

RESOLUTION NO. 1819-04

A RESOLUTION OF BOARD OF DIRECTORS OF TIGARD-TUALATIN SCHOOL DISTRICT NO. 23J, ACTING AS THE LOCAL PUBLIC CONTRACT REVIEW BOARD, AMENDING THE DISTRICT'S PUBLIC CONTRACTING RULES TO REFLECT AMENDMENTS TO THE PUBLIC CONTRACTING CODE MADE BY THE LEGISLATURE SINCE 2012 AND TO OAR CHAPTER 137 BY THE ATTORNEY-GENERAL.

WHEREAS, the Board of Directors of Tigard-Tualatin School District No. 23J ("District") acts as the Local Public Contract Review Board ("Board") pursuant to ORS 279A.060; and

WHEREAS, the District operates under its own set of Public Contract Rules adopted under ORS 279A.065 ("2012 District Rules"); and

WHEREAS, the Oregon Legislative Assembly has adopted amendments to Public Contracting Code, ORS Chapters 279A, 279B, and 279C, since 2012; and

WHEREAS, the Attorney General has amended the Model Public Contracting Rules in OAR Chapter 137 (A.G. Model Rules) to implement the amendments; and

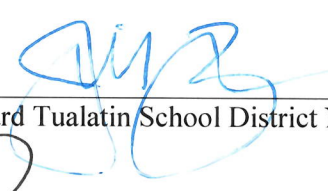
WHEREAS, ORS 279A.065 (5)(b) requires the Board to review any amendments to the A.G. Model Rules to determine whether the Board should modify the District's rules to ensure compliance with statutory changes; and

WHEREAS, the Board deems it necessary and advisable to adopt updated Rules to address these statutory and rule changes and other District policy issues;

BE IT RESOLVED:

1. The Board hereby amends its 2012 District Rules as provided in attached Exhibit A ("2018 District Rules").
2. The Board adopts an amendment to an existing class special procurement (Section 427) and adopts additional class special procurements pursuant to ORS 279B.085 as described in Attached Exhibit B.
3. The Board adopts one additional class exemption for public improvement contracts pursuant to ORS 279C.335 as described in Attached Exhibit B.

DATED this 8th day of October, 2018.



Tigard Tualatin School District No. 23J Board of Directors

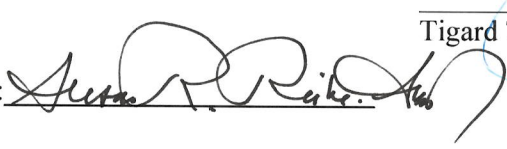
ATTEST: 

EXHIBIT A
TIGARD-TUALATIN SCHOOL DISTRICT NO. 23J
PUBLIC CONTRACTING RULES —~~2012~~— 2018

100 ADMINISTRATION.

105 District Rules.

Pursuant to ORS 279A.065(5), the District elects to establish its own rules of procedure for public contracts ("Rules"). The Model Rules adopted by the attorney general under ORS 279A.065(1) do not apply to the District, except as expressly incorporated by reference in Section 130 of these Rules.

110 Definitions.

(1) District: Tigard-Tualatin School District No. 23J.

(2) District Contract: Means all Contracts entered into by the District, including Public Contracts subject to the Public Contracting Code and Rule 130 of these Rules, Contracts to which the Public Contracting Code does not apply, intergovernmental agreements, settlement agreements, Contracts for the purchase, conveyance, acceptance, sale, or lease of real property or an interest in real property, and all other Contracts or agreements entered into by the District.

(3) Public Contract: District Contracts subject to the Public Contracting Code.

(2)(4) School Board: The District Board of Directors pursuant to ORS Chapter 332.

(5) Superintendent: The District Superintendent or the Superintendent's designee.

(3)(6) Chief Financial Officer: The District Chief Financial Officer.

115 Local Public Contract Review Board.

The School Board is the District Local Public Contract Review Board pursuant to ORS 279A.060.

120 Authority to Approve and Execute District Contracts; Administer Rules.

(1) Except as otherwise provided in these Rules, the powers and duties of the local contract review board under the Public Contracting Code or the Model Public Contracting Rules incorporated by

reference in these Rules shall be exercised and performed by the School Board.

(2) Except as otherwise provided in these Rules, all powers and duties given or assigned to Contracting Agencies by the Public Contracting Code or the Model Public Contracting Rules incorporated by reference in these Rules shall be exercised by the Superintendent. The Superintendent may designate any District employee or employees to exercise all or a portion of the Superintendent's powers and duties under these Rules.

(3) Pursuant to ORS 279A.075 and 332.075(3), and except as expressly limited by other School Board policy, the School Board delegates to the Superintendent the authority to enter into and approve payment on District Contracts in the following circumstances:

(a) The District Contract is within appropriations made by the School Board; and

(b) Any of the following circumstances apply:

(i) The total amount payable by the District under the individual District Contract does not exceed \$~~400,000~~150,000;

(ii) The District Contract is for routine and customary expenditures, including but not limited to payroll, payroll taxes and benefits, utility bills, and postage;

(iii) Advance authorization has been given by the School Board for the Superintendent to execute a particular District Contract or class of District Contracts;

(iv) The District Contract is an Emergency Procurement;

(v) The District Contract is a Change Order or Contract Amendment to a prior-approved Contract authorized under these Rules; or

(vi) These Rules otherwise expressly authorize the Superintendent to approve the Contract.

(2) The delegation of contracting authority to the Superintendent in subsection (3) does not apply to a collective bargaining agreement or a Service Contract that includes the provision of labor performed by employees of the School District as defined in ORS 332.075(3), or to a Contract for the purchase, conveyance, acceptance, sale, or lease of real property or an interest in real property unless the School Board has expressly authorized the Superintendent to negotiate and/or execute such real property contract pursuant to Section 2(b)(ii).

(3) Except as provided in subsection (23) of this section, the School Board must approve all District contracts.

130 Model Public Contracting Rules Incorporated by Reference.

Certain provisions of the Model Public Contracting Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065(1) ("Model Rules") and in effect on January 1, ~~2012~~, 2018, are incorporated by reference in these Rules as provided in this section. Decisions by the District to modify a particular Rule are set forth in this section in italics. The following provisions are applicable to all public contracts of the District, as defined in ORS 279A.010 and 279A.025, except as noted. Conflicts between the Model Rules incorporated by reference and the District's Rules are resolved in favor of the District's Rules. References to "Contracting Agency" or "Agencies" in the incorporated Model Rules mean the District.

NOTE: See Appendix A for a table showing the dollar thresholds that govern the procurement procedures required under the following rules.

(1) OAR Chapter 137 Division 46 (General Provisions Relating to Public Contracting). The following provisions are applicable to all public contracting of the District, as defined in ORS 279A.010 and 279A.025, except as noted.

137-046-0100 Content and General Application; Federal Law Supremacy

137-046-0110 Definitions for the Model Rules

137-046-0120 Policy

137-046-0130 Application of the Code and Model Rules; Exceptions

Minorities, Women and Emerging Small Businesses

137-046-0210 Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

Contract Preferences

137-046-0300 Preference for Oregon Goods and Services

Modification: The District does not adopt OAR 137-046-0300(5), which allows a local contracting agency to grant a percentage preference for goods, services, or personal services as permitted by ORS 279A.128. The District elects not to grant such preferences.

137-046-0310 Reciprocal Preferences

137-046-0320 Preference for Recycled Materials

Cooperative Procurement

137-046-0400 Authority for Cooperative Procurements

137-046-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

137-046-0420 Joint Cooperative Procurements

137-046-0430 Permissive Cooperative Procurements

137-046-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

137-046-0450 Interstate Cooperative Procurements

137-046-0460 Advertisements of Interstate Cooperative Procurements

137-046-0470 Protests and Disputes

137-046-0480 Contract Amendments

(2) OAR Chapter 137 Division 47 (Public Procurement for Goods and Services General Provisions).

General Provisions

137-047-0000 Application

137-047-0100 Definitions

Source Selection

137-047-0250 Source Selection

137-047-0255 Competitive Sealed Bidding

137-047-0257 Multistep Sealed Bidding

137-047-0260 Competitive Sealed Proposals

137-047-0261 Multi-tiered and Multistep
Proposals

137-047-0265 Small Procurements

Modification: The Superintendent shall have the authority to establish specific requirements for procurement of goods and services less than or equal to ~~\$5,000~~ 10,000 as the Superintendent determines is in the best interests of the District.

137-047-0270 Intermediate Procurements

137-047-0275 Sole-Source Procurements
Modification: The Superintendent is delegated the authority to determine whether goods and services or a class of goods and services are available from only one source pursuant to ORS 279B.075.

137-047-0280 Emergency Procurements

137-047-0285 Special Procurements

137-047-0290 Cooperative Procurements

Procurement Process

137-047-0300 Public Notice of Solicitation Documents

137-047-0310 Bids or Proposals are Offers

137-047-0320 Facsimile Bids and Proposals

137-047-0330 Electronic Procurement

Bid and Proposal Preparation

137-047-0400 Offer Preparation

137-047-0410 Offer Submission

137-047-0420 Pre-Offer Conferences

137-047-0430 Addenda to Solicitation Document

137-047-0440 Pre-Closing Modification or Withdrawal of Offers

137-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

137-047-0460 Late Offers, Late Withdrawals, and Late Modifications

137-047-0470 Mistakes

137-047-0480 Time for Agency Acceptance
Modification: An Offeror's Offer is a Firm Offer, irrevocable, valid, and binding on the Offeror for not less than sixty (60) days following closing, unless otherwise specified in the Solicitation Document.

137-047-0490 Extension of Time for Acceptance of Offer

Qualifications and Duties

137-045-0500 Responsibility of Bidders and Proposers

137-047-0525 Qualified Products Lists

137-047-0550 Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions

137-047-0575 Debarment of Prospective Offerors

Offer Evaluation and Award

137-047-0600 Offer Evaluation and Award

137-047-0610 Notice of Intent to Award

137-047-0620 Documentation of Award

137-047-0630 Availability of Award Decisions

137-047-0640 Rejection of an Offer

137-047-0650 Rejection of All Offers

137-047-0660 Cancellation of Procurement or Solicitation

137-047-0670 Disposition of Offers if Procurement or Solicitation Canceled

Legal Remedies

137-047-0700 Protests and Judicial Review of Special Procurements

137-047-0710 Protests and Judicial Review of Sole-Source Procurements

137-047-0720 Protests and Judicial Review of Multi-tiered and Multistep Solicitations

137-047-0730 Protests and Judicial Review of Solicitations

137-047-0740 Protests and Judicial Review of Contract Award

137-047-0750 Judicial Review of Other Violations

137-047-0760 Review of Prequalification and Debarment Decisions

137-047-0800 Amendments to Contracts and Price Agreements

137-047-0810 Termination of Price Agreements

(3) OAR Chapter 137 Division 48 (Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts).

137-048-0100 Application; Effective Date

137-048-0110 Definitions

137-048-0120 List of Interested Consultants;
Performance Record

137-048-0130 Applicable Selection Procedures;
Pricing Information; Disclosure of Proposals;
Conflicts of Interest

Selection Procedures

137-048-0200 Direct Appointment Procedure

137-048-0210 Informal Selection Procedure

137-048-0220 Formal Selection Procedure

137-048-0230 Ties Among Proposers

137-048-0240 Protest Procedures

137-048-0250 Solicitation Cancellation; Consultant
Responsibility for Costs

137-048-0260 Two-Tiered Selection Procedure for
Local Contracting Agency Public Improvement
Projects

137-048-0270 Price Agreements

Post Selection Considerations

137-048-0300 Prohibited Payment Methodology;
Purchase Restrictions

137-048-0310 Expired or Terminated Contracts;
Reinstatement

137-048-0320 Contract Amendments

(4) OAR Chapter 137 Division 49 (General
Provisions Related to Public Contracts for
Construction Services).

137-049-0100 Application

137-049-0110 Policies

137-049-0120 Definitions

137-049-0130 Competitive Bidding Requirement

137-049-0140 Contracts for Construction Other
than Public Improvements

137-049-0150 Emergency Contracts; Bidding and
Bonding Exemptions

137-049-0160 Intermediate Procurements;
Competitive Quotes and Amendments

Formal Procurement Rules

137-049-0200 Solicitation Documents; Required
Provisions; Assignment or Transfer

137-049-0210 Notice and Advertising
Requirements; Posting

137-049-0220 Prequalification of Offerors

137-049-0230 Eligibility to Bid or Propose;
Registration or License

137-049-0240 Pre-Offer Conferences

137-049-0250 Addenda to Solicitation Documents

137-049-0260 Request for Clarification or
Change; Solicitation Protests

137-049-0270 Cancellation of Solicitation
Document

137-049-0280 Offer Submissions

137-049-0290 Bid or Proposal Security

137-049-0300 Facsimile Bids and Proposals

137-049-0310 Electronic Procurement

137-049-0320 Pre-Closing Modification or
Withdrawal of Offers

137-049-0330 Receipt, Opening, and Recording
of Offers; Confidentiality of Offers

137-049-0340 Late Bids, Late Withdrawals, and
Late Modifications

137-049-0350 Mistakes

137-049-0360 First-Tier Subcontractors;
Disclosure and Substitution

137-049-0370 Disqualification of Persons

137-049-0380 Bid or Proposal Evaluation Criteria

137-049-0390 Offer Evaluation and Award;
Determination of Responsibility

137-049-0400 Documentation of Award;
Availability of Award Decisions

137-049-0410 Time for Contracting Agency
Acceptance; Extension

*Modification: An Offeror's Offer is a Firm Offer,
irrevocable, valid, and binding on the Offeror for not*

less than sixty (60) days following closing, unless otherwise specified in the Solicitation Document.

137-049-0420 Negotiation With Bidders Prohibited

137-049-0430 Negotiation When Bids Exceed Cost Estimate

137-049-0440 Rejection of Offers

137-049-0450 Protest of Contractor Selection; Contract Award

137-049-0460 Performance and Payment Security; Waiver

Addition: The Superintendent may, in the Superintendent's discretion, elect to require performance bonds and payment bonds pursuant to ORS 279C.380 for Public Improvement Contracts less than \$100,000.

137-049-0470 Substitute Contractor

137-049-0490 Foreign Contractor

Alternative Contracting Methods

137-049-0600 Purpose

137-049-0610 Definitions for Alternative Contracting Methods

137-049-0620 Use of Alternative Contracting Methods

137-049-0630 Findings, Notice, and Hearing

137-049-0640 Competitive Proposals; Procedure

137-049-0645 Requests for Qualifications (RFQ)

137-049-0650 Requests for Proposals (RFP)

137-049-0660 RFP Pricing Mechanisms

137-049-0670 Design-Build Contracts

137-049-0680 Energy Savings Performance Contracts (ESPC)

137-049-0690 Construction Manager/General Contractor (CM/GC)

Contract Provisions

137-049-0800 Required Contract Clauses

137-049-0810 Waiver of Delay Damages Against Public Policy

137-049-0815 BOLI Public Works Bond

137-049-0820 Retainage

137-049-0830 Contractor Progress Payments

137-049-0840 Interest

137-049-0850 Final Inspection

137-049-0860 Public Works Contracts

137-049-0870 Specifications; Brand Name Products

Modification. The Superintendent is delegated the authority to determine whether goods and services or a class of goods and services should be exempt under ORS 279C.345(2) from the requirements of ORS 279C.345(1).

137-049-0880 Records Maintenance; Right to Audit Records

137-049-0890 Contracting Agency Payment for Unpaid Labor or Supplies

137-049-0900 Contract Suspension; Termination Procedures

137-049-0910 Changes to the Work and Contract Amendments

140 Classification of Mixed Contracts.

A mixed Public Contract requires the contractor to render certain services and also to provide the District with other kinds of services, goods or products. Classification of a mixed Public Contract as a Personal Services Contract, Architectural and Engineering Services Contract, Information Technology Contract, or other kind of Public Contract is determined by the mixed Public Contract's predominant purpose. A mixed Public Contract's predominant purpose is determined by whether the majority of the amounts paid or received under the mixed Public Contract will be for a particular kind of service (personal, architectural, engineering, land surveying or related services, information technology, or other kinds of service) or for the acquisition of goods or products. The Superintendent is delegated the authority to make a reasonable classification of Public Contract type pursuant to this Rule. The Contract shall be solicited pursuant to this Classification.

200 PERSONAL SERVICES CONTRACTS.

210 Personal Services Contract Definition.

(1) Pursuant to ORS 279A.055(2), a Contract for "Personal Services" is a Contract primarily for the provision of services that requires specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of services depends on attributes that are unique to the service provider.

(2) Personal Services Contracts that fall within the definition in subsection (1) of this section include, but are not limited to the following:

(a) Contracts for services performed in a professional capacity, including services of an accountant, attorney, land-use-planning consultant, appraiser, surveyor, medical professional (e.g., doctor, dentist, counselor), information technology consultant, or broadcaster;

(b) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;

(c) Contracts for services that are specialized, creative, or research-oriented;

(d) Contracts for services as a consultant;

(e) Contracts for educational services; and

(f) Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services.

(3) The School Board delegates to the Superintendent the discretion to decide whether a particular type of Contract or service falls within the definition of "Personal Services Contract" as set forth in subsections (1) and (2) of this section.

(4) "Personal Services Contract" does not include a Contract for architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services or related services subject to OAR Chapter 137 Division 48 pursuant to Section 130(3) of these Rules.

(5) The District may not use Personal Services Contracts to obtain and pay for the services of an employee. A Personal Services Contract may be used only to obtain and pay for the services of an independent contractor.

215 Formal Selection Procedures.

(1) **Formal Selection Procedure.** The District will use a formal selection procedure whenever the Superintendent determines that the amount of the Contract or complexity of the project requires use of the formal process. All formal RFP and RFQ solicitations must comply with the requirements for competitive sealed proposals contained in ORS 279B.060 and may be solicited through any of the sealed proposal procurement methods set forth in OAR 137-047-0260 to OAR 137-047-0263 that the Superintendent deems most appropriate for the particular solicitation. The selected procurement method shall be processed and reviewed pursuant to the provisions of OAR Chapter 137 Division 47 applicable to such procurement method.

(2) **Additional Requirements for a Request for Qualifications (RFQ).** An RFQ may be used to determine whether competition exists to perform the needed services or to establish a list of qualified contractors for RFPs, for informal solicitations, or for individual negotiation, as provided in these Rules.

(a) The RFQ must at least describe the particular specialty desired, the qualifications the contractor must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including but not limited to the contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services that the contractor has completed, with references concerning past performance; and any other information necessary to evaluate contractor qualifications.

(b) A qualifications presubmission meeting (voluntary or mandatory) may be held for all interested contractors to discuss the proposed services. The RFQ must include the date, time, and place of the meeting.

(c) Unless the RFQ establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements are rejected, all respondents (who met the published qualifications) will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal in response to a contracting district's subsequent RFP.

220 Informal Selection Procedures.

The Superintendent may use an informal selection process to obtain personal services when a formal selection process is not required.

(1) The informal selection process must solicit responses/proposals from at least three qualified contractors offering the required services. If three proposals are not reasonably available, fewer will suffice, but the Superintendent shall make a written record of the effort made to obtain at least three proposals.

(2) The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including but not limited to each Proposer's:

(a) Particular capability to perform the services required;

(b) Experienced staff available to perform the services required, including each Proposer's recent, current, and projected workloads;

(c) Performance history;

(d) Approach and philosophy used in providing services;

(e) Fees or costs;

(f) Geographic proximity to the project or the area where the services are to be performed; and

(g) Work volume previously awarded by the District, with the object of effecting an equitable distribution of contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.

(3) Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the District's Procurement File.

225 Selection by Negotiation.

The Superintendent may procure personal services with contractors directly through negotiation in any of the following circumstances:

(1) The Contract Price is not more than \$50,000.

(2) The Superintendent has, through an RFQ, established a list of qualified contractors for the particular project or class of project.

(3) The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such work include legal services and audit services.

(4) The contractor possesses unique knowledge and/or expertise in a specialized service area making competition impractical. Such services can include, but are not limited to special education services, community relations, and academic coaching.

~~(5) In the case of Architectural, Engineering, Land Surveying or Related Services, the services to be performed under the Contract consist of services that have been substantially described, planned, or otherwise previously studied in an earlier Contract with the same contractor and are rendered for the same project as the services rendered under the earlier Contract, and the contractor must either have been selected for the original project pursuant to a formal selection procedure, or be assisting the District with a project that is anticipated to be the subject of a claim, whether legal, equitable, administrative, or otherwise. A Contract for which a non-District funding source, e.g., a Grant or a federal, state, or city contract, identifies the Contractor in the funding award or makes a funding award conditioned upon the Service being performed by a specific Contractor. The following must be documented to the Procurement File:~~

~~(a) The name of the external funding source;~~

~~(b) The background on how the funding source selected the Contractor(s); and~~

~~(c) A copy of the funder's document naming the Contractor.~~

~~(6) A Contract where the student, parent, or other third-party participant selects the service provider and the process for selecting qualified Contractors has been approved in advance by the Chief Financial Officer.~~

~~(7) The Contract is for the provision of therapeutic placements for Special Education Students.~~

226 Disclosure of Proposals.

Consistent with the requirements of ORS 279C.107, the term "competitive proposal" includes proposals under District Rules 215 (Formal Selection Procedures), 220 (Informal Selection Procedures), and 225 (Selection by Negotiation). In the circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, the District may open proposals so as to avoid disclosure of proposal contents to competing Proposers consistent with the

requirements of ORS 279C.107. Otherwise, the District may open proposals in such a way as to avoid disclosure of the contents until after the District awards a Contract consistent with the requirement of ORS 279C.107.

230 Emergencies.

(1) The Superintendent may in its discretion enter into a Personal Services Contract without complying with formal or informal solicitation requirements if an emergency exists.

(2) The Local Contract Review Board or the Superintendent must declare the existence of an emergency in writing that will authorize the District to enter into an Emergency Contract. The Superintendent must make written findings describing the emergency conditions that require prompt execution of the Contract.

(3) The Superintendent may not contract pursuant to this exception in the absence of a substantial risk of loss, damage, or interruption of services or harm to public health, safety, or the environment that would occur if Contract performance awaited the time necessary, given the complexity of the project, to solicit, receive, and analyze proposals.

235 Contract Requirements.

District Personal Services Contracts must contain the mandatory Contract provisions set forth in ORS 279B.020, 279B.220, 279B.230, 279B.235, and, as applicable, 279B.225.

300 SPECIAL PROCUREMENTS GENERALLY.

305 Purpose.

The District may award a Public Contract as a special procurement pursuant to the requirements of ORS 279B.085, which permits class special procurements and Contract-specific special procurements for the acquisition of goods or services. Such procurements allow the District to enter into a single Contract or a series of Contracts over time without using competitive sealed bidding or competitive sealed proposals or other competitive procedures as otherwise required by these Rules.

310 Procedures.

(1) **Request.** To seek approval of a special procurement, the Superintendent shall submit a written request to the School Board as provided in ORS 279B.085(2).

(2) **Approval.** The School Board shall review and may approve a request for a special procurement pursuant to the criteria set forth in ORS 279B.085(4).

(3) **Notice.** Notice of the request and approval of a special procurement shall be provided as set forth in OAR 137-047-0285, as modified by these Rules. Once a class special procurement has been approved by the School Board, no further notice is required to award contracts pursuant to such notice.

(4) If the District plans to conduct a competitive special procurement, it shall give notice of intent to award to all prequalified offerors who sought the award of a Contract in the manner provided for competitive sealed bids.

400 CLASS SPECIAL PROCUREMENTS.

The School Board declares the following Contracts listed in this chapter as classes of special procurements for which Contracts may be awarded without using competitive sealed bidding or competitive sealed proposals or other competitive procedures as otherwise required by these Rules. Unless a process is particularly specified in these Rules, selection procedures for such class special procurements shall be as the Superintendent determines are in the best interests of the District.

401 Renegotiations of Existing Contracts with Incumbent Contractors.

(1) **Authorization.** The Superintendent or designee, acting on behalf of the District, may renegotiate and amend existing Contracts with incumbent contractors, if it is in the best interest of the District to do so.

(2) **Process and Criteria.** The Superintendent may renegotiate various items of the Contract, including but not limited to price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Superintendent must meet the following conditions in his renegotiations with incumbent contractors:

(a) **Favorable Result.** The Superintendent shall determine that, with all things considered, the renegotiated Contract is at least as favorable to the District as the Original Contract and document this in the Procurement File. For example, the District and the contractor may adjust terms and conditions within the Original Contract to meet different needs;

(b) **Within the Scope.** The goods or services provided under the renegotiated Contract must be reasonably related to the Original Contract's solicitation. For example, the District may accept functionally equivalent substitutes for any goods or services in the Original Contract's solicitation;

(c) **Optional Term or Condition.** If a contractor offers a term or condition that was rejected in the original Solicitation, the District may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the District and as only an option to the District, then the District may accept the option of a lower price under the rejected term or condition. For example, if the District initially rejected a contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the District may agree to the option to order lesser amounts or receive a reduced price based on a minimum order; and

(d) **Market.** In order to avoid encouraging favoritism or diminishing competition, the District will research the accepted competitive practices and expectations of offerors within the market for the specific Contract(s) or classes of Contracts to be renegotiated (Market Norm). If the District researches the Market Norm, the Procurement File must document its results. Based on this information, the District may confirm that, following the Market Norm is unlikely to encourage favoritism, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the District accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

402 Advertising Contracts – Purchase and Sale.

(1) **Authorization — Purchase.** The Superintendent or designee, acting on behalf of the District, may purchase media advertising, regardless of dollar value, without competitive bidding pursuant to Rule 120(3).

(2) **Process and Criteria — Purchase.** If the anticipated purchase exceeds \$150,000, the District will publish notice pursuant to Rule 130(2) (incorporating OAR 137-047-0300). The Procurement File shall document the reasons why a competitive process was deemed impractical. The

resulting Contract must be in writing and the Procurement File must document the use of this special procurement Rule by number to identify the sourcing method.

(3) **Authorization — Sale.** The Superintendent or designee, acting on behalf of the District, may authorize the sale of advertising in District publications and for District activities, regardless of dollar value, without competitive bidding pursuant to Rule 120(3).

(4) **Process and Criteria — Sale.** The District will use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed to be impractical.

403 Equipment Repair and Overhaul.

~~(5)~~(1) **Authorization.** The Superintendent or designee, acting on behalf of the District, shall comply with the requirements of this Rule for the procurement of equipment repair or overhaul services.

~~(6)~~(2) **Conditions.** The Superintendent may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

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

(b) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(c) The District purchases within the limits and pursuant to the methods in Section 7 of this Rule.

~~(7)~~(3) **Process and Criteria.** The District will use competitive methods wherever possible to achieve best value. If the anticipated purchase is less than \$150,000, the District may purchase without competitive bidding and include in the Procurement File the reasons why competitive quotes were deemed impractical. The District may then proceed directly into a Contract. If the anticipated purchase exceeds \$150,000, the District shall solicit competitive bids or proposals utilizing one of the source selection methods provided in ORS 279B and Section 130(2) of these Rules or request a specific exemption from the Local Contract Review Board.

407 Purchases Under Federal Contracts.

When the price of goods and services has been established by a Contract with the federal government pursuant to a federal contract award, the Superintendent may purchase the goods and services in accordance with the federal contract. In exercising this authority under this class special procurement, the Superintendent must:

- (1) Include in the Procurement File a memorandum confirming the federal official who granted permission to the District to purchase under the federal contract; and
- (2) Include in the Procurement File documentation showing the cost savings to be gained from anticipated purchases under the federal contract.

409 Copyrighted Materials and Creative Work.

(1) **Authorization.** The District may purchase copyrighted materials and creative work, regardless of dollar value, without competitive bidding, pursuant to this Rule.

(2) **Definitions.** Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to newly, new adopted textbooks/instructional materials, workbooks, curriculum kits, on-line curriculum, testing materials, reference materials, books, periodicals, audio and visual media, and non-mass-marketed software from a particular publisher or their designated distributor. Examples of creative work, which may or may not be copyrighted, may include paintings, sculpture, and other artwork, music, dance, theatre, and other artistic works. Works covered by this Class Special Procurement include, but are not limited to, artwork, music, uncopyrighted writings, and similar works. This class special procurement includes instructional resources (digital resources, educational resources, learning management systems, and open educational resources).

~~411 Food Contracts.~~

~~(1) **Authorization.** The intent of this Rule is to provide a method for the Superintendent to procure food products that are available for a limited time at "lower than normal" prices (also referred to as "spot buys").~~

~~(2) **Conditions.** The Superintendent may procure an unlimited dollar value of food using a competitive~~

~~bid or quote process when all the following conditions are present:~~

~~(a) A nonexclusive requirements Contract or regularly scheduled bid process already exists for the item being purchased;~~

~~(b) The proposed unit price of the item to be purchased is significantly less than a comparable item's price on an existing requirements Contract or recent bid (as described in subsection (3) of this Rule), and the amount saved exceeds any additional administrative costs incurred to purchase, using this exemption;~~

~~(c) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes);~~

~~(d) Any requirements contracts currently in place for the item being purchased contain clauses allowing for the use of this exemption; and~~

~~(e) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing requirements contract.~~

~~(3) **Process.** Purchases may be made under this exemption only after the Superintendent documents the following in its Procurement File: the Superintendent's attempt and method to obtain quotes from at least three sources; the written quote or bid, if obtained; item specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six months prior to the current purchase. When practical, written quotes are recommended.~~

413 Product Prequalification.

(1) **Authorization.** The District may enter into a Public Contract for procurement based on product(s) prequalification, pursuant to this Rule.

(2) **Process and Criteria.** The District may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following procedures:

(a) The District will make reasonable efforts to notify all known manufacturers and vendors of competing products of the District's intent to compile a list of prequalified products. The notice will explain the procedure that manufacturers and vendors of competing products must utilize to apply to have their

products included on the District's list of prequalified products. At its discretion, the District may provide such notice by:

(i) advertising in a trade publication of general statewide circulation; or

(ii) written notice to those manufacturers and vendors appearing on the appropriate list maintained by the District.

(b) The District will accept manufacturer and vendor applications to include products in the District's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or District's written notice.

(3) Denial and Protest. If the District denies an application for inclusion of a product on its list of prequalified products, the District will promptly provide the applicant with a written notice of the denial, including the reason(s) for the denial. The applicant may submit a written request to the Superintendent within 7seven calendar days of the District's notice requesting review and reconsideration of the denial.

(4) Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the Procurement File. The resulting Contract must be in writing and the Procurement File must document the use of this special procurement Rule by number to identify the sourcing method.

414. "Spot Buys."

(1) Authorization This Special Procurement provides a process for the District to procure products that are available for a limited period of time at "lower-than-normal" prices (also referred to as "spot buys"). Spot buy opportunities typically arise with regard to commodities such as food stuffs or technology.

(a) The Superintendent may purchase "spot buys" without competitive procurement and in any dollar amount as provided in this Section.

(b) Conditions. The District may procure an unlimited dollar value of products when any of the following conditions are present:

(A) A non-exclusive mandatory-use Contract or regularly scheduled Bid process already exists for the item being purchased;

(B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing mandatory-use Contract, recent Bid, or based on obtaining at least three Quotes, and the amount saved exceeds any additional administrative costs incurred to purchase the item using this Special Procurement;

(C) The product being purchased has limited availability (i.e., the product may no longer be available or available at the special price upon completion of normal Bid processes); or

(D) Any mandatory-use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special Procurement.

(c) Notwithstanding Section 1(b) of this Section, the District may not purchase a spot buy if doing so would jeopardize fulfillment of a guaranteed minimum volume under an existing mandatory-use Contract;

(2) Documentation. Purchases may only be made under this Special Procurement if the Superintendent documents to the Procurement File that at least one of the conditions set forth in Section (1)(b) apply to the proposed purchase.

415 Requirements Contracts (Blanket Purchase Orders or Price Agreements).

(1) Authorization. The Superintendent or designee, acting on behalf of the District, may establish requirements Contracts pursuant to this Rule.

(2) Definitions. "Requirements Contracts" means the procurement of goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the Contract was let by one of the source selection methods identified in ORS 279B.050.

(3) Process and Criteria. The District may establish requirements contracts for the purposes of minimizing ~~paper~~ workpaperwork, achieving continuity of products, securing a source of supply, reducing inventory, combining District requirements for volume discounts, standardization among schools and departments and reducing lead time for ordering. Requirements contracts may be utilized in accordance with the following:

(a) The Contract must have been let by one of the source selection methods identified in ORS 279B.050; and

(b) Schools and departments may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures.

(c) The term of any District requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.

(d) The District may use the requirements Contract entered into by another Oregon public agency under the following conditions:

(i) The original Contract met the requirements of public procurement statutes contained in ORS 279A and ORS 279B.

(ii) The original Contract allows other public agency usage of the contract; and

(iii) The original public contracting agency concurs and this is documented by a written interagency agreement between the ~~district~~District and the agency.

417 Used Personal Property — Purchase.

(1) Authorization. Subject to the provisions of this Rule, the superintendent or designee, acting on behalf of the District, may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if, at the time of purchase, the District has determined and documented that the purchase will:

(a) be unlikely to encourage favoritism or diminish competition; and

(b) result in substantial cost savings or promote the public interest.

(2) "Used personal property or equipment" means the property or equipment that has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used" at the time of purchase. "Used personal property or equipment" generally does not include property or equipment if the District was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) Process and Criteria.

(a) For purchases of used personal property or equipment where the cost does not exceed \$150,000, the District will, where feasible, obtain three competitive quotes, unless the District has determined and documented that a purchase without obtaining competitive quotes will result in cost savings and will not diminish competition or encourage favoritism.

(b) For purchases of used personal property or equipment exceeding \$150,000, the District will obtain and keep a written record of the source and amount of quotes received. If three quotes are not available, a Written record must be made of the attempt to obtain quotes.

419 Used Personal Property — Sale.

(1) The Superintendent may sell used property or equipment by liquidation without obtaining competitive bids or quotes if a liquidation sale would bring in greater revenue to the District than would be gained through bids. As used in this ~~section~~Section, "Surplus Personal Property or Equipment" is property or equipment that has been determined to be no longer useful to the District. It may be property or equipment that the District has used for some time and that is fully used up or obsolete. It may be property or equipment that is the natural excess or leftover from a project, such as cable, wire, carpet, etc., that has been cut or partially used in some manner so that it cannot be returned to the supplier for a refund.

(2) For sales of surplus property valued at more than \$25,000 per item or lot, the Superintendent must attempt to obtain at least three competitive quotes. The Superintendent will keep a written record of the source and number of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

421 Telecommunications Services.

(1) Authorization. The Superintendent or designee, acting on behalf of the District, shall comply with the requirements of this Rule for the procurement of telecommunications services.

(2) Conditions. The District may enter into a Public Contract for telecommunications services without competitive bidding if no competition exists within the area for the service required. To determine whether competition exists, the District will consider the following factors:

(a) Determination of alternative providers available within the geographic and service market area;

(b) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance; and

(c) The extent to which alternative providers can respond to the District's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limited district liability.

(3) Process and Criteria. The District will use competitive methods wherever possible to achieve best value.

(a) If competition exists as defined above and the anticipated purchase is over \$5,000 but less than \$150,000, the District will attempt to obtain three competitive quotes pursuant to the Rules governing Intermediate Procurements. The quotes, reasons why three quotes were not available, and the justification for award will be documented and retained in the Procurement File.

(b) If the anticipated purchase exceeds \$150,000, the District will solicit written proposals in accordance with Rule 47-0260 governing RFPs.

(c) The resulting Contract must be in writing and the Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method.

423 Fuel and Asphalt Contracts.

Regardless of dollar amount, the District is exempt from competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, and asphaltic products if the District seeks competitive quotes from at least three vendors and makes its purchase from the least expensive source. Written records for the quotations and purchases made will be kept by the Purchasing Department as public records.

425 Hazardous Material Abatement.

(1) The Superintendent may enter into Public Contracts without competitive procurement, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Oregon Department of Environmental

Quality ("DEQ") under ORS Chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this class special procurement:

(a) The Superintendent must, to the extent reasonable under the circumstances, encourage competition by attempting to obtain informal quotes from potential suppliers of goods and services.

(b) The department responsible for managing or coordinating the cleanup must submit a written description of the circumstances that require the cleanup and a copy of the DEQ order for the cleanup to the District Purchasing Department, along with a requisition authorizing the Contract.

(c) The District Purchasing Department must record the measures taken under subsection (a) of this ~~section~~Section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor to whom award is made.

(2) The Superintendent may not contract pursuant to this class special procurement in the absence of an order from the DEQ to clean up a site that includes a time limit that would not allow the District to hire a contractor under normal competitive procurement procedures. Goods and services to perform other hazardous material removal or cleanup will be purchased in accordance with normal competitive procurement procedures as described in these Rules.

427 Insurance and Employee Benefits.

The Superintendent may purchase liability, property damage, workers' compensation, and other insurance and insurance products, services, contracts, and employee benefits, without Competitive Procurement and regardless of dollar amount, by selecting either a vendor directly or by appointing an agent of record. For the purpose of this Special Procurement, "employee benefits" includes, but is not limited to, "employee benefit plans" as defined in ORS 243.105(1), plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886, flexible benefit plans as defined in ORS 243.221, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans, long-term care insurance, health care coverage to retired officers, employees, spouses, and children, employee assistance plans, and expense reimbursement plans.

430 Medical and Hospital Purchasing Cooperatives.

If the District becomes a member of a legally established purchasing cooperative, the District is exempt, regardless of dollar amount, from the requirements of competitive procurement and the requirements contract provisions of OAR 125-310-0300 for purchases of hospital and medical supplies and equipment through the cooperative.

433 Medical and Laboratory Supplies.

The Superintendent is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding Contracts after competitive procurement. The laboratory and medical supplies affected by this Rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

434 Mental Health Coordination Services.

(1) The District may enter into mental health care coordination services without competitive

procurement if the Superintendent determines that a particular provider is in a unique position to provide such Services to the District due to factors such as previous relationships built, continuity of services and close proximity for students and families and that conducting a competitive process would be unlikely to result in selection of an alternative provider.

(2) The Superintendent will document his or her findings as to compliance with subsection 1 in the procurement file for the contract.

436 Office Copier Purchases.

(1) The District may enter into multiple requirements Contracts for the purchase, rental, or lease of office copying equipment. Except for this multiple award class special procurement, such Contracts must otherwise conform to the requirements of these Rules.

(2) In exercising this class special procurement, the District must fully consider the operating capabilities, limitations, and cost of each brand or model and select the brand that will produce the best combination of performance and cost per copy for each application.

439 Purchase of Products for Resale to Students and Staff.

The District may purchase personal property for resale to students and staff without competitive procurement pursuant to these Rules and regardless of dollar amount.

443 Radio and Television Contracts for Student Activities.

(1) **Authorization.** The District must use a competitive procurement method, e.g., an Invitation to Bid or Request for Proposals, to obtain written bids or proposals to provide commercial radio and television services for any student activity or District program, including athletics, if the value of the services totals \$75,000 or more, regardless of whether the District is paying or receiving revenue from such contractors.

(2) Process.

(a) Specific and Ancillary Services. The solicitation document used to invite bids or proposals to furnish radio or television services to District programs must include the minimum bidder or qualifications and service specifications and will conform to the other requirements of the "Request for Proposal" rule herein. The solicitation document

may invite interested bidders or proposers to offer other ancillary services. Each ancillary service, if offered, must be accompanied by a dollar value that reflects the current purchase price for the service and a description of the service and its use and application.

(b) Term of Contract. A Contract for radio or television services may be awarded for up to five years.

445 Donated Materials or Services.

The Superintendent may authorize a person to perform services or provide materials regardless of dollar amount if:

(1) The person has agreed to donate all or a significant portion of the materials or services necessary to perform the service; and

(2) The person enters into a license or agreement with the District whereby the person agrees to comply with the Public Contract requirements applicable to the particular project and any requirements that the Superintendent deems necessary or beneficial to protect the District.

447 Concession Contracts.

The Superintendent may enter into concession or franchise contracts without competitive procurement pursuant to these Rules regardless of dollar amount. For the purposes of this ~~section~~Section, a "concession contract" or "franchise" means that the District authorizes the use of its property or facilities for a private commercial purpose in return for a fee or a percentage of revenue from the operation.

449 Manufacturer Direct Supplies.

The Superintendent may purchase goods directly from a manufacturer without competitive procurement if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis and are not requirements Contracts.

451 Purchases under Contracts Solicited by Nonprofit Procurement Organizations of Which the District is a Member.

The District may purchase Goods and/or Services under a Contract or Procurement solicited by a Nonprofit Procurement Organization of which it is a member. For the purposes of this Special Procurement, such a Procurement Organization will

be considered to be an "Administering Contracting Agency" and a "Contracting Purchasing Group" pursuant to these Rules. Such Procurement must otherwise comply with the requirements for permissive, joint, or Interstate Cooperative Procurements, as applicable, pursuant to these Rules.

453 Secure, Specialized Transportation for Special Needs, Homeless Students.

(1) The Superintendent may contract directly for transportation services for special needs students where such transportation need requires a transportation service with skills or equipment tailored to the needs of the particular special needs student or class of special needs students. For the purposes of this Special Procurement, a "special needs student" is a student with special physical, mental, developmental, or security needs such that District transportation, public transportation, or other private general transportation providers (taxicabs, town car services, charter services, etc.) cannot provide safe, beneficial, or timely service. The School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for secure, specialized transportation, in any dollar amount.

(2) The Superintendent ~~my-~~ may contract directly for transportation services, included taxi cab services, for homeless students as the need arises. The School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for secure, specialized transportation, in any dollar amount.

455 Expedited Contracting Process in Order to Access State, Federal, or Grant Funding.

The Superintendent may waive any or all of the solicitation procedures otherwise required by these Rules in the following circumstances:

(1) The state or federal government or a granting entity has adopted a funding program or made funding available to assist the District in purchasing Goods and/or Services and has attached a time deadline to have a Contract in place or underway or completed in order for the District to access or be eligible for those funds.

(2) The Superintendent determines that compliance with the solicitation procedures in this Rule could jeopardize the District's ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.

(3) The Superintendent provides for an alternative contracting process.

(4) The reasons for and extent of the waiver are documented in the Procurement File.

(5) The School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount.

500 EXEMPTIONS FROM COMPETITIVE BIDDING = PUBLIC IMPROVEMENT CONTRACTS.

All Public Improvement Contracts must be based on competitive bidding, except the following:

(1) Specific Exemptions for Individual Contracts. Contracts that have been specifically exempted under ORS 279C.335(2).

(2) Class Exemptions. Contracts covered by

~~(3)~~ class exemptions approved under ORS 279C.335.

520 Exemption Procedures.

(1) Request for Exemption. The Superintendent may request a resolution from the Contract Review Board exempting a particular Public Improvement Contract or class of Contracts from competitive bidding if the Contract or Contracts are not otherwise exempted under these Rules.

(2) Contents of Exemption Request. Exemption requests must contain the following:

(a) The nature of the project;

(b) Estimated cost of the project;

(c) Findings supporting why it is unlikely that an exemption from competitive bidding would encourage favoritism or diminish competition for the Public Contract as required by ORS 279C.335(2)(a);

(d) Findings supporting the substantial cost savings anticipated by the exemption from competitive bidding as required by ORS 279C.335(2)(b) or an alternative finding as provided in ORS 279C.335(2)(c);

(e) Information regarding the following factors as required by ORS 279C.330:

(i) Operational, budget, and financial data;

(ii) Public benefits;

(iii) Value ~~Engineering; engineering;~~

(iv) Specialized expertise required;

(v) Public safety;

(vi) Market conditions;

(vii) Technical complexity; and

(viii) Funding sources.

(f) Proposed alternative contracting and purchasing practices to be employed; and

(g) The estimated date by which it would be necessary to let the contract.

(3) Hearing Required.

(a) The District must hold a public hearing prior to adoption of the findings required by subsections (1) and (2).

(b) Notification of the public hearing must be published in at least one trade newspaper of general statewide circulation at least 14 days before the hearing.

(c) The notice must state that the public hearing is for the purpose of taking comments on the District's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings must be made available to the public.

(d) At the public hearing, the Board must offer an opportunity for any interested party to appear and present comment.

(e) If the District is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the District's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(4) Exempted Public Improvements in Excess of \$100,000.

Upon completion of and final payment for any Public Improvement Contract in excess of \$100,000 for which the District did not use the competitive bidding process, the District must prepare and deliver to the Contract Review Board an evaluation of the public improvement project pursuant to 6520(3), above.

600 CLASS EXEMPTIONS — PUBLIC IMPROVEMENT CONTRACTS.

The School Board declares the following contracts listed in this ~~section~~Section as classes of Public Improvement Contracts exempt from competitive bidding.

605 Donated Public Improvements.

The District may authorize a person to construct a public improvement without competitive bidding or other competitive process and regardless of dollar amount, if:

(1) The person has agreed to donate all or a significant portion of the materials or services necessary to construct the public improvement or perform the service; and

(2) The person enters into a license or agreement with the District whereby the person agrees to comply with the public contracting requirements applicable to the particular project and any requirements that the District deems necessary or beneficial to protect the District.

610 Requirements Contracts (Blanket Purchase Orders or Price Agreements).

The District may establish ~~requirements contracts~~Requirements Contracts for the purposes of minimizing paperwork, achieving continuity of products, securing a source of supply, reducing inventory, combining District requirements for volume discounts, standardization among schools and departments, and reducing lead time for ordering. Requirements Contracts may be utilized in accordance with the following:

(1) The Contract must have been let by an appropriate competitive procurement process.

(2) Schools and departments may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures.

(3) The term of any District requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279C.335.

615 Expedited Contracting Process in Order to Access State, Federal, or Grant Funding.

(1) The Superintendent may waive any or all of the solicitation procedures under these Rules in the following circumstances:

(a) The state or federal government or granting entity has adopted a funding program or made funding available to assist the District in constructing Public Improvements and has attached a time deadline to have a Contract in place, a Project underway, or a Project completed in order for the District to access or be eligible for those funds.

(b) The Superintendent determines that compliance with the solicitation procedures in this Division 49 could jeopardize the District's ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.

(c) The Superintendent provides for an alternative contracting process.

(d) The reasons for and extent of the waiver are documented in the Procurement File.

(2) The School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount.

700 PRODUCTS FOR WHICH BRAND NAMES CAN BE SPECIFIED.

Pursuant to ORS 279B.215(2), the School Board authorizes the use of brand name specifications in the following cases.

705 Athletic and Physical Education Equipment.

The District may specify a product by brand name or make, or the products of a particular manufacturer or seller, when procuring equipment and supplies used in athletic programs or physical education programs. The procurement shall otherwise comply with the requirements of these Rules.

800 PROCUREMENT SUBJECT TO FEDERAL REQUIREMENTS.

(1) General Rule: Federal law prevails in case of conflict.

When a District contract involves federal funds that require compliance with federal statutes or

regulations, the federal statutes and regulations govern over any conflicting provisions in these Rules or the State of Oregon Public Contracting Code. See ORS 279A.030. These Rules apply to federal procurements where they do not conflict with federal statutes or rules.

(2) Procurements Subject to 2 CFR 200 (the OMB "Super Circular").

(a) Procurements utilizing federal grant funds ("Federal Awards") will generally be subject to federal procurement requirements set forth in 2 CFR Sections 200.318 to 200.326. The applicability of the Super Circular is set forth in 2 CFR Section 200.101. The regulations are incorporated by reference as District Contract Rules for contracts subject to 2 CFR 200.

(b) District employees, officers and agents in the selection, award, or administration of any contract must comply with the State of Oregon Code of Ethics (ORS Chapter 244). In addition, no District employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal Award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

APPENDIX A

PROCUREMENT PROCESS THRESHOLDS

	<u>Direct Purchase</u>	<u>Informal Quotes</u>	<u>Formal Solicitation (ITB or RFP)</u>
<u>Non-Federal Funded Purchases</u>			
<u>Goods and Services</u>	<u>Up to \$10,000</u>	<u>\$10,001 to \$150,000 (At least three quotes)</u>	<u>Over \$150,000</u>
<u>Public Works Improvements</u> <u>A Public Improvement means a project for construction, reconstruction or renovation by or for a contracting agency. A Public Improvement does not include a project for which no funds from a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.</u>	<u>Up to \$5,000</u>	<u>\$5001 to \$100,000 (At least three quotes)</u>	<u>Over \$100,000 (ITB only unless exemption approved by LCRB)</u>
<u>Consultants for architectural, engineering, land surveying, and other construction related professional services</u>	<u>Up to \$100,000</u>	<u>\$100,001 to \$250,000 (Send informal RFPs to at least five consultants if contract price > than \$150,000; three consultants if < \$150,000)</u>	<u>Over \$250,000</u>
<u>Personal Service Contracts</u>	<u>Up to \$ 50,000</u>	<u>\$ 50,001 to \$150,000 (At least three quotes).</u>	<u>Over \$150,000</u>
<u>Federally Funded Purchases</u>			
<u>Any Goods or Services</u>	<u>Up to \$10,000</u>	<u>\$10,000⁰¹ to \$250,000, or low complexity</u>	<u>Over \$250,000 or High complexity</u>

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EXHIBIT B

FINDINGS IN SUPPORT OF THE DESIGNATION OF CERTAIN CLASSES OF CONTRACTS FOR GOODS AND SERVICES AS SPECIAL PROCUREMENTS UNDER ORS 279B.085

The Board of Directors of Tigard-Tualatin School District No. 23J, acting as the Local Public Contract Review Board ("Board"), makes the following findings in support of amendments and additions to its class special procurements for goods and services to the District's 2018 amendments to its Public Contracting Rules ("2018 District Rules").

I. Class Special Procurements.

A. Applicable Criteria. ORS 279B.085(4) empowers the Board to designate classes of contracts for goods or services for special procurement outside of the competitive procurement processes otherwise required under ORS Chapter 279B and the District's Public Contracting Rules. In order to approve a class special procurement, the Board must find that the designation of a class of contracts for special procurement:

1. Is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts; and
2. Either:
 - a. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
 - b. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the requirements that are otherwise applicable under ORS Chapter 279B or the District's Rules adopted to implement those rules.

B. Findings. The District's class special procurements are set forth in District Public Contracting Rules in Section 400 (see Exhibit A). The District's 2018 Amendments amend an existing class special procurement and adopt new class special procurements as follows:

1. "Spot Buys." (Section 414).
 - a. Findings of Fact. The 2018 Districts Rules add this Section to permit the District to take advantage of "spot buys"—i.e., limited offers of certain products at lower-than-normal prices. Examples of goods that are frequently offered on a spot-buy basis include food stuffs and technology. This class special procurement recognizes and takes advantage of the particular market conditions related to certain products, and has operational and budgetary benefits by empowering the District to quickly and cheaply acquire such products when such special sales are offered. Under this new class the District can purchase spot buys in any of the circumstances set forth in subsection (b).
 - b. Conclusions of Law. This class special procurement will not encourage favoritism or diminish competition because it takes advantage of a unique marketing process for certain goods and services. Further, the Rule requires a limited competitive review process to ensure that the "spot price" is in fact substantially less expensive than the competitive prices. This class special procurement amendment will result in substantial cost savings to the District because it will enable the District to better take advantage of special sales of products at lower-than-normal prices, and promotes

the public interest because use of the standard process would cost the District the opportunity to take advantage of a special sale price.

2. Insurance and Employee Benefits (Section 427).

a. Findings of Fact. The District may rely on its professional insurance broker, or “agent of record,” to solicit competitive proposals from responsible companies to furnish liability and employee benefit coverages. The agent of record solicits proposals from providers. The agent maintains a mailing list of interested providers. When it is time to solicit proposals to furnish employee benefit coverages, the agent sends solicitations to all providers on the list. After receipt of proposals, the agent of record works with District administration to evaluate them and to negotiate contract awards with those firms who provide the most comprehensive and best services at the most cost-effective rates. The District saves money by being able to take advantage of insurance and employee benefit plans that are tailored to meet the District’s needs. The District’s discretion over the types, kinds, and coverages of employee benefits is constrained or subject to agreement under collective bargaining agreements and the mandates of the Oregon Educators Benefits Board. The amendment to this section primarily provides definitions for employee benefits that are included in this class.

b. Conclusions of Law. It is unlikely that use of this class special procurement will encourage favoritism in the awarding of District contracts or substantially diminish competition for District contracts because the District solicits proposals from insurance and employee benefit insurance providers under conditions that foster competition among a sufficient number of potential vendors. The District evaluates the proposals submitted to furnish employee benefit insurance for the best value to the District, given the requirements specified by the employee benefits portions of the District’s agreements with represented employee groups and within the constraints imposed by the Oregon Educators Benefits Board. This class special procurement also substantially promotes the public interest because award of contracts pursuant to the procurement procedures in ORS Chapter 279B is not practicable for the reasons stated above.

3. Mental Health Care Coordination Services (Section 434).

a. Findings of Fact. The 2018 Districts Rules add this Section to allow selection of a Mental Health Care Coordinating Services Provider without competitive procurement as long as the Superintendent determines that the provider is in a unique position to provide such services to the District, qualified and that competition is unlikely to result in an alternative provider. Since 2012, the Board has approved an annual special procurement to permit the District to contract with LifeWorks NW due to factors such as previous relationships built, continuity of services and close proximity for students and families. Approval of this amendment will allow the District to continue to contract with LifeWorks for as long as there is no effective competition to provide the services due to the factors specified.

b. Conclusions of Law. This amendment will not discourage competition because the Superintendent will have to make an annual determination that there is no effective competition and that the vendor continues to be uniquely qualified to provide the services. This exemption will substantially promote the District's interest by allowing the District to continue to contract with a top quality provider and avoid unnecessary costs and delay of a competitive process that is unlikely to change the result.

4. Purchases under Contracts Solicited by Nonprofit Procurement Organizations of Which the District is a Member (Section 451).

a. Findings of Fact. The purpose of this class special procurement is to allow the District to participate in or purchase goods or services under contracts solicited by nonprofit procurement organizations of which the District is a member under the same terms and conditions as provided in ORS 279A.200 to 279A.225 for cooperative procurement through other public bodies. There are a number of regional and national nonprofit procurement entities that permit or are limited to nonprofit or public body members. The benefits of membership are that the District obtains a lower price through the economies of scale and avoidance of duplication of the procurement process. The safeguards are that the nonprofit procurement process must be substantially similar to the competitive process in ORS 279B, and notice must be given in certain circumstances for contracts over certain amounts, the same as is required under the cooperative procurement statutes.

b. This class special procurement will not diminish competition or encourage favoritism because of the requirement that the nonprofit organization must have solicited the contract using competitive procedures substantially equivalent to those required in ORS 279B. The class special procurement will result in substantial cost savings by enabling the District to take advantage of economies of scale resulting from regional or national procurements and because of the avoidance of the cost of a duplicative procurement process.

5. Secure, Specialized Transportation for Special Needs, Homeless Students
(Section 453).

a. Findings of Fact. The District is required by state and federal law to provide transportation to all of its students. When such students have special physical, mental, developmental, or security needs, such transportation may require a transportation service with particularized skills or equipment, and such skills or equipment can be required with little or no advance warning. In order to comply with the law and serve these students, the District needs to have the flexibility to directly retain such service based on the particularized need. This section also provides the Superintendent may contract directly for transportation services such as taxi cab services for homeless students as the need arises.

b. Conclusions of Law. This amendment will not discourage competition because these services are not typically competed, but are chosen based needs at the time. This exemption promotes the public interest in a way that can't practicably be realized through the standard ORS 279B procurement process because the standard process is not relevant to selection of these services and because the District has no or only limited choices with regard to transportation services.

6. Expedited Contracting Process in Order to Access State, Federal, or Grant Funding (Section 455).

a. Findings of Fact. The state and federal governments and certain nonprofit and for-profit granting entities have grant/funding programs that may have deadlines or limit funding availability to a certain window of time. The purpose of this special procurement is to grant the authority to the Superintendent to modify the procurement process and approve and execute a contract in any dollar amount in cases where strict adherence to the standard process could jeopardize the District's eligibility for such funding by delaying a contract, project, or procurement. The Superintendent must document the reasons supporting and the extent of the waiver in the procurement file, as well as provide for an alternative contracting process consistent with the time constraint.

b. Conclusions of Law. This special procurement will not encourage favoritism or substantially diminish competition for District contracts because it would apply to a very

limited subset of contracts eligible for such specialized funding, and because the Superintendent is required to design an alternative competitive process based on the timeline for award of the funding. The use of this special procurement will result in substantial cost savings to the District by enabling it to better take advantage of state, federal, and other grant funding opportunities.

II. Exemptions from Competitive Bidding.

A. Applicable Criteria. ORS 279C.335(2) empowers the Board, acting as the local contract review board, to adopt rules exempting certain classes of public improvement contracts from competitive bidding upon approval of the following findings:

1. It is unlikely that such exemptions will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

2. The awarding of public improvement contracts pursuant to the exemption will result in substantial cost savings to the District. In making these findings, ORS 279C.315 requires consideration of information regarding: (a) operational, budget, and financial data; (b) public benefits; (c) value engineering; (d) specialized expertise required; (e) public safety; (f) market conditions; (g) technical complexity; and (h) funding sources. In addition, the Board may consider the type, cost, and amount of the contract, the number of persons available to bid, and such other factors as the Board deems appropriate. The Board may not identify a class solely based on funding or procurement method.

B. Findings. The District's exemptions from competitive bidding for public improvement contracts are set forth in Section 600 (Exhibit A). The District is adopting one new class exemption from competitive bidding, as follows:

1. Expedited Contracting Process in order to Access State, Federal, or Grant Funds (Section 615).

a. Findings of Fact. This exemption is the public improvement analog to the new goods and services special procurement in Section 455 approved above. This exemption is proposed to address the same circumstance where deadlines are attached to state, federal, or grant funding such that conducting the standard procurement process could jeopardize the District's eligibility to obtain the funding by delaying execution of a contract, the start of a project, or the completion of a project. The purpose of this exemption is to grant the authority to the Superintendent to modify the procurement process and approve and execute a contract in any dollar amount in such circumstances. The Superintendent must document the reasons supporting and the extent of the waiver in the procurement file, as well provide for an alternative contracting process consistent with the time constraint.

b. Conclusions of Law. This exemption will not encourage favoritism or substantially diminish competition for District contracts because it would apply to a very limited subset of the contracts eligible for such specialized funding, and because the Superintendent is required to design an alternative competitive process based on the timeline for award of the funding. The use of this exemption will result in substantial cost savings to the District by enabling it to better take advantage of state, federal, and grant funding opportunities. The remaining findings and considerations in 279C.315 and 279C.335(2)(b)(A) to (N) are not relevant to this specialized situation.

III. Existing Special Procurement and Exemptions Continued. No other amendments to existing special procurements or exemptions or new special procurements or exemptions are being proposed as part of the 2018 amendments to the District's Public Contracting Rules.