



**MEETING NOTICE
WORKSHOP SESSION**

TUESDAY, OCTOBER 3, 2017

The meeting will be held at the Port of Astoria Admin Offices, #10 Pier One, Suite 209, Astoria, Oregon. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling the Port of Astoria at (503) 741-3300.

AGENDA

WORKSHOP SESSION – OPEN TO THE PUBLIC

4:00 PM

CALL TO ORDER/ROLL CALL

PLEDGE OF ALLEGIANCE

CHANGES/ADDITIONS

PUBLIC COMMENT – for items on the agenda

WORKSHOPS:

1. Review of Contracting Rules
2. Committee Assignments

ADVISORY ITEM:

1. None at this time

PUBLIC COMMENT – for items not on the agenda

CONSIDER FUTURE AGENDA ITEMS

UPCOMING MEETING DATES

- Regular Session – October 17, 2017 at 5:00 PM

ADJOURN

RESOLUTION NO. _____

A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES

WHEREAS, the Port of Astoria (“Port”), an Oregon port district formed under Oregon Revised Statutes (“ORS”) chapter 198 and authorized by ORS chapter 777, is a contracting agency subject to Oregon’s public contracting laws, ORS chapters 279A, 279B, and 279C; and

WHEREAS, ORS 279A.065(5) provides that a contracting agency may adopt its own rules of procedure for public contracting, which may include portions of the Model Public Contracting Rules adopted by the Attorney General;

NOW, THEREFORE, the Board of Port Commissioners (“Commission”), acting as both the governing body of the Port and as the Port’s Local Contract Review Board, hereby resolves as follows:

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

APPROVED AND ADOPTED on _____, 2017.

Commission Chair

ATTEST:

Secretary

RESOLUTION ADOPTING PUBLIC CONTRACTING RULES FOR THE PORT OF
ASTORIA

EXHIBIT A

PUBLIC CONTRACTING RULES AND PROCEDURES

A. Delegation.

1. Contract Review Board. The powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the Board of Port Commissioners (“Commission”).
2. Contract Approval. Except as otherwise provided in these Rules, the Commission shall approve any contract entered into by the Port. Authority to approve public contracts shall be delegated only by amendment of these Rules or by resolution of the Commission.
3. Executive Director’s Authority. The Port’s Executive Director or designee may enter into any contract up to **\$50,000** without prior approval of the Commission, provided the amount of such contract and the purpose therefor is contained in the adopted budget of the Port.¹ The Executive Director shall comply with all applicable competitive bidding processes required by law or by these rules.

Extensions. Regardless of dollar amount, if the initial contract provides for extensions or renewals, the Executive Director or designee may approve the extensions or renewals without further Commission approval, provided the cumulative term of the contract does not exceed five (5) years.

Non-Budgeted Contracts. The Executive Director or designee may approve contracts not provided for in the Port’s adopted budget without Commission approval, provided the estimated value of the contract does not exceed the amounts for Small Procurements as provided in paragraph C of these rules.

4. Leases. The Executive Director or designee may approve real estate leases with an initial term of one year or less without approval of the Commission. The Commission shall approve leases with an initial term longer than one year.

Lease Extensions. If the initial lease agreement allows for renewal or extension of the lease, the Executive Director or designee may approve the renewal or extension without further approval of the Commission.

If the initial lease agreement does not allow for extensions or renewals, the Executive Director may approve an extension or renewal that does not exceed one

¹ There is no requirement that the Commission delegate any purchasing authority to the manager or any other staff member. However, if the Commission chooses to delegate some of its authority to approve contracts, this rule must explicitly state the scope of the authority delegated. The rule as proposed allows the Executive Director or his/her designee to enter into contracts up to a certain dollar amount, provided the money is budgeted for that purpose. The Commission can increase or decrease this authority, take away this authority, or delegate authority to other staff members if it chooses.

year. Extensions or renewals not addressed in the initial lease of longer than one year require Commission approval.

5. Emergency Authority. The authority to act in an emergency is described in Section F of these rules.

B. Professional (Personal) Services.²

1. Definition. Pursuant to ORS 279A.055, the Local Contract Review Board defines “Personal Services” as follows:

“Personal Services” shall include those that require specialized technical, creative, professional or communication skills or talents, unique or 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. Such services shall include, but are not limited to: architects; engineers; surveyors; attorneys; accountants; auditors; computer programmers; artists; designers; performers; project managers and consultants. The Executive Director or designee shall have the authority to determine whether a particular service is a “personal service” under this definition.

2. Contracts for Personal Services **Other** than Architectural, Engineering, Surveying, or Photogrammetry Services.³
 - a. Personal Services contracts under this subsection may be directly awarded (without competitive bidding).
 - b. If, in the discretion of the Executive Director or designee, a competitive process is used, the process shall generally conform to the requirements for competitive proposals provided in ORS 279B.060.
 - c. Whether or not a competitive process is used, the Port shall select personal services contractors under this subsection based on the following factors:
 - The experience and level of expertise of contractor and contractor's available personnel, in the area and for the type of services required;
 - Whether the contractor's available personnel possess any required licenses or certifications required to perform the services required;

² The Port has wide latitude to determine the definition of “professional (personal) services” that will apply to the Port. The definition proposed here includes typical types of services. The Commission should consider whether there are other professions that it would like to include.

³ Architects, engineers, surveyors, and photogrammetrists (aerial photography) get special treatment under Oregon law. Therefore, those types of professional services contracts are handled separately in these Rules. See section 3, and related footnotes.

- The legal and business constraints or requirements, if any, imposed by particular characteristics of the matter for which the Port seeks personal services;
 - The extent and nature of any likely conflicts of interest that exist or could arise if contractor provided services with respect to a particular matter;
 - The training, expertise, temperament, style and experience of the particular contractor personnel available to perform work on the specific matter and the training, expertise, temperament, style and experience of the particular District personnel that will be working on the matter with the Contractor's personnel;
 - Recommendations of other professionals, or references from clients of the contractor;
 - Overall cost;
 - Other factors the Port considers relevant to the selection of a Contractor to provide particular services.
- d. In weighing the evaluation factors, no single factor shall be determinative, but all factors will be considered together to determine the best possible selection for the Port.
3. Contracts with Architects, Engineers, Land Surveyors, and Photogrammetrists.⁴
- a. Unless otherwise provided in this Section, contracts for architectural, engineering, surveying and photogrammetry services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these rules.
 - b. A contract for architectural, engineering, surveying, and photogrammetry services may be entered into by direct appointment (without competitive bidding) if the cost of such services for the project will not exceed \$100,000; or in an emergency; or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

⁴ ORS 279C.110(8) allows the Port to award a contract directly to one of these types of professionals if the amount does not exceed \$100,000. [The Commission is free to *decrease* this amount, as long as it states one.] If the contract amount is expected to exceed \$100,000, the Commission must put the contract out for competitive proposals, and must also use the Qualification-Based Selection process described in these rules.

- c. All contracts for architectural, engineering, surveying and related service in excess of \$100,000 shall be entered into consistent with ORS 279C.110 (Qualification Based Selection), which substantially provides as follows:
- 1) The Port shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required.
 - 2) The Port may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after selecting a candidate pursuant to the procedures that the Port creates to screen and select consultants and to select a candidate.
 - 3) The Port's screening and selection procedures under this section, regardless of the estimated cost of the services for a project, may include considering each candidate's:
 - (a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - (b) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;
 - (c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
 - (e) Availability to the project locale;
 - (f) Familiarity with the project locale; and
 - (g) Proposed project management techniques.
 - 4) If, after following screening and selection procedures, the Port determines that two or more candidates are equally qualified, the

Port may select a candidate through any process that is not based on the candidate's pricing policies, proposals or other pricing information.

- d. Extensions. If a contract awarded in compliance with this Section allows for extensions or renewals, the contract may be extended or renewed without competitive bidding, provided the scope of work or services is not substantively changed; the cumulative term of the contract does not exceed five (5) years; and any increase in the contract amount does not exceed ten (10) percent from the cost of the prior contract year.

C. Small Procurements.⁵

1. Purchase and Sale of Goods and Non-Professional Services A contract for procurement of goods, or for services that are not personal services, is exempt from competitive bidding requirements if the estimated value of the contract does not exceed \$10,000.
2. Construction. A contract for procurement of a public improvement (construction) is exempt from competitive bidding requirements if the estimated value of the contract does not exceed \$5,000.
3. Competitive Quotes. The Executive Director or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the Port.
4. Amendments if Bids Exceed Estimates. The Port may amend a public contract awarded as a small procurement beyond the stated limits in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.⁶

⁵ A "procurement" under these Rules means a purchase of goods, or of services that are not personal services. It does not include professional services or construction-related activities. Public improvement contracts have a lower ceiling for direct appointment (see text). Dollar amounts for small and intermediate procurements are established by statute, so the Commission may not establish higher ones.

⁶ This is an optional rule, but it allows the Port some latitude to continue to use the small procurement exemption if the contract ends up being slightly larger than expected. The rule as proposed allows the Port to still use this process even if the projected cost of the project ends up exceeding the maximum by up to 25 percent. If this rule is included, the percentage of permitted variance is within the Commission's discretion, but it shouldn't be so high as to completely flout the intent of the rule.

D. Intermediate Procurements.⁷

1. Purchase and Sale of Goods and Non-Professional Services. A contract for procurement of goods, or for services that are not personal services, estimated to cost between \$10,000 and \$150,000 in a fiscal year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
2. Construction. A contract for a public improvement (construction) that is estimated to cost between \$5,000 and \$100,000 in a fiscal year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
3. Written Specifications. If the proposed contract is expected to exceed \$25,000, both the specifications for the bid and the bids themselves must be in writing.
4. Prevailing Wage Requirements. Public improvement (construction) contracts advertised or awarded under this section still must comply with all statutory requirements, including those relating to the payment of prevailing wages.
5. No Artificial Division. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section or to circumvent competitive bidding requirements.
6. Amendments if Bids Exceed Estimates. The Port may amend a public contract awarded as intermediate procurement beyond the stated limits in accordance with **OAR 137-047-0800**, provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.
7. Extensions. If the initial agreement allows for extensions or renewals, the Port may extend a contract entered into pursuant to these rules annually, provided the cumulative length of the contract does not exceed five (5) years, and provided any cost increases do not exceed ten (10) percent from the prior contract year.

E. Special Procurements and Exemptions.⁸

1. The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

⁷ The intermediate procurement process refers to the process of obtaining at least three informal quotes, rather than doing a formal bidding process. The dollar amounts for small and intermediate procurements are established by statute. The Commission can adopt lower limits, but cannot exceed the limits provided in statute.

⁸ This process requires the Local Contract Review Board to adopt findings as required by statute to support the exemption. The Commission should seek legal advice before exercising this authority, to be sure all statutory requirements are met.

2. The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.⁹

F. Emergency Contracts.¹⁰

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

G. Disposal of Surplus Property.¹¹

1. “Surplus Property” is defined as any personal property of the Port that has been determined by the Commission or its designee as being of no use or value to the Port.
2. The Executive Director may dispose of surplus property in the manner that is, in the discretion of the Executive Director, deemed most advantageous to the Port or the community at large, including but not limited to sale, donation, or disposal.

⁹ This paragraph will authorize entering into Design-Build or CMGC contracts (alternatives to traditional design-bid-build construction contracts), once other exemption requirements are met.

¹⁰ If the Port wants to authorize someone to enter into contracts in an emergency without competitive bidding, it must have a rule describing emergency contracting authority. The rule proposed here is the “traditional” way this is handled, but the Commission has discretion to modify the process if it chooses. If the Commission adopts no emergency delegation rule, the Port will be required to do a bidding process in an emergency, which may not be feasible.

¹¹ There is no statutory process for special districts to dispose of surplus property. Instead, statute requires them either to obtain bids and sell to the highest bidder (i.e., a “reverse” competitive bidding process), or establish a rule for disposing of it. The rule as proposed provides a definition of “surplus property” as well as a very wide grant of authority to dispose of it in any appropriate manner. If the rule as proposed doesn’t meet the Port’s needs, the Commission may amend it.

3. This rule does not apply to disposal of real estate. Disposal of real estate shall be made pursuant to ORS chapter 271.

H. Appeals of Prequalification Decisions and Debarment Decisions.¹²

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

¹² For most special districts, prequalification and debarment procedures are unlikely to come up. However, the Local Contract Review Board is required to establish a process that it will use if the situation does arise. The process described here is offered in lieu of a contested case hearing, which is required under state law unless a simpler procedure is adopted. The Commission is free to adopt a different procedure than the one proposed here, if it chooses to do so.

I. Public Improvement Contracts (Construction).¹³

1. Except as provided in these Rules, all public improvement contracts shall be advertised and awarded according to the requirements of Oregon Revised Statutes, chapter 279C.
2. “Public improvement” means a project for construction, reconstruction or major renovation on real property by or for the Port. “Public improvement” does not include: (a) Projects for which no funds of the Port are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or (b) emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
3. Under Oregon law, any public improvement contract costing \$50,000 or more is subject to payment of prevailing wages, and applicable requirements. [ORS 279C.800, et seq.]
4. Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the Local Contract Review Board has exempted the product from competitive bidding after making the following written findings:
 - a. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;
 - b. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency;
 - c. There is only one manufacturer or seller of the product of the quality required; or
 - d. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [ORS 279C.345]
5. Unless otherwise authorized by these Rules, an advertisement for a public improvement contract must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the Port may determine.

¹³ Requirements for public improvement contracts (construction) are lengthy and complex, and are subject to change. Rather than reprint the statutory requirements here in their entirety, these rules refer to the appropriate statutory cites where more information can be obtained when needed.

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

All advertisements for public improvement contracts must state:

- a. The public improvement project;
- b. The office where the specifications for the project may be reviewed;
- c. The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- d. The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
- e. The name and title of the person designated for receipt of bids;
- f. The date, time and place that the Port will publicly open the bids; and
- g. If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act. [ORS 279C.360]
- h. A solicitation for a public improvement shall comply with all applicable requirements of ORS 279C.365 through ORS 279C.414.
- i. Contracts for public improvements shall comply with all applicable requirements of ORS 279C.500 through ORS 279C.590.

J. Purchases from Federal Catalogues.¹⁴ Subject to applicable approval requirements stated in these Rules, the Port may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

¹⁴ If the Port purchases, or may purchase, anything through federal purchasing programs, it must have a rule authorizing it to do so. The rule as proposed gives that authority. The Commission may omit the rule altogether if it does not need such authority.

K. Electronic Advertising.¹⁵ Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Commission shall determine when electronic publication is appropriate, and consistent with The Port's public contracting policies. However, regardless of electronic or other advertisement, if a public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

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¹⁵ This rule is necessary if the Port intends to advertise bids electronically, such as on its website, on something like Craigslist, or on a state procurement website such as ORPIN, or other electronic medium. The \$125,000 requirement for public improvement contracts to be advertised in a trade journal is required by statute and cannot be modified.

PORT OF ASTORIA

COMMITTEE ASSIGNMENTS

2017-2018

ORGANIZATION	COMMISSION	ALTERNATE
<u>NWACT</u>		
NW Area Committee on Transportation	Frank Spence	Staff
<u>ColPacEDD/NOEA</u>		
Columbia Pacific Economic Develop. Dist./Northwest Oregon Economic Alliance	Frank Spence	Staff
<u>C.R.E.S.T</u>		
Columbia River Estuary Study Taskforce	Jim Campbell	Staff
<u>WFOA</u>		
Western Fish Boat Owners	Bill Hunsinger	Staff
<u>LCSG</u>		
Lower Columbia Solutions Group	Bill Hunsinger	Staff
<u>C.E.D.R.</u>	Dirk Rohne	Staff
Clatsop Economic Development Resources		
<u>Clatsop Cruise Committee/Cruise Hosts</u>	Frank Spence	Staff
<u>O.P.P.A.</u>		
Oregon Public Ports Association	Frank Spence	Staff
<u>Columbia River Salmon Advisory</u>	Bill Hunsinger	Staff
<u>OCZMA</u>		
Oregon Coastal Zone Mgmt Assn	Frank Spence	Staff
<u>Regional Solutions Group</u>	Frank Spence	Staff
<u>Airport Advisory Committee</u>	Jim Campbell	Staff
<u>Budget Committee</u>	All Commissioners	Staff
<u>Marina Advisory Committee</u>	Jim Campbell	Staff
<u>City of Cannon Beach</u>	Frank Spence	Staff
<u>City of Seaside</u>	Frank Spence	Staff
<u>City of Gearhart</u>	Frank Spence	Staff
<u>City of Astoria</u>	Frank Spence	Staff
<u>City of Warrenton</u>	Robert Stevens	Staff
<u>Clatsop County</u>		
2nd Wednesday 10am	F. Spence/D. Rohne	Staff
4th Wednesday 6pm	F. Spence/D. Rohne	Staff

NOTE: Whenever a designated commissioner is unable to attend their assigned agencies, another commissioner may take their place by notifying the President through the Executive Director.



**MEETING NOTICE
EXECUTIVE SESSION**

TUESDAY, OCTOBER 3, 2017

The meeting will be held at the Port of Astoria Admin Offices, #10 Pier One, Suite 209, Astoria, Oregon.

AGENDA

EXECUTIVE SESSION – CLOSED TO THE PUBLIC

5:00 PM (Immediately following the Workshop Session)

The Executive session will be held to consider the following items:

- To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing pursuant to ORS 192.660(2)(i).