2 - Class Authorization IGAs:

IGAs that are routine, are long-term or ongoing, and are of low risk to the District may be grouped together in a “class.” These classes of IGAs will be presented to the Board, similar to Type 1, as regular Agenda Items for discussion and approval. Approval of the class will authorize the Fire Chief or designee to execute all IGAs in the class as they are processed by staff without additional approval by the Board. Examples include IGAs for the use of the Training Center.

3. Type 3 - Consent Agenda IGAs:

IGAs under \$25,000 (whether paid or received by the District) and that are low risk to the District will be presented to the Board under the Consent Agenda for approval. Copies of the IGAs to be approved will be included with the Board packet. The Board will approve these under the Consent Agenda and will authorize the Fire Chief or designee to execute the IGAs. The Board may pull any matter off of the consent agenda for specific discussion.

Amendments to existing IGAs do not need to be approved by the Board.

Memorandum of Understanding (MOU) documents are a similar form of agreement between two or more agencies. MOUs are not as formal as an IGA; the District elects to utilize IGAs instead of MOUs, because the IGA provides more protection to the District. If another agency presents an MOU to the District to sign, or the District elects to utilize an MOU, the MOU will be treated as an IGA as established above.

- O. Standard of Conduct. District employees engaged in the selection, award and administration of contracts, will conduct District business ethically, objectively, and in compliance with Board Policy 4.9 *Conflict of Interest*. Employees who violate the standard of conduct are subject to disciplinary procedures of Board Policy 4.7 and ORS 244.

DATE: February 25, 1997

REVISED: June 28, 2022

REVIEWED: June 25, 2024

SECTION 9.4 SALES TO OUTSIDE AGENCIES

The Board recognizes that other agencies may wish to benefit from the District's volume purchasing. The District shall make such sales at a price that recovers actual cost, plus billing, purchasing, and warehousing costs associated with such purchases.

DATE: February 25, 1997

REVISED: February 27, 2007

REVIEWED: June 25, 2024

- A. Standardization of supplies, materials, and equipment is to be achieved whenever possible.
- B. District intent is to achieve standardization through attrition. Consideration must be given to cost of installation and operation commitments when replacing non-standard items.
- B. Solicitation and Contract Specifications:
 - 1. Non Public Improvement
 - a. A brand name specification may be prepared and used if the District determines that only the identified brand name specification will meet a particular need on one or more of the written determinations under 279B.215(2).
 - 2. Public Improvement
 - a. Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt. The LCRB may exempt products or classes of products by Resolution pursuant to ORS 279C.345(2).

DATE: February 25, 1997

REVISED: October 30, 2018

REVIEWED: June 25, 2024

A. Federal Law Supremacy

1. As a condition of receiving Federal assistance the District must comply with applicable Federal laws, regulations, executive orders, and other requirements in the procurement of goods and services for which the Federal assistance is provided.
2. Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS Chapters 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision thereof, or require additional conditions in public contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670 or the Model Rules.
3. This Section 9.8 establishes clarifying, additional and/or more restrictive Federal procurement standards for the procurement of goods or services under a Federal award or a Proclaimed Emergency or Disaster, such that the District can effectively obtain the goods or services required in such circumstances. The District may use contractors to assist in carrying out the scope of work under a Federal financial assistance award.

B. Definitions

1. “Federal Award” means the Federal financial assistance that the District receives directly from a Federal awarding agency or indirectly from a pass-through entity. Federal Award also means the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement or cost-reimbursement contract awarded under the Federal Acquisition Regulations.
2. “Proclaimed Emergency or Disaster” means the President or Governor has declared or proclaimed a State of Emergency for an area that includes the geographic territory of the District. A local emergency, proclaimed by the Fire Chief, or designee, differs from this definition; the procurement procedures under a local emergency are covered under Section 9.3 of this policy.
3. “Public Exigency or Emergency” means a situation, related to a Proclaimed Emergency or Disaster, which demands immediate aid or action and/or presents an immediate threat to public health, life safety, or improved property.
4. “Procurement or Purchase” means the purchase(s), rental(s) or lease(s) of goods or services related to a Federal award.

C. Purchasing authority during a Proclaimed Emergency or Disaster

1. Existing procurement authority, under District Board Policy of Section 9.3, remains in effect unless otherwise authorized or delegated by the Fire Chiefs

Office. Electronic requisitions should be created and approved in the standard workflow process. Workflow approval may be bypassed by the Procurement and Contracts Administrator, Finance Manager, or Controller when necessary under exigent circumstances; or by others upon written authorization by the Chief Financial Officer, Assistant Fire Chief, or the Fire Chief. A manual/paper requisition/purchase order process is allowed if the electronic system is unavailable. Manual approval shall follow the same procedure as above.

- D. General Procurement Standards (2 CFR 200.318). When procuring goods and services under a Federal award:
1. The District must follow its own documented procurement procedures (Model Rules) provided that procurements conform to applicable Federal law and the standards identified in Part 200 Procurement Standards §200.318 through §200.327 and the Federal award. The most restrictive standards apply in the event of any direct conflict.
 2. The District will create, develop and maintain written and/or electronic oversight documentation to ensure that contractors perform in accordance with the terms, conditions, and specifications of issued contracts or purchase orders.
 3. District employees engaged in a Federal Award procurement must abide by the District Standard of Conduct (Section 9.3.O.). Violations, including self-reporting, must be reported to the Procurement and Contracts Administrator or Human Resources Director.
 4. The District must avoid acquisition of unnecessary or duplicative items; consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. The District, where appropriate, must develop and maintain written and/or electronic documentation for the analysis of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach for procurements.
 5. To promote cost-effective use of shared services, and to foster greater economy and efficiency, the District should enter into state and local intergovernmental agreements where appropriate for procurements or use of common or shared goods and services.
 6. The District is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. See <https://www.oregon.gov/DAS/surplus> for more information.
 7. The District should use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction.

8. The District must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Each solicitation under a Federal Award will include a Contractor Certification, an affidavit of non-collusion, and a bidder responsibility form to aid in ensuring compliance with this section. A contractor will not be awarded a District contract when the contractor is non-responsible or non-responsive as may be determined during the evaluation of bids. A contractor will not be awarded a District contract when the contractor is debarred, suspended or otherwise ineligible for participation in a Federal award. See <https://www.sam.gov>.
9. The District must create, develop and maintain written and/or electronic documentation sufficient to detail the history of a procurement; including, but not necessarily limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
10. The District may only use a time and materials type contract after a written determination that no other contract is suitable and the requirements of 2 CFR Part 200.318(j) are met.
11. The District, using good administrative practice and sound business judgment, is responsible for settlement of all contractual and administrative issues arising out of Federal Award procurements.

E. Competition (2 CFR 200.319)

1. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements. Procurement transactions must not contain restrictive terms or specifications including but not limited to:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business with the District;
 - b. Requiring unnecessary experience and excessive bonding;
 - c. Noncompetitive pricing practices between firms or between affiliated companies;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. Organizational conflicts of interest;

- f. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement; and
 - g. Any arbitrary action in the procurement process.
 - 2. Procurements that use statutorily or administratively imposed state or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference are prohibited. The ORS 279A.120 Oregon goods and services and nonresident bidder preferences are prohibited.
 - 3. District written procedures for procurement transactions are governed by ORS Chapters 279A, 279B and 279C, and delineated in OAR Chapter 137 divisions 46, 47, 48 and 49 (Model Rules). District Federal award solicitations must include:
 - a. Clear and accurate description of the technical requirements of the material, product or service to be procured devoid of any features which unduly restrict competition:
 - i. The description may include a statement of the qualitative nature of the material, product or service to be procured and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
 - b. The District must ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough sources to ensure maximum open and free competition. The District must not preclude potential bidders from qualifying during the solicitation period.
- F. Methods of Procurement to be followed (2 CFR 200.320)
 - 1. The District must follow the procurement procedures of 2 CFR 200.320 for procurements under a Federal award or sub-award. In any case of disparity or conflict between the thresholds of Federal and District rules, the District shall adhere to the most restrictive amount.

SECTION 9.8

FEDERAL GRANT PROCUREMENT (continued)

- G. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321)
1. The District must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
 2. Affirmative action steps must include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitations list;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs a. through e. of this section.
- H. Domestic preferences for procurements (2 CFR 200.322).
1. As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
 2. For purposes of this section:
 - a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

I. Contract Cost and Price (2 CFR 200.324)

1. The District must perform a cost of price analysis, prior to receiving bids or proposals, in connection with every procurement action in excess of the Intermediate Procurement (simplified acquisition) threshold, including contract modifications.
2. The District must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the geographic area for similar work.
3. Basic considerations under Subpart E – Cost Principles include: Costs must be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles; conform to any limitations or exclusions set forth in these principles or in the Federal award as to types of amount of cost items, be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the District, be accorded consistent treatment, be determined in accordance with generally accepted accounting principles (GAAP), not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period, and be adequately documented. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

J. Federal awarding agency or pass-through entity review. (2 CFR 200.325)

The District must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements and pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates.

K. Bonding Requirements (2 CFR 200.326)

The construction bonding requirements of the Model Rules (OAR 137 chapter 49) match the requirements of 2 CFR 200.326. The District will require in solicitations that exceed the Intermediate procurement threshold the bid guarantee, performance and payment bonding as required by the Model Rules and 2 CFR 200.326.

L. Contract Provisions. (2 CFR 200.327)

District contracts must contain applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, as well as any other compliance clause that may be required by the Federal award documentation.

DATE: October 30, 2018

REVISED: June 28, 2022

REVIEWED: June 25, 2024

This is to certify that Purchasing, Section 9, policies 9.1 – 9.8 were duly adopted and approved by Board action on:

Justin J. Dillingham, President of the Board

Clark I. Balfour, Secretary of the Board

APPROVED: June 25, 2024