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# **Contracting & Purchasing Rules**

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**November 2022**

**Port of Cascade Locks  
Contracting & Purchasing Rules**

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## Contracting & Purchasing Rules

### I. Introduction.

**A. Purpose of Rules.** These Contracting and Purchasing Rules (“Rules”) are adopted by the Port Commission of the Port of Cascade Locks (the “Port Commission”), as the governing body and the local contract review board for the Port of Cascade Locks (the “Port”). The purpose of these Rules is to establish the Port’s local rules of procedure for entering into contracts and making purchases. It is the policy of the Port Commission to:

1. Use contracting practices and methods that maximize the efficient use of Port resources and the purchasing power of Port funds;
2. Promote impartial and open competition;
3. Use solicitation materials that are complete and contain a clear statement of contract specifications and requirements;
4. Take advantage of evolving procurement methods that suit the purchasing needs of the Port;
5. Regularly review changes in ORS Chapters 279A, 279B, and 279C (the “Public Contracting Code”) and update these Rules as needed to maintain compliance with statutory requirements.

**B. Interpretation of Rules.** Except as specifically provided herein, the model rules adopted by the Attorney General pursuant to the Public Contracting Code (the “Model Rules”) do not apply to the Port. Public contracts and purchases shall be awarded, administered, and governed in accordance with these Rules.

1. Where these Rules are silent on a public contracting or purchasing matter, the General Manager may apply the Model Rules, to the extent that they do not conflict with these Rules or with other rules and regulations adopted by the Port Commission.
2. In the event of a conflict between any provision of these Rules and the Model Rules, the provision of these Rules shall prevail.
3. In the event of a conflict between the provisions of these Rules, the more specific provision shall take precedence over the more general provision.
4. In the event of a conflict between one or more provisions of these Rules, the General Manager shall have the authority to interpret the provisions consistently with the purposes for these Rules in order to resolve the conflict.

**C. Applicability of Federal Statutes and Regulations.** Except as otherwise

expressly provided in the Public Contracting Code, all applicable federal statutes and regulations shall govern when federal funds are involved.

**II. Definitions.** Unless a different definition is specifically provided, or the context clearly requires otherwise, the following terms have the meanings set forth herein. Any term defined in the singular includes the meaning of the plural, and vice versa.

**Administering agency.** A contracting agency, other than the Port, that solicited and established the initial contract in a cooperative procurement.

**Affected person.** A person whose ability to participate in a procurement is adversely affected by a Port decision.

**Award.** The decision to enter into a contract or purchase order with a specific offeror or proposer.

**Bid.** A response to an invitation to bid.

**Bidder.** A person who submits a bid in response to an invitation to bid.

**Bid security.** A form of security submitted or posted by a bidder as a monetary guarantee that, if selected, the bidder will accept the award of the contract under the terms of the bid. Bid security is either returned, forfeited, or exchanged for a different form of guarantee. The form of bid security may be: a surety bond signed by the surety, a signed irrevocable letter of credit issued by an insured institution as the term is defined in ORS 706.008(11), a cashier's check, or other adequate form of security as determined by the General Manager.

**Port.** The Port of Cascade Locks, a port district organized and operating under ORS Chapter 777, and a contracting and purchasing agency under Oregon law.

**General Manager.** The Port's General Manager, or the person designated as the acting General Manager in the General Manager's absence.

**Contract or Public Contract.** A purchase, lease, rental, or other acquisition by the Port of personal property, goods, services, personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. A public contract does not include contracts and purchases excluded under ORS 279A.025(2).

**Contractor.** A person who enters into a contract with the Port.

**Contract price.** As the context requires:

- a. The maximum payment that the Port will make under a contract for the full duration of the contract (including any extensions and renewals allowed), if the contractor fully performs, including bonuses, incentives, and contingency amounts;
- b. The maximum not-to-exceed amount, if specified in the contract; or

- c. The total of all unit prices set forth in the contract.

**Contracting agency.** A public body authorized by law to conduct a procurement.

**Cooperative procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies.

**Days.** Calendar days.

**Disadvantaged Business Enterprises, Minority-Owned Businesses, Woman-Owned Businesses, Service Disabled Veteran-Owned Businesses, and Emerging Small Businesses.** An enterprise or business that is certified by the State of Oregon's Certification Office for Business Inclusion and Diversity in the Oregon Business Development Department as a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, and/or an emerging small business.

**Emergency.** Involves circumstances that:

- a. Could not have been reasonably foreseen; and
- 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 or amendment of a contract, in order to remedy the substantial risks and threats.

**Findings.** The justification for a decision.

**Goods or services.** Supplies, equipment, materials, and services (other than personal services), and any personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto. The term includes good or services, goods and services, and any combination of supplies, equipment, materials, personal property, and services.

**Nonresident bidder.** A bidder that is not a resident bidder.

**Offer.** A bid, proposal, quote, or other response to a solicitation document.

**Offeror.** A person who submits an offer.

**Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on a contract established by an administering agency in a cooperative procurement.

**Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation, or other legal or commercial entity, and any other person or entity with legal capacity to contract.

**Personal services.** Services that require specialized skill, knowledge, and resources in the application of technical or scientific expertise, or in the exercise of professional,

artistic, or management discretion or judgment. Personal services include those services designated as personal services under this definition, and such contracts and services as may be designated by the General Manager as personal services from time to time. Personal services do not include professional services. Personal services include the services of:

- a. An accountant, attorney, auditor, court reporter, information technology consultant, or physician;
- b. Expert witnesses or consultants to provide testimony or other consultation relating to existing or potential litigation or legal matters in which the Port is or may become interested;
- c. Artists in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
- d. Contracts for services as a consultant, other than a professional services consultant.

**Procurement.** The act of purchasing, leasing, renting, or otherwise acquiring goods or services, personal services, professional services, or public improvements.

**Procurement File.** The Port's record of a given procurement, including all solicitation documents, notices, bids and proposals received, protests and responses, findings, record of award, contracts, renewals, and amendments.

**Professional services.** Architectural, engineering, land surveying, photogrammetric, transportation planning, or related services, or any combination of these services, provided by a consultant.

**Proposal.** A response to a request for proposals.

**Proposer.** A person that submits a proposal in response to a request for proposals.

**Proposer security.** A form of security submitted or posted by a proposer as a monetary guarantee that, if selected, the proposer will accept the award of the contract under the terms of the proposal. Proposer security is either returned, forfeited, or exchanged for a different form of guarantee. The form of proposer security may be: a surety bond signed by the surety, a signed irrevocable letter of credit issued by an insured institution as the term is defined in ORS 706.008(11), a cashier's check, or other adequate form of security as determined by the General Manager.

**Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.

**Public contract.** See Contract.

**Public improvement.** A project for construction, reconstruction, or major renovation on real property, by or for the Port. A public improvement does not include projects for which: (i) no funds of the Port are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; (ii) emergency work; (iii) minor alteration, ordinary repair, or maintenance work that is necessary to preserve a



public improvement.

**Recycled products.** All materials, goods, and supplies, not less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of post-consumer waste. It includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

**Related services.** Personal services, other than architectural, engineering, and land survey services, that are related to the planning, design, engineering, or oversight of public improvement projects or components thereof.

**Request for proposals.** A solicitation document used for soliciting proposals.

**Request for qualifications.** A written document issued by the Port describing particular services to which potential contractors may respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between any potential contractor on the list and the Port.

**Resident bidder.** A bidder that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid, has a business address in Oregon, and has stated in the bid that the bidder is a resident bidder.

**Scope.** The statement of work or range and attributes of the goods or services described in a procurement document.

**Solicitation.** As the context requires:

- a. A request for the purpose of soliciting offers, including an invitation to bid, a request for proposal, a request for quotes, a request for qualifications, or other similar document;
- b. The process of notifying prospective offerors of a request for offers; and/or
- c. The solicitation documents.

**Work.** The furnishing of all materials, equipment, and labor necessary to successfully complete any individual item in a contract, and the successful completion of all duties and obligations imposed by the contract.

**Written or in writing.** This term includes conventional paper documents, whether handwritten, typewritten, or printed, and includes electronic transmissions and facsimile documents when required by applicable law or permitted by a solicitation document or contract.

## **II. Authority.**

- A. Port Commission as Local Contract Review Board.** The Port Commission is the local contract review board for the Port and has all of the rights, powers, and authority necessary to carry out the provisions of these Rules, the Public Contracting Code, and the Model Rules.

- B. Application of the Model Rules.** Pursuant to ORS 279A.065(6), the Port has elected to adopt its own rules of procedure for public contracting and purchasing. Except as specifically provided herein, the Model Rules do not apply to the Port.
- C. Inapplicability of Contracting and Purchasing Rules.** These Rules do not apply to the following:
1. Contracts or agreements to which the Public Contracting Code does not apply;
  2. Contracts, intergovernmental, and interstate agreements entered into pursuant to ORS Chapter 190;
  3. Grants, as defined under ORS 279A.010;
  4. Acquisitions or disposals of real property or interests in real property;
  5. Contracts, agreements, or other documents entered into, issued, or established in connection with:
    - a. The incurring of debt, including any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special, or limited;
    - b. The making of program loans and similar extensions or advance of funds, aid, or assistance by the Port to a public or private person for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
    - c. The investment of funds by the Port as authorized by law; or
    - d. Banking, money management, or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the General Manager.
  6. Contracts for employee benefit plans;
  7. Contracts with newspapers and other publications for the placement of advertisements or public notices;
  8. Contracts for items where the price is government-regulated and available from a single source or limited number of sources;
  9. Insurance contracts;
  10. Revenue-generating agreements;
  11. Federal agreements where applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these Rules or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these Rules.

- D. Authority of General Manager.** The Port's General Manager is responsible for ensuring that these Rules are followed. For contracts, purchases, and proceedings covered by these Rules, the General Manager is authorized to:
1. Award contracts and amendments consistently with these Rules, without specific authorization by the Port Commission, if: (i) the expenditure is included in the adopted fiscal year budget for which the award is made; and (ii) the total contract price does not exceed the General Manager's spending authority, as may be established by the Port Commission from time to time.
  2. Interpret any ambiguities or conflicts within these Rules consistently with the Sections I(A) and (B) and in consultation with the Port's legal counsel, to resolve the conflict or clear the ambiguity.
  3. Refer any contracting or purchasing decision within the General Manager's authority to the Port Commission, in the General Manager's discretion.
  4. Execute all contracts and amendments other than those that qualify under subsection (1), with specific authorization by the Port Commission.
  5. As the purchasing agent for the Port, the General Manager is authorized to:
    - a. Advertise for bids or proposals without specific authorization from the Port Commission, when the proposed purchase is included within the current fiscal year budget.
    - b. Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the Port Commission approves the proposed budget transfer.
    - c. Establish the authority of Port employees to make purchases of any goods or services within the General Manager's authority to purchase with spending limits deemed appropriate by the General Manager.
  6. Delegate, in writing, the signature authority described in the above subsections.
  7. Delegate, in writing, the General Manager's obligations under these rules to make any findings, conduct any proceedings, or retain any records to the appropriate Port employee or consultant.
  8. Adopt forms, procedures, and administrative rules for all Port purchases, regardless of the amount.
    - a. When adopting the forms, procedures, and/or administrative rules, the General Manager shall establish practices and policies that:
      - i. Do not encourage favoritism or substantially diminish competition; and
      - ii. Allow the Port to take advantage of the cost-saving benefits of alternative contracting methods and practices;
    - b. The Port shall use these forms, procedures, and administrative rules unless they conflict with these Rules.

- E. Favorable Terms.** Contracts and purchases shall be negotiated on the most favorable terms for the Port, in accordance with these Rules, other adopted ordinances, state and federal laws, policies, and procedures.
- F. Unauthorized Contracts or Purchases.** Unauthorized public contracts entered into or purchases made without valid authorization shall be voidable at the sole discretion of the Port.
  1. The Port may take appropriate action in response to the execution of unauthorized contracts or purchases.
  2. Such appropriate actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such contracts or purchases.
- G. Purchasing from Port Employees or Employees' Immediate Family Prohibited.** No contract shall be entered into with, or purchase made from, any Port employee or employee's immediate family member, or any business with which the employee or employee's immediate family member is associated, unless:
  1. The contract or purchase is expressly authorized and approved by the Port Commission; or
  2. The need for the contract or purchase occurs during a state of emergency, and the General Manager finds, in writing, that the acquisition from the employee, employee's immediate family member, or business with which the employee or employee's immediate family member is associated is the most expeditious means to eliminate the threat to public health, safety, and welfare.

For purposes of this Section, a business with which the employee or employee's immediate family member is associated means any business in which a Port employee is a director, officer, owner, or employee, or any corporation in which a Port employee owns or has owned ten percent (10%) or more of any class of stock at any point in the preceding calendar year. An employee's immediate family member means the employee's: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; siblings, and spouses thereof; grandparents and grandchildren, and spouses thereof; and domestic partner, and parents thereof.

### III. Preferences.

- A. Tie Breaker Preference (mandatory resident preference).** If the Port receives offers that are identical in price, fitness, availability, and quality, and the Port chooses to award a contract, the preferences provided in ORS 279A.120 shall be applied prior to the contract award based on the following order of precedence:
  1. The Port shall award the contract to the offeror who is offering goods, services, personal services, or any combination thereof, that are manufactured, produced, or to be performed in Oregon.
  2. If two or more offers are for goods, services, or personal services that are

manufactured, produced, or to be performed in Oregon, the Port shall award the contract by drawing lots among the identical resident offers. The Port shall provide such identical resident offerors notice of the date, time, and location of the drawing of lots, and an opportunity for those offerors to be present when the lots are drawn.

3. If none of the offers are for goods, services, or personal services that are manufactured, produced, or to be performed in Oregon, the Port shall award the contract by drawing lots among the identical non-resident offers. The Port shall provide such identical non-resident offerors notice of the date, time, and location of the drawing of lots, and an opportunity for those offerors to be present when the lots are drawn.

4. **Determining if offers are identical in price, fitness, availability, and quality for purposes of applying a Tie Breaker Preference.**

- Bids are identical if the bids are responsive and offer the goods or services or personal services described in the Invitation to Bid at the same price.
- Proposals are identical if the proposals are responsive and achieve equal scores when scored according to the evaluation criteria set forth in the Request for Proposals.
- Offers received in response to a Special Procurement under ORS 279B.085 are identical if, after completing the contracting procedure, the Port determines, in writing, that two or more offers are equally advantageous to the Port.
- Offers received in response to an Intermediate Procurement under ORS 279B.070 are identical if the offers equally best serve the interests of the Port, taking into account considerations including but not limited to: price, experience, expertise, product functionality, suitability for a particular purpose, and contractor responsibility under ORS 279B.110.

**B. Reciprocal Preference (mandatory resident preference).** Reciprocal preferences under ORS 279A.120, if applicable, must be given when evaluating bids. The Port shall add a percent increase to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state in which the bidder resides. In determining whether the nonresident bidder's state gives preference to in-state bidders, and the amount of preference that is given to in-state bidders, if any, the Port may rely on the list of reciprocal preferences prepared and maintained by the Oregon Department of Administrative Services.

**C. Discretionary Local Preference (optional local preference).** If the solicitation is in writing and the procurement is not excluded under this Section IV (C)(3), the General Manager may provide a specified percentage preference of not more than ten percent (10%) for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon. In the event the General Manager determines that such a preference will be applied,

the application and amount of the preference must be identified in writing in the solicitation document.

1. When a preference is provided and more than one offeror qualifies for the preference, the General Manager may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.
2. The General Manager may establish a preference percentage of ten percent (10%) or higher if the General Manager makes a written determination that good cause exists to establish the higher percentage, explains the reasons, and provides evidence for finding good cause to establish a higher percentage.
3. **Discretionary local preference unavailable for certain procurements.** The discretionary preference described in this Section IV (C) may not be applied to a contract for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or to any other construction contract that is not defined as a public improvement under ORS 279A.010.

**D. Preference for Recycled Products.** Preferences for recycled products shall be given when comparing goods, as required under ORS 279A.125. The General Manager shall make a written determination of whether the goods are manufactured from recycled materials and the criteria used in making such determination. Preference shall be given if:

1. The recycled product is available;
2. The recycled product meets applicable standards;
3. The recycled product can be substituted for a comparable nonrecycled product; and
4. The costs of the recycled product do not exceed the costs of comparable nonrecycled products by more than five percent, or a higher percentage if the General Manager makes a written determination justifying a higher percentage.

**E. Opportunities for Disadvantaged Business Enterprises, Minority-Owned Businesses, Woman-Owned Businesses, Service Disabled Veteran-Owned Businesses, and Emerging Small Businesses.** The Port may choose to provide contract opportunities to Disadvantaged Business Enterprises, Minority-Owned Businesses, Women-Owned Businesses, Service Disabled Veteran-Businesses, (“MWSDV”), and Emerging Small Business (“ESB”). To this end:

1. The Port may consult with the State advocate for MWSDVs and ESBs to determine the best means of making contracting opportunities available.
2. The Port may, in solicitation documents, require that some portion of the work be performed, or some portion of the materials be provided, by a MWSDV or ESB business enterprise. The Port may establish other contract requirements as authorized by ORS 279A.107.
3. The Port may use the State of Oregon’s Certification Office for Business

Inclusion and Diversity Certification Management System Directory to authenticate certification of a business or enterprise as a MWSDV or ESB.

#### IV. General Provisions.

- A. Public Notice.** Unless otherwise specifically provided by these Rules, any notice required to be published by these Rules may be published using any method the General Manager deems appropriate, including but not limited to: mailing notice to persons that have requested notice in writing, placing notice on the Port's website, placing notice through an electronic procurement system, or publishing in statewide trade or local publications.
- B. Procedure for Competitive Verbal Quotes and Proposals.** Where allowed by these Rules, solicitations by competitive quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, facsimile, or email, as authorized by the General Manager.
1. A good faith effort shall be made to contact at least three (3) potential providers.
  2. If three (3) potential providers are not reasonably available, fewer shall suffice, but the General Manager shall keep a written record of the efforts made to obtain three potential providers as part of the procurement file.
- C. Procedure for Informal Written Solicitation.** Where allowed by these Rules, informal written solicitations shall be made by a solicitation document sent to not fewer than three (3) prospective providers.
1. The solicitation document shall request competitive price quotes or competitive proposals, and shall include:
    - a. The date, time, and place that price quotes or proposals are due;
    - b. A description or quantity of the good or service required;
    - c. A statement of the time period for which price quotes or proposals must remain firm, irrevocable, valid, and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
    - d. Any required contract terms or conditions; and
    - e. Any required bid form or proposed format.
  2. Price quotes or proposals shall be received by the General Manager at the date, time, and place established in the solicitation document.
    - a. The General Manager shall keep a written record of the sources of the quotes or proposals.
    - b. If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the General Manager shall keep a written record of the efforts made to obtain quotes or proposals as part of the procurement file.

**D. Procedure for Competitive Sealed Bidding.**

1. The Port shall issue an invitation to bid, which must include the following information:
  - a. Time and date by which the bids must be received, and a place where the bids must be submitted. The Port may receive bids by electronic means or direct or permit a bidder to submit bids by electronic means.
  - b. Name and title of the person designated to receive bids and the contact person for the procurement, if different.
  - c. Description of the procurement, which must: identify the scope of work, outline the contractor's anticipated duties, set expectations for the contractor's performance, and include all contractual terms and conditions applicable to the procurement.
  - d. Time, date, and place for prequalification applications, if any, to be filed, and the classes of work, if any, for which bidders must be requalified under ORS 279B.120.
  - e. All criteria to be used in evaluating the bids.
  - f. Additional statements as required by ORS 279B.055.
2. The invitation to bid may additionally include the following information:
  - a. Criteria to determine minimum acceptability, such as inspection, testing, quality, and suitability for intended use or purpose.
  - b. Criteria that will affect the bid price and that will be considered in evaluating for award, including but not limited to: discounts, transportation costs. Total costs of ownership or operation of a product over the life of the product must be objectively measurable if included.
3. Bid security. The Port may require bid security if the General Manager determines that bid security is reasonably necessary or prudent to protect the interests of the Port.
4. Public notice. A public notice may be provided in any manner deemed reasonably prudent considering the nature of the procurement. Public notice may be published on the Port's website, through an electronic procurement system, in a newspaper of general circulation in the area where the contract is to be performed, and/or in any other publications as the General Manager may determine.

Notwithstanding the foregoing, for construction contracts over \$125,000, the Port shall publish at least once in a newspaper of general circulation in the area where the contract is to be performed, in addition to whatever other publications the General Manager may deem appropriate.
5. Evaluation of bids. The Port shall evaluate all bids received before the time and date indicated for bid opening. The Port may not consider for award any bids received after the time and date indicated for bid opening. All applicable



preferences shall be applied in evaluating the bids. Bids shall be evaluated on the requirements and criteria set forth in the invitation to bid. No criteria may be used in the evaluation that were not set forth in the invitation to bid.

6. Notice of intent to award. At least 7 calendar days before the award, the Port shall provide written notice of its intent to award a contract to all bidders. If the General Manager determines that circumstances justify prompt execution of the contract, a shorter notice period may be established, provided that the specific reasons for the shorter notice period are documented in the procurement file.
7. Finality. The Port's award shall not be final until the later of either: the expiration of the protest period following the notice of intent to award pursuant to OAR 137-047-0740, or after the Port provides written responses to all timely-filed protests denying the protests and affirming the award.

**E. Procedure for Competitive Sealed Proposals.**

1. The Port shall solicit a request for proposals, which must include the following information:
  - a. Time and date by which sealed proposals must be received, and a place where the proposals must be submitted. The Port may receive proposals by electronic means or may direct or permit proposers to submit proposals by hard copy.
  - b. Name and title of the person designated to receive proposals and the contact person for the procurement, if different.
  - c. Description of the procurement, which must: identify the scope of work, outline the contractor's anticipated duties, set expectations for the contractor's performance, and include all contractual terms and conditions applicable to the procurement.
  - d. Time, date, and place for prequalification applications, if any, to be filed, and the classes of work, if any, for which proposers must be requalified under ORS 279B.120.
  - e. Description of the methods by which the Port will make the results of each tier of competitive evaluation available to the proposers who competed in that tier.
  - f. Description of the manner in which the proposers who are eliminated from further competition may protest the Port's decision.
  - g. Additional statements as required by ORS 279B.055.
2. The request for proposals may additionally include the following information:
  - a. Contractual terms or conditions that the Port reserves for negotiation with proposers.
  - b. Request that proposers propose contractual terms and conditions that

relate to the subject matter reasonably identified in the request for proposals.

- c. The form or content of the written contract that the Port will accept.
  - d. The method the Port will use to select the contractor, which may include but is not limited to: negotiating with the highest ranked proposer, competitive negotiations, a multiple-tiered competition that is designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers.
  - e. The manner in which the Port will evaluate proposals, identifying the relative important of price and other factors the Port will use to evaluate and rate the proposals in the first tier of competition. If the Port uses more than one tier of competitive evaluation, the request for proposals must describe the process the Port will use to evaluate proposals in the subsequent tiers.
3. Proposer security. The Port may require proposer security if the General Manager determines that proposer security is reasonably necessary or prudent to protect the interests of the Port. The form of security shall be as determined by the General Manager.
  4. Public notice. A public notice may be provided in any manner deemed reasonably prudent considering the nature of the procurement. Public notice may be published on the Port's website, through an electronic procurement system, in a newspaper of general circulation in the area where the contract is to be performed, and/or in any other publications as the General Manager may determine. Notwithstanding the foregoing, for construction contracts over \$125,000, the Port shall publish at least once in a newspaper of general circulation in the area where the contract is to be performed, in addition to whatever other publications the General Manager may deem appropriate.
  5. Evaluation of proposals. The Port may select the contractor using the method provided for in the request for proposals, including but not limited to: an award based solely on the rankings of proposals; discussions leading to best and final offers; serial negotiations beginning with the highest ranked proposer; competitive simultaneous negotiations; multiple-tiered competitions; multi-step requests for proposals beginning with first unpriced submittals; or a combination of methods or any other authorized method. All applicable preferences shall be applied in evaluating proposals. If the Port awards a contract, the Port shall award the contract to the responsible proposer whose proposal the Port determines in writing is the most advantageous to the Port, based on the evaluation process and factors described in the request for proposals, applicable preferences, and the outcome of any negotiations where applicable. Other factors may not be used in the evaluation.
  6. Application of public records to proposals. The Port may open proposals in a manner to avoid disclosing contents to competing proposers during the

process of negotiation, when applicable; however, the Port shall record and make available the identity of all proposers as part of the Port's public records after the proposals are opened. Proposals are not required to be open for public inspection until after the notice of intent to award is issued, even when opened at a public meeting.

7. Notice of intent to award. At least 7 calendar days before the award, the Port shall provide written notice of its intent to award a contract to each proposer who was evaluated in the final competitive tier. If the General Manager determines that circumstances justify prompt execution of the contract, a shorter notice period may be established, provided that the specific reasons for the shorter notice period are documented in the procurement file.
8. Finality. The Port's award shall not be final until the later of either: the expiration of the protest period pursuant to OAR 137-047-0740, or as set forth in the notice of intent to award if different, or after the Port provides written responses to all timely-filed protests denying the protests and affirming the award.

**F. Retroactive Approval.** Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The General Manager may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the General Manager, along with a written request for contract retroactive approval, that contains:

1. An explanation of the reason the work was commenced before the contract was awarded or executed;
2. A description of steps being taken to prevent similar occurrences in the future;
3. Evidence that, but for the failure to award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
4. A proposed form of contract.

## **V. Goods or Services.**

**A. Small Procurements.** Contracts or purchases of goods or services with a contract price of \$10,000 or less are small procurements. Small procurements are not subject to competitive bidding requirements and no public notice is required.

1. For small procurements of goods or services, the General Manager may use any procurement method the General Manager deems practical or convenient, including direct negotiation or direct award.
2. A small procurement contract awarded may be amended to exceed \$10,000 only in accordance with OAR 137-047-0800, provided that the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price.

**B. Intermediate Procurements.** Contracts for goods or services with a

contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements.

1. Intermediate procurements may be by informal written solicitation.
2. Negotiations. The General Manager may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal, or solicitation acceptable or more advantageous to the Port.
3. Award. If a contract is awarded, the award shall be made to the offeror whose competitive quote or proposal or informal written solicitation the General Manager determines will best serve the interests of the Port, taking into account:
  - Price
  - Experience and expertise
  - Product functionality and suitability for a particular purpose
  - Satisfaction of the Port with the offeror's work, in other contracts between the offeror and the Port.
  - Contractor responsibility under ORS 279B.110 standards
  - Any other relevant considerations
4. An intermediate procurement contract may be amended to exceed \$150,000 only in accordance with OAR 137-047-0800, provided that the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price.

**C. Large Procurements.** Contracts for goods or services with a contract price greater than \$150,000 are large procurements.

1. The General Manager may use competitive sealed bidding as set forth in ORS 279B.055 and these Rules, or competitive sealed proposals as set forth in ORS 279B.060 and these Rules.
2. The Port shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.

## **VI. Personal Services.**

**A. Classification of Services as Personal Services.** In addition to the classes of personal services contracts identified in the definition of personal services contracts, the General Manager may designate certain service contracts or classes of service contracts as personal services contracts. In determining whether a service is a personal service, the General Manager shall consider:

1. Whether the work requires specialized skill, knowledge, or resources, such as technical or scientific expertise; or requires the exercise of discretion, such as artistic, creative, or the exercise of professional, artistic, or management discretion or judgment;

2. Whether the Port intends to rely on the contractor's specialized skills, knowledge, and expertise to accomplish the work; and
3. Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the Port's needs and result in obtaining satisfactory contract performance and optimal value.
4. A service shall not be classified as personal services for the purposes of these Rules if:
  - a. The work has traditionally been performed by contractors selected primarily on the basis of price; or
  - b. The services do not require specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment.

**B. Requests for Qualifications.** At the General Manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations, or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
2. A request for qualifications may require information including, but not limited to:
  - a. The contractor's particular capability to perform the required personal services;
  - b. The number of experienced personnel available to perform the required personal services;
  - c. The specific qualifications and experience of personnel;
  - d. A list of similar personal services the contractor has completed;
  - e. References concerning past performance; and
  - f. Any other information the General Manager deems necessary to evaluate the contractor's qualifications.
3. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time, and location of the meeting.
4. Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, then all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of

any required personal services and have an opportunity to submit a proposal in response to request for proposals.

**C. Direct Appointment.** Personal services may be procured through direct negotiations and award if:

1. The estimated contract price does not exceed \$100,000 and the work is within a budgetary appropriation or approved by the Port Commission; or
2. The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the Port may have an interest; or
3. The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
4. Amendments. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
5. Public Notice. No public notice of personal services contracts procured by direct negotiations is required.

**D. Solicitations.** Personal Services that do not qualify for direct appointment under subsection (C) may be procured through the same process the Port is authorized to use for the procurement of professional services.

## **VII. Professional Services**

**A. Direct Appointment.** The Port may enter into a contract directly with a consultant providing professional services without following the selection procedures set forth elsewhere in these Rules if:

1. The Port finds that an Emergency exists; or
2. The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
3. Where a project is being continued, as more particularly described below, and where the estimated fee will not exceed \$250,000, the professional services to be performed under the contract meet the following requirements:
  - a. The services consist of professional services that have been substantially described, planned or otherwise previously studied in an earlier contract with the same consultant and are rendered for the same project as the professional services rendered under the earlier contract;

- b. The estimated fee to be made under the Contract does not exceed \$250,000; and
  - c. The Port used either a formal selection procedure at the time of original selection to select the consultant for the earlier contract; or
4. Where a Project is being continued, as more particularly described below, and where the estimated fee is expected to exceed \$250,000, the professional services to be performed under the contract meet the following requirements:
- a. The services consist of or are related to professional services that have been substantially described, planned or otherwise previously studied under an earlier contract with the same consultant and are rendered for the same project as the professional services rendered under the earlier contract;
  - b. The Port used a formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier contract; and
  - c. The Port makes written findings that entering into a contract with the consultant, whether in the form of an amendment to an existing contract or a separate contract for the additional scope of services, will:
    - i. Promote efficient use of public funds and resources and result in substantial cost savings to the Port; and,
    - ii. Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract.
5. The Port may select a consultant for a contract under this section of the Rules from the following sources:
- a. A list of consultants the Port creates under OAR 137-048-0120 (List of Interested Consultants; Performance Record);
  - b. Another contracting agency's list of consultants that the contracting agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that contracting agency; or
  - c. All consultants offering the required professional services that the Port reasonably can identify under the circumstances.
6. The Port shall direct negotiations with a consultant selected under this section of the Rules toward obtaining written agreement on:
- a. The consultant's performance obligations and performance schedule;
  - b. Payment methodology and a maximum amount payable to the consultant for the professional services required under the contract that is fair and reasonable to the Port as determined solely by the Port, taking into account the value, scope, complexity and nature of the professional

services; and

- c. Any other provisions the Port believes to be in the Port's best interest to negotiate.

**B. Informal Solicitations.** An informal written solicitation process may be used for professional services when the contract price is less than \$250,000.

1. The Port may use the informal selection procedure on the basis of qualifications alone, or, for related services, on the basis of price and qualifications, if the Port:
  - a. Creates a request for proposals that includes at a minimum the following:
    - i. A description of the project for which a consultant's professional services or related services are needed and a description of the professional services or related services that will be required under the resulting contract;
    - ii. The anticipated contract performance schedule;
    - iii. Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including construction services;
    - iv. The date and time proposals are due and other directions for submitting proposals;
    - v. Criteria upon which the most qualified consultant will be selected. Selection criteria may include, but are not limited to, the following:
      - The amount and type of resources and number of experienced staff the consultant has committed to perform the professional services or related services described in the request for proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the professional services or related services;
      - Proposed management techniques for the professional services or related services described in the request for proposals;
      - A consultant's capability, experience and past performance history and record in providing similar professional services or related services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;
      - A consultant's approach to professional services or related services described in the request for proposals and design philosophy, if applicable;
      - A Consultant's geographic proximity to and familiarity



with the physical location of the project;

- Volume of work, if any, previously awarded to a consultant, with the objective of effecting equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most qualified consultant for the type of professional services required;
  - A consultant's ownership status and employment practices regarding women, minorities, service-disabled veterans, emerging small businesses, or historically underutilized businesses;
  - If the Port is selecting a consultant to provide related services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
- vi. A statement that proposers do so solely at their expense, and Port is not responsible for any proposer expenses associated with the request for proposals;
- vii. A statement directing proposers to the applicable protest procedures; and
- viii. A sample form of the contract.
- b. Provides a request for proposals to a minimum of five (5) prospective consultants. If fewer than five (5) prospective consultants are available, the Port shall provide the request for proposals to all available prospective consultants and shall maintain a written record of the Port's efforts to locate available prospective consultants for the request for proposals. The Port shall draw prospective consultants from:
- i. The Port's list of consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);
  - ii. Another contracting agency's list of consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or
  - iii. All consultants that the Port reasonably can locate that offer the desired professional services or related services, or any combination of the foregoing.
- c. Reviews and ranks all proposals received according to the criteria set forth in the request for proposals, and select the three highest ranked proposers.

2. The Port may use the informal selection procedure for related services on the

basis of price proposals and other pricing information alone if the Port:

- a. Creates a request for proposals that includes at a minimum the following:
    - i. A description of the project for which a consultant's Related services are needed and a description of the related services that will be required under the resulting contract;
    - ii. The anticipated contract performance schedule;
    - iii. Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including construction services;
    - iv. The date and time proposals are due and other directions for submitting proposals;
    - v. Any minimum or pass-fail qualifications that the proposers must meet, including but not limited to any such qualifications in the subject matter areas described in these Rules applicable to a request for proposals for professional services that are related to the related services described in the request for proposals;
    - vi. Pricing criteria upon which the highest ranked consultant will be selected. pricing criteria may include, but are not limited to, the total price for the related services described in the request for proposals, consultant pricing policies and other pricing information such as the consultant's estimated number of staff hours needed to perform the related services described in the request for proposals, expenses, hourly rates and overhead;
    - vii. A statement directing proposers to the applicable protest procedures; and
    - viii. A sample form of the Contract.
  - b. Provides the request for proposals to a minimum of five (5) prospective consultants. If fewer than five (5) prospective consultants are available, the Port shall provide the request for proposals to all available prospective consultants and shall maintain a written record of the Port's efforts to locate available prospective consultants for the request for proposals. The Port shall draw prospective Consultants from sources similar to the sources authorized for requests for proposals for professional services
  - c. Reviews and ranks all responsive proposals received, according to the total price for the related services described in the request for proposals, consultant pricing policies and other pricing information requested in the request for proposals, including but not limited to the number of hours proposed for the related services required, expenses, hourly rates and overhead, and select the three highest-ranked proposers.
3. When the estimated fee in an informal selection procedure is expected not to exceed \$150,000, the Port is only required to provide the request for

proposals to three (3) prospective consultants. If fewer than three (3) prospective consultants are available, the Port shall provide the request for proposals to all available prospective consultants and shall maintain a written record of the Port's efforts to locate available prospective consultants for the request for proposals.

4. If the Port does not cancel a request for proposals after it reviews the proposals and ranks each proposer, the Port will begin negotiating a contract with the highest ranked proposer. The Port shall direct contract negotiations toward obtaining written agreement on the following:
  - a. The consultant's performance obligations and performance schedule;
  - b. Payment methodology and a maximum amount payable to the consultant for the professional services or related services required under the contract that is fair and reasonable to the Port as determined solely by the Port, taking into account the value, scope, complexity and nature of the professional service and related services; and
  - c. Any other provisions the Port believes to be in the Port's best interest to negotiate.
5. The Port shall, either orally or in writing, formally terminate negotiations with the highest ranked proposer, if the Port and the proposer are unable for any reason to reach agreement on a contract within a reasonable amount of time. The Port may thereafter negotiate with the second ranked proposer, and if necessary, with the third ranked proposer, in accordance with this section of the Rules, until negotiations result in a contract. If negotiations with any of the top three proposers do not result in a contract within a reasonable amount of time, the Port may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this section or proceed with a formal solicitation.
6. The Port shall terminate the informal selection procedure and proceed with the formal selection procedure if the scope of the anticipated contract is revised during negotiations so that the estimated fee will exceed \$250,000.

**C. Formal Selection Procedure.** For contracts with consultants providing professional services that do not qualify for direct appointment or the informal selection procedure, the Port shall enter into the contract through the formal selection procedure set forth in OAR 137-048-0220.

## **VIII. Public Improvements.**

- A.** The Port may directly appoint a consultant for a public improvement, if the estimated cost of the professional services for the project does not exceed \$100,000.
- B.** For all other public improvement procurements, the Port shall follow the procedures set forth in the Public Contracting Code for all contracts relating to construction services for the development of a public improvement.

## IX. Alternative Source Selection Methods.

**A. Sole-Source Procurements.** A contract may be awarded as a sole-source procurement without competition pursuant to this section.

1. Determination of Sole Source. Before a sole-source contract may be awarded, the General Manager shall make written findings that the goods or services, personal services, or professional services are available from only one source, based on one or more of the following criteria:
  - a. The efficient use of existing goods or services, personal services, or professional services requires the acquisition of compatible goods or services, personal services, or professional services that are available from only one source;
  - b. The goods or services, personal services, or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;
  - c. The goods or services, personal services, or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or
  - d. Other facts or circumstances exist that support the conclusion that the goods or services, personal services, or professional services are available from only one source.
2. Negotiations. To the extent reasonably practical, contract terms advantageous to the Port shall be negotiated with the sole source provider.
3. Notice. The General Manager shall post notice of any determination that the sole source selection method will be used on the Port's website not less than seven (7) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services, or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

**B. Special Procurements.** The Port Commission, upon its own initiative or upon request of the General Manager, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

1. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the Port Commission that contains the following:
  - a. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
  - b. The estimated contract price, and the estimated cost of the project, if

relevant;

- c. Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
- d. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
- e. A description of the proposed alternative contracting methods to be employed; and

2. In making a determination regarding a special selection method, the Port Commission may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

3. Hearing. The Port shall approve the special solicitation or exemption after a public hearing before the Port Commission.

- a. At the public hearing, the Port shall offer an opportunity for any interested party to appear and present comment.
- b. The Port Commission shall consider the findings and may approve the exemption as proposed or as modified by the Port Commission after providing an opportunity for public comment.

**C. Special Procurement Classes.** The following classes of contracts are special procurements that may be awarded in any manner that the General Manager deems appropriate to the Port's needs, including by direct appointment or direct purchase. Except where otherwise provided, the General Manager shall make a record of the method of award in the procurement file.

1. Advertising. Contracts for the placement of notices or advertisements in any medium.
2. Columbia Gorge Sternwheeler Operations. Contracts for third-party operations and contracts for any facilities associated with those operations.
3. Concession Agreements. Contracts for the operation of a particular business using Port property or on Port jurisdiction.
4. Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
5. Corrective Services. Contracts entered into for the purpose of rectifying, repairing, or remedying the work unsatisfactorily performed by a contractor.
6. Equipment Repair. Contracts for equipment repair or overhauling,

provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

7. Government-Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
8. In-Kind Replacement. Purchases of an identical good (which may include incidental services) to a good that is being replaced.
9. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Port.
10. Specialty Goods for Resale. Contracts for the purchase of specialty goods by the Port for resale to consumers.
11. Sponsorship Agreements. Sponsorship agreements, under which the Port receives a gift or donation in exchange for recognition of the donor.
12. Surplus Goods. The purchase of goods from government surplus auctions or government sales.
13. Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
14. Temporary Extensions or Renewals. Contracts for a single period of one (1) year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
15. Temporary Use of Port-Owned Property. The Port may negotiate and enter into a license, permit, or other contract for the temporary use of Port-owned property without using a competitive selection process if:
  - a. The contract results from an unsolicited proposal to the Port based on the unique attributes of the property or the unique needs of the proposer;
  - b. The proposed use of the property is consistent with the Port's use of the property and the public interest; and
  - c. The Port reserves the right to terminate the contract without penalty, in the event that the Port determines that the contract is no longer consistent with the Port's present or planned use of the property or the public interest.
16. Used Goods. The General Manager may contract for the purchase of used goods by direct negotiation, if the General Manager determines such goods are substantially similar to new goods; would be suitable for the Port's needs; and can be purchased for a lower cost than the new goods.
  - a. For this purpose, the cost of used goods shall be based upon the life-cycle cost of the goods over the period of time for which the good is reasonably expected to be used by the Port.

b. The General Manager shall record the findings that support the purchase.

17. Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

18. Conference and Meeting Room Contracts. Contracts entered into for meeting room rentals, hotel rooms, food and beverage, and incidental costs related to conferences and Port-sponsored workshops and trainings.

**D. Emergency Procurements.** When the General Manager determines that immediate execution of a contract or purchase is necessary to prevent a risk of substantial damage or injury to persons or property, the General Manager may execute the contract or enter into the purchase without competitive selection and award or Port Commission approval, but, where time permits, competitive quotes should be sought from at least three providers.

1. When the General Manager enters into an emergency contract, the General Manager shall, as soon as possible in light of the emergency circumstances, document in the Procurement Fil, the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the Port and the public.
2. The General Manager shall also notify the Port Commission of the facts and circumstances surrounding the emergency execution of the contract.

**E. Cooperative Procurements.** Cooperative procurements may be made without competitive solicitation, as provided in the Public Contracting Code.

## **X. Protest and Appeal Procedures.**

**A. Protests and Judicial Review of Special Procurements.** An affected person may protest the request for approval of a special procurement as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the General Manager within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice. The protest period begins on the date the first notice was published in any form.
  - a. The written protest shall include a fee in an amount established in a schedule adopted by the General Manager to cover the costs of processing the protest.
  - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:
  - a. Identification of the requested special procurement;
  - b. A detailed statement of the legal and factual grounds for the protest;

- c. Evidence or documentation supporting the grounds on which the protest is based;
  - d. A description of the resulting harm to the affected person; and
  - e. The relief requested.
3. Additional Information. The General Manager may allow any person to respond to the protest in any manner the General Manager deems appropriate, by giving such persons written notice of the time and manner whereby any response shall be delivered.
  4. Port Response. The General Manager shall issue a written disposition of the protest in a timely manner.
    - a. If the General Manager upholds the protest, in whole or in part, the General Manager may, in the General Manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
    - b. If the General Manager upholds the protest, in whole or in part, the Port shall refund the fee required to be delivered with the protest.
  5. Judicial Review. An affected person may not seek judicial review of a denial of a request for a special procurement.
    - a. Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
    - b. Judicial review shall be in accordance with ORS 279B.400.

**B. Protests and Judicial Review of Sole-Source Procurements.** An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the General Manager within seven (7) days after the first date of public notice of a proposed sole source procurement is placed on the Port's website, unless a different period is provided in the public notice.
  - a. The written protest shall include a fee in an amount established in a schedule adopted by the General Manager to cover the costs of processing the protest.
  - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:
  - a. A detailed statement of the legal and factual grounds for the protest;
  - b. Evidence or documentation supporting the grounds on which the protest is based;
  - c. A description of the resulting harm to the affected person; and



- d. The relief requested.
- 3. Additional Information. The General Manager may allow any person to respond to the protest in any manner the General Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
- 4. General Manager Response. The General Manager shall issue a written disposition of the protest in a timely manner.
  - a. If the General Manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.
  - b. If the General Manager upholds the protest, in whole or in part, the Port shall refund the fee required to be delivered with the protest.
- 5. Judicial Review. An affected person may not seek judicial review of an election not to make a sole-source procurement.
  - a. Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.
  - b. Judicial review shall be in accordance with ORS 279B.400.

**C. Protests and Judicial Review of Personal Services Procurements.** An affected person may protest the procurement of a personal services contract as provided in this section.

- 1. Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the General Manager.
  - a. The written protest shall include a fee in an amount established in a schedule adopted by the General Manager to cover the costs of processing the protest.
  - b. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.
  - c. Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.
  - d. Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.
- 2. Contents of Protest. The written protest shall:
  - a. Specify all legal or factual grounds for the protest as follows:
    - i. A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of these Rules or applicable law. The protest shall identify the specific provision of these Rules or applicable law that was violated.

- ii. A person may protest award or intent to award for the reason that:
    - All proposals ranked higher than the affected persons are nonresponsive;
    - The Port failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
    - The Port abused its discretion in rejecting the affected person's proposal as nonresponsive; or
    - The evaluation of proposals or the subsequent determination of award is otherwise in violation of these Rules or applicable law.
  - iii. The protest shall identify the specific provision of these Rules or applicable law that was violated by the Port's evaluation or award;
  - b. Include evidence or supporting documentation that supports the grounds on which the protest is based;
  - c. A description of the resulting harm to the affected person; and
  - d. The relief requested.
3. Additional Information. The General Manager may allow any person to respond to the protest in any manner the General Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
  4. General Manager Response. The General Manager shall issue a written disposition of the protest in a timely manner.
    - a. If the General Manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.
    - b. If the General Manager upholds the protest, in whole or in part, the Port shall refund the fee required to be delivered with the protest.
  5. Judicial Review. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

**D. Protests of Cooperative Procurements.** Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the Port only if the Port is the administering agency and under the applicable procedure described herein.

**E. Protests of Specifications and Other Protests.** An affected person may file a protest with the General Manager, if the affected person believes that the procurement process used is contrary to law, or that a solicitation document or specification is unnecessarily restrictive, legally flawed, or improperly specifies a

brand name.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the General Manager within seven (7) days after the earlier of: (i) the first date of publication of the specification, solicitation document, or proposed procurement; or (ii) the first date that public notice of the specification, availability of the solicitation document, or proposed procurement is placed on the Port's website, unless a different period is provided in the publication or public notice.
  - a. The written protest shall include a fee in an amount established in a schedule adopted by the General Manager to cover the costs of processing the protest.
  - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:
  - a. Sufficient information to identify the solicitation that is the subject of the protest;
  - b. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document or specification is unnecessarily restrictive, legally flawed, or improperly specifies a brand name;
  - c. Evidence or documentation supporting the grounds on which the protest is based;
  - d. A description of the resulting harm to the affected person; and
  - e. The relief requested.
3. General Manager Response. The General Manager shall consider all protests timely and completely filed, and shall issue a written disposition of the protest in a timely manner.
4. Judicial Review. An affected person who has first exhausted all administrative remedies and timely and completely filed a protest under this section may seek judicial review as provided under ORS 279B.40.