

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 1

Public Contracting and Procurement Rules

Section 1-005 Scope

1. **Statutory Authority.** These Rules are adopted by the Lane Regional Air Protection Agency ("LRAPA") and its contract review board, the LRAPA Board of Directors (the "Board") pursuant to the authority granted by ORS Chapter 468A, ORS 279A.065 and ORS 279A.070.
2. **Attorney General's Rules Inapplicable.** The Attorney General's Model Contract Rules adopted pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of the Board specifically referenced and adopted in these Rules, but may be used by the Purchasing Agent, as hereinafter defined, as supplemental Rules, if needed to address circumstances not provided for by these Rules.
3. **Statutory Requirements Not Reiterated.** LRAPA is subject to public contracting requirements under ORS Chapters 279A, 279B and 279C (the "Public Contracting Code"). Those requirements generally are not reiterated in these Rules.
4. **Federal Requirements.** LRAPA is subject to certain contracting requirements when a particular Contract is supported in whole or in part with federal funds. Those requirements are not reiterated in these Rules.
5. **Exempt Contracts.** The following contracts are exempt from application of the Public Contracting Code and are also exempt from all provisions of these Rules except for Section 1.6 concerning the authority of the Board and the Purchasing Agent to award and execute LRAPA contracts:
 - A. Contracts between LRAPA and other public bodies or between LRAPA and the federal government;
 - B. Grants, as defined herein, other than contracts for construction services for which LRAPA has received a grant;
 - C. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which LRAPA is or may become interested;

- D. Acquisitions or disposals of real property or interests in real property;
 - E. Contracts, agreements or other documents entered into, issued or established in connection with:
 - (1) The incurring of debt by LRAPA, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and 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.
 - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by LRAPA to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or
 - (3) The investment of funds by LRAPA, as authorized by law, and other financial transactions of LRAPA that in the determination of the Purchasing Agent or the Executive Director cannot practically be established under the competitive Contractor selection procedures of ORS 279B.050 to 279B.085;
 - F. Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
 - G. Any other public contracting of LRAPA specifically exempted from the Public Contracting Code by another provision of law.
6. Powers and Authority of the Board and the Purchasing Agent.
- A. Powers Reserved to the Board.
 - (1) Contract Review Board Authority. The Board reserves to itself the exercise of all of the duties and authority of a contract review board under the Public Contracting Code, including, but not limited to, the power and authority to:
 - (a) Hear Debarment appeals; and
 - (b) Create and approve special procurements under ORS 279B.085 and approve exemptions from competitive bidding for Public Improvement Contracts under ORS 279C.335.

- (2) Contract Award. The Board reserves to itself the authority to approve the award of all Public Contracts for which the Contract Price exceeds the expenditure authority of the Purchasing Agent.
- (3) Amendment of Rules. All amendments to these Rules shall be made by resolution of the Board following a hearing at which members of the public have the opportunity to appear and submit comments and protests. Unless otherwise provided in these Rules, notice of the hearing for a proposed amendment to these Rules shall be advertised at least once in a publication in general circulation in the greater Eugene area at least five (5) Days prior to the hearing.

B. Authority and Responsibilities of the Purchasing Agent.

- (1) General Authority. The Purchasing Agent is authorized to take all action that s/he deems necessary or convenient to implement these Rules except for those powers and authorities expressly reserved to the Board. Without limiting the generality of the foregoing and subject to these Rules, the Purchasing Agent shall determine the manner in which Contractors for particular Contracts shall be selected, issue all Solicitation Documents, hear all protests, evaluate all awards, make all Contract awards within his/her expenditure authority and execute, on behalf of LRAPA, all duly awarded Contracts.
- (2) Purchasing Agent Regulations. The Purchasing Agent may develop Contract and Solicitation forms and promulgate administrative rules, procedures and delegation orders under these Rules. In doing so, the Purchasing Agent shall make sure that such forms, rules, procedures and orders:
 - (a) Do not encourage favoritism or substantially diminish competition;
 - (b) Allow LRAPA to take advantage of the cost-saving benefit of alternative contracting methods and practices;
 - (c) Give preference to Goods and Services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal (and so long as giving such preference is consistent with applicable federal laws); and
 - (d) Give preference to Goods that are certified to be made from recycled products when such Goods are available, can be substituted for non-recycled products without a loss in quality, and

the cost of Goods made from recycled products is not significantly more than the cost of Goods made from non-recycled products.

- (3) Contract Oversight. The Purchasing Agent shall oversee all public contracting activities of LRAPA.
- (4) Mandatory Review and Rule Amendment. The Purchasing Agent will designate appropriate staff to review and recommend necessary changes to the Rules following each session of the Oregon state legislature and may, from time to time, recommend other amendments to the Rules. All amendments to the Rules will be promulgated by the Board.
- (5) Annual Report to Bureau of Labor and Industries. Not less than thirty (30) Days prior to adoption of LRAPA's annual budget, LRAPA shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every Public Improvement known to LRAPA that LRAPA plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. LRAPA shall also submit to the Commissioner a statement as to whether it intends to perform the construction through a private Contractor.
- (6) Delegation. All responsibilities and authority of the Purchasing Agent except for those duties specifically assigned by these Rules to the Executive Director of LRAPA may be delegated and sub-delegated by duly executed written orders.

7, Effective Date and Effect. These Rules take effect upon adoption by the Board and supersede any conflicting Rules, procedures or practices.

Section 1-010 Definitions

- "Addendum" or "Addenda" means a written document issued by LRAPA to change, clarify, add, modify or delete a Solicitation Document.
- "Amendment" means a written document to modify or change a Contract and executed by all parties to the Contract.
- "Bid" means a formal, Sealed, binding written Offer to provide Goods or Services or to construct an improvement described in a Solicitation Document for a fixed price, based on stipulated lump sums and/or unit prices.
- "Bid Documents" means the Solicitation Documents that set forth requirements for submitting a Bid.
- "Bidder" means an Entity that submits a Bid in response to an Invitation to Bid.

- "Board" means the Board of Directors of LRAPA.
- "Change Order" means a written statement signed by LRAPA and a general contractor, stating their agreement upon all or part of the following, subject to particular terms and conditions of an agreement between a general contractor and LRAPA for a particular project:
 - A. a described change in the work being undertaken by the general contractor;
 - B. the amount, if any, the original Contract amount is adjusted upward or downward for the change in the work; and
 - C. the extent of the adjustment, if any, in the schedule of construction.
- "Closing" means the date and time after which Bids, Proposals, Statements of Qualifications or other Solicitation Responses will not be received. The Closing date and time must be specified in the Solicitation Documents.
- "Contract" means a written agreement that sets forth all rights and obligations of the parties with respect to a particular transaction, including but not limited to all plans, specifications, price terms and legal requirements.
- "Contract Price" means the total amount paid or to be paid under a Contract, including any approved alternates, and any fully executed Change Orders or Amendments.
- "Contractor" means the Entity awarded a Contract.
- "Days" means calendar days unless otherwise specified by these Rules.
- "Debarment" means a debarment pursuant to ORS 279B.130 or a Disqualification pursuant to ORS 279C.440, 279C.445 and 279C.450.
- "Disaster" means a severe storm, volcanic eruption, landslide, mudslide, drought, fire, earthquake, explosion, civil disturbance, or other catastrophe that causes or may cause substantial damage or injury to persons or property within LRAPA's boundaries or area of jurisdiction.
- "Disqualification" means the elimination of a Bid or Proposal from consideration for a particular award on grounds of responsiveness or under the Standards of Responsibility.
- "Emergency" means that a substantial risk of loss, damage, interruption of services, or threat to the public health or safety has arisen from circumstances that could not have been reasonably foreseen and that requires prompt execution of a Contract to remedy the condition.

- “Entity” means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- “Findings” means justification for the Board or Executive Director’s conclusion that may include, but is not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in Public Contracts; value engineering; specialized expertise needed; public safety; market conditions; technical complexity; and funding sources.
- "Goods" means any item or combination of supplies, equipment materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.
- "Invitation to Bid" means a publicly advertised written Solicitation Document calling for Bids.
- "LRAPA" means the Lane Regional Air Protection Agency.
- "Offer" means a Bid, Proposal, or Quotation, as applicable.
- "Offeror" means an Entity submitting an Offer.
- "Opening" means the date upon which Solicitation Documents are first available to potential Offerors.
- “Personal Services” means services that require 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 the service depends on attributes that are unique to the service provider. Such services include but are not limited to the services of attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. For any single Contract or class of Contracts, the Purchasing Agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph are Personal Services.
- "Personal Service Contract" means a Contract primarily for the provision of Personal Services. The following are not Personal Service Contracts:
 - A. Contracts with a temporary staffing agency to supply labor, which is of a type that can generally be done by any skilled worker;
 - B. Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials; or

- C. Contracts for which the work has traditionally been performed by Contractors selected primarily on the basis of price (i.e., construction Services; food services; or other Services that do not require specialized skills, knowledge and resources).
- "Price Agreement" means a Public Contract for the procurement of Goods or Services at a set price with no guarantee of a minimum or maximum purchase; or an initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services in which the contracting agency does not guarantee a minimum or maximum additional purchase.
 - "Proposal" means a competitive written Offer, binding on the Proposer and submitted in response to a Request for Proposals, a Request for Qualifications or a Request for Quotations.
 - "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals, a Request for Qualifications or a Request for Quotations.
 - "Public Contract" means any agreement for the purchase, lease, rental or other acquisition or the sale or other disposal by LRAPA of personal property, Services, including Personal Services, Public Improvements, Public Works, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement and which is not exempt from the application of these Rules under Subsection 1-005-5.
 - "Public Contracting Code" means the provisions of ORS Chapters 279A, 279B, and 279C.
 - "Public Improvement" means the construction, reconstruction or major renovation on real property by or for LRAPA, but does not include a Contract for which no funds of LRAPA are directly or indirectly used, Emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve real property.
 - "Public Improvement Contract" means a contract for a Public Improvement.
 - "Public Works" include, but are not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by LRAPA to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by LRAPA.
 - "Purchasing Agent" means the Executive Director of LRAPA, or his or her duly authorized designees.
 - "Quotation" or "Quote" means a price or statement of proposed Contract terms offered in response to an informal, oral or written Solicitation that is not publicly advertised, but is made to a limited number of potential Offerors.

- "Request for Proposal" means publicly advertised written Solicitation Documents inviting Proposals.
- "Request for Qualifications" means a written request for submission of a statement of qualifications.
- "Request for Quotations" means an informal oral or written request inviting Quotes.
- "Resident Bidder" means 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 whether the Bidder is a Resident Bidder under ORS 279A.120.
- "Responsible Bidder" or "Responsible Proposer" means that a Bidder or a Proposer who has made a Responsive Offer, meets the Standards of Responsibility and, if the Contract is for a Public Improvement, is not on the list created by the Construction Contractors Board under ORS 701.227.
- "Responsive Offer" means an Offer (including a Bid or Quote or Proposal) that conforms in all material respects with the requirements set forth in the Solicitation Documents and all requirements of the Public Contracting Code and these Rules. An Offer is not responsive if it contains Contract terms or provisions that are contrary to the terms and provisions set forth in the Solicitation Documents or indicates that the Goods and Services that will be provided do not conform to the Contractor specifications.
- "Rules" means these Public Contracting Rules of the Lane Regional Air Protection Agency promulgated by the Board.
- "Sealed" means that a Bid is enclosed in an opaque paper envelope with all Openings glued, taped, or otherwise fastened so the envelope cannot be easily opened prematurely without leaving evidence that it had been opened prematurely.
- "Services" means all labor and services, including trade services, other than Personal Services.
- "Solicitation" means any invitation to one or more potential Contractors to submit a Bid, Proposal, Quote, statement of qualifications or letter of interest to LRAPA with respect to a proposed project, procurement or other contracting opportunity. The word "Solicitation" also refers to the process by which LRAPA requests, receives and evaluates potential Contractors and awards Contracts that are subject to these Rules.
- "Solicitation Documents" means all informational materials issued by LRAPA for a Solicitation, including, but not limited to advertisements, Instructions to Bidders or Proposers, the Contract terms, Invitations to Bid, Requests for Proposals, written Requests for Quotations and all documents incorporated by reference.

- "Standards of Responsibility" means that an Offeror must meet all of the following requirements to be deemed a responsible Offeror:
 - A. Financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to indicate the capability of the Bidder or Proposer to meet all contractual responsibilities;
 - B. A satisfactory record of performance. The Purchasing Agent shall document the record of performance of a Bidder or Proposer if the Purchasing Agent finds the Bidder or Proposer nonresponsible under this paragraph;
 - C. A satisfactory record of integrity. The Purchasing Agent shall document the record of integrity of a Bidder or Proposer if the Purchasing Agent finds the Bidder or Proposer nonresponsible under this paragraph;
 - D. Qualified legally to contract with LRAPA;
 - E. Supplied all necessary information in connection with the inquiry concerning responsibility. If a Bidder or Proposer fails to promptly supply information requested by the Purchasing Agent concerning responsibility, the Purchasing Agent shall base the determination of responsibility upon any available information and may find the Bidder or Proposer to be non-responsible;
 - F. Not been Debarred by LRAPA; and
 - G. Has complied with requirements under the Solicitation, if any, to make good faith efforts as prescribed in ORS 200.045(3) concerning small business enterprises.

The Purchasing Agent may investigate any Offeror so that previously Debarred Entities or their officers, directors, or principal owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this Rule or of the Debarment provision of these Rules.

Section 1-015 Classes of Public Contracts and Methods of Selection

1. General Rules.
 - A. No Division of Contracts. No procurement or Contract or scheduled Public Improvement may be artificially divided into parts or phases for the purpose of avoiding any of these Rules.
 - B. Record of Selection Method. The Purchasing Agent shall keep a written record of the method used to award every Contract for Personal Services, Goods or Services or Public Improvement and the basis of the award and, unless the award was made pursuant to an Invitation to Bid or a Request for Proposals, of the reasons why the method of selection was deemed in the best interest of LRAPA.

- C. Estimated Contract Price. When deciding whether to use an informal method of selection that does not include formal advertisement of the Solicitation, the estimated Contract Price shall be calculated to include a reasonable contingency against market price fluctuation. If Quotes or Proposals received under an informal Solicitation indicate that the likely Contract Price, including all renewal periods, will exceed the price-limit for the informal method by more than ten percent (10%), the Solicitation shall be cancelled and may be reissued under a method appropriate for the likely Contract Price.

2. Sole Source Contracts.

- A. Method of Selection and Record of Determination. Goods, Services, Personal Services that are available from only one source may be purchased through direct negotiation without competitive Solicitation. The Purchasing Agent shall make a written record of the facts that support the determination that the product or Service or improvement is only available from a single source and that alternative products, Services or improvements would be unsatisfactory for LRAPA's needs.
- B. Notice. At least three (3) business Days before making a sole source procurement for which the estimated Contract Price will exceed \$100,000, the Purchasing Agent shall publish notice of the procurement that:
 - (1) identifies the Goods or Services sought;
 - (2) requests statements of interest from vendors who are qualified to provide the desired Goods or Services; and
 - (3) states that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Agent will proceed with a sole source procurement.

3. Emergencies.

- A. In General. When the Purchasing Agent determines that immediate execution of a Contract is necessary to prevent substantial damage or injury to persons or property, the Purchasing Agent may execute the Contract without complying with the requirements of this section concerning competitive selection and award, but, where time permits, the Purchasing Agent shall attempt to use competitive price and quality evaluation before selecting an Emergency Contractor. In the event the Contract Price exceeds \$100,000, the Board shall approve the Contract prior to execution or ratify the Contract at the next regularly scheduled meeting of the Board.
- B. Reporting. The Purchasing Agent shall:

- (1) document 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 LRAPA and the public, and
- (2) notify the Board of the declaration of Emergency, if made, and the facts and circumstances surrounding the Emergency execution of the Contract, as soon as possible, in light of the Emergency circumstances.

C. **Public Improvement Contracts.** A Public Improvement Contract may only be awarded under this section if the Purchasing Agent has declared an Emergency. Any Public Improvement Contract award under this section must be awarded within sixty (60) Days following the declaration of an Emergency unless the Board grants an extension of the Emergency period.

4. **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.
5. **Preference for Products and Services of Disabled and Blind Individuals.** If any Goods, Services or improvements needed by LRAPA are available in a timely manner from a qualified nonprofit agency for disabled individuals, as defined in ORS 279.835, or if LRAPA is in need of an operator of a vending facility on property owned by LRAPA, the Purchasing Agent shall enter into a Contract with a qualified nonprofit agency in accordance with the provisions of ORS 279.835 – ORS 279.855 or with a blind person in accordance with the provisions of ORS 346.510 – ORS 346.560, as applicable. If Goods, Services, including vending facility operations, or improvements are available from more than one such agency or person, the Purchasing Agent shall award a Contract to the agency or the person with products and Services that best meet the needs of LRAPA. The provisions of this paragraph do not apply to Contracts for Personal Services.

Section 1-020 Goods and Services Other than Personal Services

1. **General.** The Rules set forth under this section govern the selection of Goods and Services providers, including providers of trade and construction Services for minor alterations, ordinary repairs or maintenance of Public Improvements. The Model Rules shall govern selection of Contractors for Public Improvements. Contracts for Goods or Services in any amount may be awarded under a Solicitation using an Invitation to Bid or a Request for Proposals.
2. **Small Procurements.** Contracts for the procurement of Goods or Services for which the estimated Contract Price does not exceed \$25,000 may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of LRAPA. A Contract awarded as a small procurement may be amended only in accordance with these Rules.

3. Intermediate Procurements. Contracts for Goods or Services for which the estimated Contract Price does not exceed \$150,000 may be awarded using one of the following two informal Solicitation methods. For Contracts for which the estimated Contract Price is more than \$25,000 but does not exceed \$75,000, at least three (3) verbal Quotes must be obtained. For Contracts for which the estimated Contract Price is more than \$75,000 but does not exceed \$150,000, at least three (3) written Quotes must be obtained. A Contract awarded as an intermediate procurement may be amended only in accordance with these Rules.
4. Special Procurements. The following classes of Contracts or Goods or Services are subject to the class special procurement procedures described below.
 - A. Purchasing Agent's Discretion. The following classes of contracts may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of LRAPA. The Purchasing Agent shall make a written record documenting the manner of selection and the reason why the selection was in the best interest of LRAPA.
 - (1) Insurance and employment benefits Contracts.
 - (2) Contracts or arrangements for the sale or other disposition of used personal property.
 - (3) Contracts for copyrighted materials or advertising products;
 - (4) Contracts for items for which price or selection of suppliers is regulated by a governmental authority, including the purchase of steam, power, heat, water, telecommunications services, and other utilities;
 - (5) Contracts for educational materials, including books, periodicals, sound recordings, films, film strips, maps and other printed or published materials;
 - (6) Contracts for a single period of one year or less, for the temporary extension of an expiring and non-renewable Price Agreement or Services Contract;
 - (7) Contracts for food service;
 - (8) Contracts for equipment repair and overhaul;
 - (9) Contracts for gasoline, fuels, oils and lubricants;
 - (10) Contracts for computer hardware and software;

- (11) Contracts for Goods and Services which are acquired for and through the Airmetrics program (and using the Airmetrics Fund), including materials needed to manufacture and sell the "MiniVol" air sampler; and
 - (12) Contracts for Goods or Services in an amount of \$25,000 or less.
- B. Federal Purchasing Program. Goods and Services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this Rule.
- (1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or Contracts submitted to and approved by the Purchasing Agent. The requisitioning department shall provide the Purchasing Agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to LRAPA to purchase under the federal program.
 - (2) The price of the Goods or Services must be established under Price Agreements between the federally approved vendor and GSA.
 - (3) The price of the Goods or Services must be less than the price at which such Goods or Services are available under state cooperative purchasing programs that are available to LRAPA.
 - (4) If a single purchase of Goods or Services exceeds the Informal Contract Limit, the requisitioning department must obtain informal written Quotes or Proposals from at least two additional vendors (if reasonably available) and find, in writing, that the Goods or Services offered by GSA represent the best value for LRAPA.
 - (5) Subsection 1-020-4.B(4), above, does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
- C. Cooperative Procurements. The Purchasing Agent may purchase Goods and Services under joint and permissive cooperative procurements as provided under and subject to the applicable provisions of ORS Chapter 279A. When procuring Goods or Services using advertised Invitations to Bid or a Request for Proposals, the Purchasing Agent is encouraged to consider whether the Solicitation should provide a basis for permissive cooperative procurements by other contracting agencies.

Section 1-025 Personal Service Contracts

1. General Rule. Contracts for Personal Services in any amount may be awarded under a Request for Proposals. Personal Services are services that require 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 the service depends on

attributes that are unique to the service provider. Such services include but are not limited to the services of attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. For any single Contract or class of Contracts, the Purchasing Agent shall have discretion to determine whether additional types of services not specifically mentioned in this section are Personal Services.

2. **Small Procurements.** Contracts for the procurement of Personal Services for which the estimated Contract Price does not exceed \$25,000 may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of LRAPA. A Contract awarded as a small procurement may be amended only in accordance with these Rules.
3. **Intermediate Level Contracts.** Contracts for the procurement of Personal Services for which the estimated Contract Price does not exceed \$150,000 may be awarded using one of the following two informal Solicitation methods. For Contracts for which the estimated Contract Price is more than \$25,000 but does not exceed \$75,000, at least three (3) verbal Quotes must be obtained. For Contracts for which the estimated Contract Price is more than \$75,000 but does not exceed \$150,000, at least three (3) written Quotes must be obtained. A Contract awarded as an intermediate procurement may be amended only in accordance with these Rules.
4. **Purchasing Agent's Discretion.** The following Personal Service Contracts may be awarded by any method deemed appropriate by the Purchasing Agent, including without limitation, by direct appointment, by private negotiation or by using a competitive process.
 - A. **Contracts Under \$25,000.** Contracts for which the Purchasing Agent estimates that payments will not exceed \$25,000 over the full term, including optional renewals.
 - B. **Temporary Extensions.** A Contract for a single period of one (1) year or less, for the temporary extension of an expiring and non-renewable Contract.
 - C. **Contracts for Continuation of Work.** Contracts of not more than \$75,000 for the continuation of work by a Contractor who performed preliminary studies, analysis or planning for the work under a prior Contract, if the prior Contract was awarded under a competitive process and the Purchasing Agent determines that use of the original Contractor will significantly reduce the costs of, or risks associated with, the work.
 - D. **Reinstatement of Expired Contracts.** A Personal Services Contract may be reinstated once, at least so long as the requirements of this section are met.
 - (1) The Contract was not extended or renewed in a timely manner due to unforeseen or unavoidable conditions.
 - (2) The Contract is reinstated within sixty (60) Days of expiration of the original Contract.

- (3) The Purchasing Agent has determined that the work needs to be completed by the original Contractor after expiration of the Contract and there is no change in the statement of work and either:
 - (a) The reinstatement is exclusively for the purpose of permitting completion of the work or the services for no additional compensation; or
 - (b) When the services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either does not increase the rate of compensation or does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area CPI (all items) published immediately prior to the date the original Contract was established with the same index published immediately prior to the date of the reinstatement and extension.
 - (4) There have been no prior reinstatements;
 - (5) The original Contract will not be modified except with respect to the time for performance; and
 - (6) The reinstatement does not raise the aggregate amount of compensation beyond \$75,000.
- E. Advertising. Contracts in any amount for advertising services.
- F. Cooperative Procurements. Contracts under joint and permissive cooperative procurements as provided under and as subject to the applicable provisions of ORS Chapter 279A.

Section 1-030 Requests and Approvals of Alternate Selection Methods for Special Contracts

The Board, upon its own initiative or upon request of the Purchasing Agent, 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 of Alternate Selection Method. The approval of a special Solicitation method, including but not limited to direct appointment, must be based upon a record before the Board that contains the following:
 - A. The nature of the Contract or class of Contracts for which the special Solicitation or exemption is required.
 - B. Estimated Contract Price or 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, in the case of contracts for Personal Services or procurement of Goods or Services, would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the Solicitation requirements that are applicable under these Rules.
 - E. A description of the proposed alternative contracting methods to be employed; and
 - F. The estimated date by which it would be necessary to let the Contract(s).
2. Hearing. The Board shall approve the special Solicitation or exemption from competition after a public hearing following notice by publication in at least one newspaper of general circulation in the greater Eugene area.

Section 1-035 Solicitation Procedures

1. Advertisements.
- A. Manner of Publication. An advertisement for a Solicitation shall be published at least once in at least one newspaper of general circulation in the Eugene area and in such publications as the Purchasing Agent may determine to be necessary or desirable to encourage competition and participation. In addition, for any Contract that will exceed \$75,000, publication must be made in *The Oregonian* or another trade newspaper of general statewide circulation.
 - B. Time of Publication. The last publication date of an advertisement in any publication shall be at least five (5) Days prior to any Solicitation Closing and two (2) Days prior to any pre-Bid or pre-Proposal conference.
 - C. Posting and Availability. A copy of each Notice shall be posted on LRAPA's web site and hard copy shall be made available upon request.
 - D. Electronic Advertisement. Advertisements for Solicitations may be published solely in electronic format, except that any Public Contract with an estimated Price in excess of \$75,000 shall be advertised in at least one trade newspaper of general statewide circulation.
 - E. Content of Advertisement. The advertisement shall provide the following information to prospective Offerors:

- (1) The date and time of the Closing, after which Bids, Proposals, Statements of Qualifications or other Solicitation responses will not be received;
 - (2) A description of the project, the character of the work to be done, the Services to be provided or the material or thing to be purchased;
 - (4) Policy and program compliance to include Disparity Program requirements, if any;
 - (5) The date, time and place of any conference that will be held prior to the Solicitation Closing;
 - (6) The manner in which copies of the Solicitation Documents may be obtained and the address of the office where plans and specifications may be reviewed or copied;
 - (7) The charge, if any, that will be made for copies of the Solicitation Documents;
 - (8) The name and title of the person designated for receipt of Offers;
 - (9) The address where Offers must be submitted;
 - (10) The date, time and place that Offers will be publicly opened; and
 - (11) Statement, if applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a).
2. Policy and Program Compliance. LRAPA values diversity in its workforce and in the workforce of those who contract with LRAPA. LRAPA encourages firms contracting and subcontracting at all tiers with LRAPA to do the same. All Offers shall comply with the diversity program requirements set forth in the Solicitation.
 3. Pre-Closing Conferences. The Purchasing Agent may hold a pre-closing conference to answer questions regarding the project, Goods or Services sought, explain procurement requirements, conduct site inspections or assist prospective Offerors in meeting other LRAPA requirements such as compliance with its diversity program.
 - A. Announcement. The time and place of the conference shall be announced to all prospective Offerors in the Solicitation notice and Solicitation Documents. The pre-closing conference shall be held no sooner than two (2) Days after the last publication of the Solicitation advertisement, but sufficiently before Closing to allow consideration of the conference results in preparing Offers.
 - B. Attendance. The Purchasing Agent may require mandatory attendance at the pre-closing conference as a condition for submitting Offers. Such requirement shall

be included in the Solicitation advertisement and in the Solicitation Documents. A list of attendees shall be documented in the Solicitation file.

- C. Confirmation by Addenda. Statements at the pre-closing conference shall not change the Solicitation Documents unless confirmed to all prospective Offerors by means of a written Addendum to the Solicitation Documents.

4. Bid or Proposal Security.

- A. Security. Bid or Proposal security not to exceed ten percent (10%) of the base Bid or Proposal amount(s) may be required by the Purchasing Agent for Public Contracts. The Purchasing Agent shall also have discretion to require Proposal security in an amount estimated to be ten percent (10%) of the Contract Price for a Solicitation under which price is negotiable. Bid or Proposal security may be in the form of a surety bond, cashier's check, certified check, or irrevocable letter of credit.
- B. Return of Security. Upon the execution of the Contract and delivery of all required payment and performance bonds by the successful Bidder or Proposer, each Offeror's security shall be returned. The Offeror who is awarded a Contract and who, within the schedule set forth in the Solicitation Documents, fails to enter into a Contract, shall forfeit the Bid or Proposal security that accompanied the successful Offer. Any forfeit of security shall be considered as liquidated damages and not a penalty for failure of the Offeror to execute the Contract. Failure of an Offeror to negotiate in good faith for a Contract following the submission of a Bid or Proposal shall constitute grounds for retention of Bid or Proposal security, but the mere failure of a Bidder or Proposer to reach agreement with LRAPA concerning any terms and conditions of the Contract that were reserved for negotiation shall not be grounds for the retention of such security. Notwithstanding the foregoing, Bid or Proposal security shall be returned upon expiration of the period for which the Bids or Proposals are irrevocable unless an Offeror agrees in writing to extend its Offer or, in the case of the Offeror selected for award, the execution of a Contract is delayed by the Offeror.

5. Brand Name Products.

- A. In General. Specifications for Contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
 - (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;
 - (2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to LRAPA;

- (3) There is only one manufacturer or seller of the product of the quality required; or
- (4) Efficient utilization or maintenance of existing equipment, supplies or products requires the purchase of one particular manufacturer.

B. Brand Name or Equal.

- (1) A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to LRAPA because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by LRAPA.
- (2) The Purchasing Agent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
- (3) Nothing in this section may be construed as prohibiting LRAPA from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the contracting agency.

C. Qualified Product Lists.

- (1) The Purchasing Agent may develop and maintain a qualified products list in instances in which the testing or examination of Goods before procurement is necessary or desirable in order to best satisfy the requirements of LRAPA. For purposes of this section, "Goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.
- (2) In the initial development of any qualified products list, LRAPA shall give public notice, in the same way that Solicitations for procurements are issued, of the opportunity for potential Contractors, sellers or suppliers to submit Goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential Contractors, sellers or suppliers to submit Goods for the testing and examination. Any potential Contractor, seller or supplier, even though not solicited, may offer its Goods for consideration.
- (3) LRAPA's inclusion of Goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 to 192.505, LRAPA may make the test or examination results public in a manner that protects the identity of the potential Contractor, seller or supplier that offered the Goods for testing or

examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 to 192.505, LRAPA may keep confidential trade secrets, test data and similar information provided by a potential Contractor, seller or supplier if so requested in writing by the potential Contractor, seller or supplier.

- (4) The inclusion of Goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective Contractor, seller or supplier of Goods on the qualified products list.
6. Record of Potential Offerors. A record shall be maintained and made available to the public for review that identifies all entities that receive Solicitation Documents from LRAPA.
 7. Protests of Solicitation Procedures.
 - A. Definitions. As used in this section:
 - (1) "Brand name" means a brand name specification as defined in ORS 279B.200.
 - (2) "Legally flawed" means that a Solicitation Document contains terms or conditions that are contrary to law.
 - (3) "Unnecessarily restrictive" means that specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the procurement needs of LRAPA.
 - B. Protests Generally. A prospective Offeror for a Contract may file a protest with LRAPA if the prospective Offeror believes that the procurement process is contrary to law or that a Solicitation Document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective Offeror fails to timely file such a protest, the prospective Offeror may not challenge the Contract on grounds under this section in any future legal or administrative proceeding.
 - C. Exception for Special Procurements. Notwithstanding the provisions of Subsection 1-035.7.C a Contract-specific special procurement awarded under these Rules may not be protested, challenged or reviewed unless the approval of the special procurement by the Board has been invalidated by a reviewing circuit court under ORS 279B.400.
 - D. Time for Submission of Protest. Protests of a Solicitation shall only be considered when presented to the Purchasing Agent or the person identified in the

Solicitation Documents for receipt of protests, if different, in writing, in accordance with the following timelines:

- (1) Protests shall be submitted in writing not less than ten (10) Days prior to the Solicitation Closing unless the Solicitation period is shorter than fifteen (15) Days, in which case the Solicitation Documents shall recite another protest deadline that allows a period of at least three (3) business days after the date of the Solicitation Opening to submit protests; and
 - (2) Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.
- E. Identification of Protest. It is the protester's responsibility to ensure that the protest is received by LRAPA within the stated timelines. The protest should be delivered in an envelope, directed to the Purchasing Agent or the person identified in the Solicitation Documents for receipt of protests, if different, that is clearly marked with the protester's name, the ITB or RFP number, the project name, if any, date and time of Solicitation Closing, and identified as a "Solicitation Document Protest." Protests delivered via facsimile shall not be accepted.
- F. Eligibility for Consideration. The Purchasing Agent shall consider the protest if the protest is timely filed and contains the following:
- (1) Sufficient information to identify the Solicitation that is the subject of the protest;
 - (2) The grounds that demonstrate how the procurement process is contrary to law or how the Solicitation Document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
 - (3) Evidence or supporting documentation that supports the grounds on which the protest is based; and
 - (4) The relief sought.
- G. Form of Decision. If the protest is timely submitted and contains the required information, the Purchasing Agent shall consider the protest and issue a decision in writing. Otherwise, the Purchasing Agent shall promptly notify the Offeror, in writing, that the protest is untimely or that the protest failed to meet the requirements of this section and give the reasons for the failure.
- H. Time of Decision. The Purchasing Agent shall issue a decision no less than three (3) business days before the Solicitation Closing, unless a written determination is made by the Purchasing Agent that circumstances exist that require a shorter time limit.

- I. Appeal. The Purchasing Agent's decision may be appealed to the Board by providing the Executive Director a written appeal within three (3) business days after the date on which the Purchasing Agent sends his or her decision to the Proposer's postal address specified in the written protest.
 - J. Finality of Decision. The decision of the Board or if no appeal is made to the Board, of the Purchasing Agent, shall be the final determination of LRAPA on the protest.
 - K. Delay of Solicitation Closing. If LRAPA receives a protest from a Offeror in accordance with this section, the Purchasing Agent may, in his or her discretion, extend the date of Solicitation Closing if the Purchasing Agent determines an extension is necessary to consider the protest and, if necessary, to issue Addenda to the Solicitation Documents or otherwise cancel the Solicitation
8. Request for Clarification or to Propose Substitution or Modification. Prior to the deadline for submitting a protest, or at such other time as the Solicitation Documents may otherwise specify, a Bidder or Proposer may request that the Purchasing Agent clarify any provision of the Solicitation Documents or may propose a change, modification or substitution, including, without limitation, a modification to Contract terms or conditions or a modification of the plans or specifications for a project. The clarification to a potential Offeror, whether orally or in writing, does not change the Solicitation Documents and is not binding on LRAPA unless LRAPA amends the Solicitation Documents by Addenda. Failure to timely request clarification or submit a request for substitution or modification shall be deemed acceptance of all of the terms and conditions of the Solicitation Documents.
9. Addenda to Solicitation Documents.
- A. Form. Changes to Solicitation Documents shall be made by written Addenda. The Offeror shall acknowledge, in writing, receipt of all Addenda issued, on the Bid or Proposal form, or separately by letter, prior to the Solicitation Closing.
 - B. Distribution. Addenda shall be sent by mail, fax or e-mail to every prospective Offeror on file with LRAPA who has obtained the Solicitation Documents from LRAPA.
 - C. Timeliness. Addenda shall be issued at least three (3) business days prior to the Closing, unless otherwise stated in the Solicitation Documents or subsequent Addenda.
10. Pre-Closing Modification of Offers and Withdrawal of Offers.
- A. Modifications. An Offer, once submitted, may be modified in writing by the Offeror prior to the time and date set for Solicitation Closing. Any modifications shall be prepared on the company letterhead, signed by an authorized

representative of the Offeror, and state that the new document supersedes or modifies the prior Offer. It is the Offeror's responsibility to ensure that the modification is received by LRAPA prior to the date and time established for Solicitation Closing. The modification should be delivered in an envelope that is clearly marked with the Offeror's name, the Solicitation number, the project name, if any, the date and time of Solicitation Closing, and identified as a "Bid Modification" or "Proposal Modification."

B. Withdrawals Prior to Solicitation Closing.

(1) Offers may be withdrawn by written notification on company letterhead signed by an authorized representative of the Offeror and received prior to the date and time established for the Solicitation Closing. It is the Offeror's responsibility to ensure that the withdrawal is delivered to LRAPA in an envelope that is clearly marked with the Offeror's name, the Solicitation number, the project name, if any, the date and time of Solicitation Closing, and identified as "Bid Withdrawal" or "Proposal Withdrawal."

(2) Withdrawn Offers shall be returned to the Offeror unopened.

11. Manner of Offer.

A. Documents. Completed Offer forms and documents as specified or provided in the Solicitation package furnished to Offerors must be typed or prepared in ink and signed by an authorized representative of the Offer. Alterations or erasures shall be initialed in ink by the person signing the Offer.

B. Samples and Descriptive Literature. Product samples, specifications or other descriptive information or literature may be required of each Offeror in order to evaluate required characteristics of the items offered. Submission requirements and information on returning items shall be included in the Solicitation Documents.

C. Identification of Offers. To ensure proper identification and special handling, Offers should be submitted to the address listed on the Solicitation notice in a Sealed envelope appropriately marked with the name of the Offer, the Solicitation number, the name of the project, and the date and time of the Closing. LRAPA shall not be responsible for the proper identification and handling of an Offer not in conformance with these requirements.

D. Receipt of Offer. It is the Offeror's responsibility to ensure that the Offer is received by LRAPA prior to the stated Closing.

(1) Receipt. Upon receipt by LRAPA, each Offer and modification shall be time stamped or marked by hand, not opened, and shall be stored in a secure place until the Offers are opened. If Offers or modifications are opened inadvertently or are opened prior to the time and date set for

Opening, the Offers shall be resealed and stored for Opening at the correct time. When this occurs, documentation of this procedure shall be placed in the Solicitation file.

- (2) **Opening and Recording.** Offers and modifications shall be opened publicly, immediately after the deadline for the submission of Offers and in the place designated by the Solicitation Documents. With regard to Bids, The Purchasing Agent shall designate representatives who will determine and declare the precise time of day for purposes of establishing the Bid submittal deadline, open each timely received Bid, read aloud the Bid price, and record Bid prices on a Bid tabulation sheet.
- (3) **Availability.** The opened Offers shall be available for public inspection subject to the need of LRAPA to evaluate such Offers prior to Notice of Intent to Award, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. LRAPA legal counsel shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the Offer and shall be readily separable from the Offer in order to facilitate public inspection of the non-confidential portion of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

E. **Late Offers, Late Withdrawals, and Late Modifications.** An Offer received after Closing is late. Any request for Offer withdrawal or modification received after Closing is late. A late Offer, late Offer modification, or late Offer withdrawal shall not be considered and shall be returned to the Offeror unopened unless the Purchasing Agent, in his or her discretion, determines that the late submittal or withdrawal increases competition, does not prejudice any Offeror, does not compromise the integrity of the competitive system or is in the best interest of LRAPA.

F. **Mistakes in Offers.**

- (1) **General.** Clarification or withdrawal of an Offer because of an inadvertent, nonjudgmental mistake in the Offer requires careful consideration to protect the integrity of the competitive bidding system and to ensure fairness. Except as provided in this Rule, if the mistake is attributable to an error in judgment, the Offer may not be corrected. Offer correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of LRAPA or does not prejudice other Offerors.
- (2) **Mistakes Discovered Before Offers Are Opened.** Mistakes discovered before Offers are opened may be corrected as provided above.

(3) Mistakes Discovered After Offers Are Opened But Before Award.

(a) Minor Informalities.

- (i) Definition. Minor informalities are matters of form rather than substance or insignificant mistakes that can be waived or corrected without prejudice to other Offerors or LRAPA.
- (ii) Examples. Minor informalities include, but are not limited to, an Offeror's failure to return the required number of signed Solicitation Documents; failure to sign in the designated block so long as the Solicitation Documents otherwise evidence an intent to be bound; or failure to acknowledge receipt of an Addendum to the Solicitation Documents if it is clear that the Offeror received the Addendum and intended to be bound by its terms or if the Addendum did not affect price, quantity, quality or delivery time.
- (iii) Not Included. Minor informalities do not include mistakes that affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.
- (iv) Procedure. If LRAPA discovers a minor informality after Offers are opened but before award, LRAPA may, in its discretion, correct or waive the minor informality if it is in its interest to do so and may request a written clarification from an Offeror or make other determinations.

(b) Mistakes Where Intended Offer is Not Evident. The Purchasing Agent must reject an Offer in which a mistake is clearly evident on the face of the Offer, and the intended Offer is not clearly evident or cannot be substantiated from accompanying documents or objectively verified through other means.

12. Irrevocability of Offer During Time for Consideration. Offers shall be valid and irrevocable for sixty (60) Days after the Offers are opened, or for the number of Days specified in the Solicitation Documents. If circumstances arise that require an extension of time for consideration of award after the Offers have been opened, the Purchasing Agent may request in writing that the Offerors extend the time during which LRAPA may accept their Offers.

13. Cancellation of Solicitation.

- A. Cancellation in the Public Interest. A Solicitation may be cancelled, in whole or in part, when it is determined by the Purchasing Agent to be in the public interest to do so. The reasons for cancellation shall be documented and be made part of the Solicitation file. Cancellation may be made at any time prior to LRAPA's execution of the Contract.
 - B. Cancellation When Offer Period Expires. The Solicitation will be cancelled if the time for consideration of Offers has expired without an award, unless the extension of time has been mutually agreed upon in writing between LRAPA and one or more Offerors, including the apparent low Bidder in the case of Bids.
 - C. Cancellation Prior to Closing. When a Solicitation is cancelled prior to Closing, a written notice of cancellation shall be sent to all holders of Solicitation Documents. All Offers received shall be returned to Offerors unopened. When a Solicitation is cancelled after the Offers are opened but prior to award, the notice shall be sent to all responsive Offerors. After the notice of intent to award is given, notice is required to be given only to the successful Offeror.
 - D. Cancellation After Closing; Retention of Offers. In the event that a Solicitation is cancelled after Closing and Offers are opened, all Offers received shall become part of the Solicitation file and the security bonds, if any, shall be returned.
14. Negotiation When Bids or Quotes Exceed Estimates. Whenever all Bids or Quotes received under a price-based Solicitation method exceed the Purchasing Agent's estimate for the project or procurement, the Purchasing Agent may negotiate the Contract Price with the Offeror that has submitted the lowest responsible Bid or Quote. The Purchasing Agent may negotiate changes to the Goods, project or Services that reduce the price as well as changes to Contract provisions that are not required by law or these Rules, so long as the scope of the Contract is not changed. For purposes of this Rule, the scope of a Contract is changed if the pool of potential Offerors who would qualify to submit Bids or Quotes under a new Solicitation would be different from or larger than the pool of potential Offerors who were qualified to submit Bids or Quotes under the initial Solicitation.
15. Notice of Intent. The Purchasing Agent may, but shall not be required to issue a notice of intent to renew or award any Contract which is not awarded pursuant to an advertised Invitation to Bid or Request for Proposals. Publication may be made in a newspaper of general circulation in the greater Eugene area, or by electronic publication intended to reach a sufficient number of persons who would be qualified to perform the type of Services described in the Contract. If given, a notice shall offer qualified persons an opportunity to protest the renewal or award by submitting a written protest under these Rules, but unless such notice is issued, no person shall be an aggrieved Proposer with respect to the renewal or award of the Contract.
16. Protest of Awards.

- A. Delay of Award. The Purchasing Agent will not execute a Contract awarded using Quotes, or under an advertised Solicitation, and no award will be final until the period of time for filing a protest of award has expired and the Purchasing Agent has responded to all timely filed protests of aggrieved Offerors.
- B. Definition of Aggrieved Offeror. An Offeror is an aggrieved Offeror only if the person or Entity is one to whom a notice of selection of a competitive tier or notice of an intent to award has been, or should have been, sent, and such person or Entity has been erroneously denied the award of a Contract or has been erroneously eliminated from competition for a Contract because:
- (1) All higher-ranked Offerors were non-responsive or all higher-ranked Offerors clearly failed to meet the Standards of Responsibility;
 - (2) The evaluation of Offers was not conducted in accordance with the criteria or processes described in the Solicitation Documents;
 - (3) The evaluator abused his or her discretion in disqualifying the protester's Offer as Non-responsive or as failing to meet the Standards of Responsibility; or
 - (4) The evaluation of Offers or subsequent determination of award was otherwise made in violation of the Public Contracting Code or these Rules.
- C. Filing of Protests. Unless a longer or shorter time period is provided in the Solicitation Documents, an aggrieved Offeror shall have three (3) business days after the date of issuance of the notice of intent to award, or notice of Proposers selected to advance to a tier of competition, to submit to the Purchasing Agent or to the person identified in the Solicitation Documents for receipt of protests, if different, a written protest of the matter described in the award. The written protest must specify the grounds upon which the protest is based, demonstrate the basis for the protestor's status as an aggrieved Offeror, and include a postal address at which the protestor will receive the Purchasing Agent's response. Notwithstanding the foregoing, the period of protest may not be shorter than three (3) business days after the date of notice, unless the Purchasing Agent determines that the immediate execution of a Contract is necessary to avoid a loss of funding for the Contract or that further delay in execution will result in injury, property damage or other serious adverse consequences.
- D. Authority to Resolve Protests. The Purchasing Agent shall consider a written protest and issue a written decision on the protest. The Purchasing Agent may not consider a protest that is filed in an untimely manner or that fails to allege facts that would support a finding that the protestor is an aggrieved Offeror. The Purchasing Agent's decision may be appealed to the Board by providing a written appeal to the Executive Director within three (3) business days after the date on

which the Purchasing Agent sends its decision to the Offeror's postal address specified in the written protest. The decision of the Board or, if no timely appeal to the Board is made, the decision of the Purchasing Agent shall be the final decision of LRAPA on the protest.

Section 1-040 Competitive Sealed Bids

1. Contents of Bid Documents. The Bid Documents shall provide sufficient information for prospective Bidders to evaluate their interest and qualifications to supply the specified Goods or Services, and to determine a Bid price. Prior to the submittal date, Bidders shall have the opportunity to review all LRAPA background documents as described and in the manner set forth in the Bid Documents. The Bid Documents, at a minimum, shall include the following:
 - A. The Closing date and time after which Bids will not be received and the place at which the Bids may be submitted;
 - B. The name and title of the person designated for receipt of Bids, the date, time and place for the Opening of Bids, and the contact person for the Solicitation, if different;
 - C. A description of the Goods or Services desired, specifications and drawings, delivery or performance schedule, inspection and acceptance requirements, and overall scope of work and other information, including the project management structure and the support or resources to be provided by LRAPA, if any;
 - D. The form and instructions for submission of Bids and any other special information;
 - E. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;
 - F. The date, time and place that the Bids will be publicly opened;
 - G. Explanation of how LRAPA will notify Bidders of Addenda and how LRAPA will make the Addenda available;
 - H. If LRAPA intends to award Contracts to more than one Bidder pursuant to OAR 137-047-0600(4), a description of the manner in which LRAPA will determine the award;
 - I. A description of applicable policy and program compliance to include Disparity Program requirements, if any;
 - J. The manner and time in which protests that the Bid process is contrary to law or that a Bid Document is unnecessarily restrictive, is legally flawed or improperly

specifies a brand name may be submitted, the name and title of the person designated to receive protests, the manner in which the Purchasing Agent will respond to the protest and the protester's rights of appeal to the Board, if any;

- K. The manner and time in which potential Bidders may submit requests for clarification, substitution and modification to the Solicitation Documents, the name and title of the person designated to receive such requests and a description of the manner in which LRAPA will respond to requests and issue written Addenda;
- L. Special evaluation criteria, if any;
- M. The date, time and place of the pre-Closing conference, if any, whether attendance is mandatory or voluntary, and a provision that statements made by LRAPA's representatives at the conference are not binding upon LRAPA unless confirmed by written Addendum;
- N. A statement that LRAPA may, in its discretion, reject any Bid that does not comply with all prescribed public procurement procedures and requirements;
- O. A statement that LRAPA may reject for good cause any or all Bids and/or cancel or delay the Solicitation, or cancel an award at any time prior to execution upon LRAPA's finding that it is in the public interest to do so and a statement that the cost of submission of a Bid is not recoverable upon such rejection, delay or cancellation;
- P. A statement that the Bid must contain a statement indicating whether the Bidder is a "Resident Bidder," as defined in ORS 279A.120;
- Q. A statement, if the Contract is for Public Works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), no Bid will be received or considered by LRAPA unless the Bid contains a statement by the Bidder that ORS 279C.840 or 40 U.S.C. 276a will be complied with;
- R. Information addressing whether a Contractor or subcontractor must be licensed under ORS 468A.720 (asbestos abatement);
- S. The address of the office where the specifications of the work, material or things may be reviewed or obtained;
- T. Bid security requirements, if any;
- U. Contract provisions, terms and conditions to be tendered to the successful Bidder, including a provision indicating whether the successful Bidder can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval of LRAPA;

- V. A statement that the Bidder is required to certify that the Bidder has not discriminated against minority, women or emergency small business enterprises in obtaining any required subcontracts;
 - W. A statement that the Bidder must provide a valid city business license, if applicable, Construction Contractors Board (CCB) license or other license as may be required;
 - X. If a multi-year Contract, a provision that makes the Contract subject to appropriation of funds and allows LRAPA to modify, amend or terminate without prejudice;
 - Y. A statement that Bidders are responsible for noting and abiding by the terms and conditions included in the Bid Documents and Addenda and by LRAPA's Public Contracting Rules; and
 - Z. A statement that by signing and submitting the Bid form, the Bidder is acknowledging acceptance of and the intent to abide by the terms and conditions of the Bid Documents and form of Contract to be entered into.
2. Deposit for Bid Documents. LRAPA may require a deposit or charge for reasonable costs for Bid Documents and mailing. A deposit may also be required when, in the judgment of the Purchasing Agent, it is necessary to encourage the return of detailed plans, specifications or other supporting information used by potential Bidders in preparing the Bid.
3. Negotiation with Bidders.
- A. General. There shall be no negotiations with any Bidder prior to the award of a Contract.
 - B. All Bids Exceeding Cost Estimates. If a project is competitively bid and all responsive Bids from reasonable Bidders exceed the project cost estimate, LRAPA may negotiate with the lowest Responsible Bidder.
4. Bid Evaluation.
- A. General. The Contract, if awarded, shall be awarded to the lowest responsive and Responsible Bidder who meets the Standards of Responsibility applicable to the Contract. The Purchasing Agent reserves the right to waive any informality in a Bid; reject any Bid not in compliance with the Bid Documents; reject any Bid not in compliance with these Rules or state statute regarding public contracting; or reject all Bids as provided in these Rules.

- B. Bid Tabulation Sheet. The Purchasing Agent shall ensure that a written record is produced that indicates how each Bid responds to the criteria set forth in the Bid Documents. The Bid tabulation sheet shall be made available upon request for public review after LRAPA has evaluated all Bids.
- C. Special Requirements to Determine Responsiveness.
- (1) General. The Bid Documents shall set forth any special requirements and criteria that will be used to determine which Bidders are responsive Bidders.
 - (2) Review of Unit Bid Prices. Unit Bid prices or Bid alternatives will be reviewed for unbalanced pricing or Bid loading.
 - (3) Considerations for Establishing Special Requirements. Any special requirements need not be precise predictors of actual future costs, but to the extent possible, such requirements shall:
 - (a) Be reasonable estimates based upon information LRAPA has available concerning future use; and
 - (b) Treat all Bids equitably.
 - (4) Special Requirements. Examples of special requirements include, but are not limited to transportation costs, volume weighing, trade-in allowance, depreciation allowances, cartage penalties and ownership or life cycle cost formulas.
- D. Product or Service Acceptability.
- (1) The Bid Documents shall set forth the criteria to be used in determining product or Service acceptability. The Purchasing Agent may require the submission of samples, descriptive literature, technical data, or other material, and may also require any of the following prior to award:
 - (a) Demonstration, inspection or testing of a product or Service prior to award for such characteristics as quality of workmanship;
 - (b) Examination of such elements as appearance, finish, taste, or feel; or
 - (c) Other examinations to determine whether the product or Service conforms to the Bid Documents.
 - (2) The acceptability evaluation is conducted only to determine that a Bid is responsive to the Bid Documents. A Bidder's product or Service that does

not meet the minimum requirements may be rejected in LRAPA's discretion. Product or Service rejections are not considered Debarments and are not grounds for appeal under state law.

- (3) In the case of a non-Resident Bidder, the Purchasing Agent shall add a percentage increase to the Bid equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides. For the purposes of administering this section, LRAPA shall rely on information published annually by the Oregon Department of Administrative Services and shall only apply the percentage increase if such application is consistent with applicable federal laws.

E. Low Tie Bids. Low tie Bids are Bids from responsive and Responsible Bidders that are identical in price, fitness, availability and quality and that meet all the requirements and criteria set forth in the Bid Documents. Low tie Bids shall be awarded as follows:

- (1) LRAPA shall prefer Goods or Services that have been manufactured or produced in this state pursuant to ORS 279.021(1); or if still tied,
- (2) LRAPA shall then prefer the Bidder whose principal offices or headquarters are located in Oregon; or if still tied,
- (3) LRAPA shall then prefer the Bidder whose principal offices or headquarters are located in Lane County; or if still tied,
- (4) Award shall be made by drawing lots among the remaining Bidders. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.
- (5) If none of the tied Bidders is located in Oregon, award of the Contract shall be made by drawing lots. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.

5. Rejection of Individual Bids. The Purchasing Agent may reject any Bid or any separate alternate Bid required or permitted by the Bid Documents that is not responsive or any Bidder that does not meet the Standards of Responsibility applicable to the Contract.

6. Contract Award.

A. Notice of Intent to Award. Unless otherwise provided in the Bid Documents, the Purchasing Agent shall provide written notice by regular mail or facsimile to all Bidders of LRAPA's intent to award the Contract. The notice of award shall not be final until the later of the following:

- (1) Seven (7) Days after the date of the notice, unless otherwise provided in the Bid Documents; or
 - (2) Until the Purchasing Agent provides a written response to all timely filed protests, if any, that denies the protest and affirms the award; or
 - (3) Until any appeal of the Purchasing Agent's decision regarding a protest has been reviewed by the Board
- B. Prompt Execution of Contract. Upon notice of Contract award, the successful Bidder shall furnish insurance and bond information within the timelines set forth in the Bid. Failure to execute the Contract or to provide the required information within the required timelines may result in the rejection of the Bid.
- C. Non-Resident Bidder. If the Contract Price exceeds \$10,000, and the Contractor is a contract non-Resident Bidder, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract terms of payment, length of Contract and such other information as the Department of Revenue may require before final payment can be received on the Contract. A copy of the report shall be forwarded to LRAPA. LRAPA shall satisfy itself that the above requirements have been complied with before it issues final payment.
- D. Public Improvement Contracts: Performance Bond; Payment Bond; Waiver of Bonds in Case of Emergency; Public Works Bond. A successful Bidder or Proposer for a Public Improvement Contract in excess of \$50,000 shall promptly execute and deliver to LRAPA the following bonds:
- (1) A performance bond in an amount equal to the full Contract Price conditioned on the faithful performance of the Contract in accordance with the plans, specifications and conditions of the Contract. The Performance Bond must be solely for the protection of LRAPA. If the Public Improvement Contract is with a single person to provide both Public Improvement design and construction, the obligation of the performance bond for the faithful performance of the Contract must also be for the preparation and completion of the design and related services covered under the Contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the Contract, or longer if provided for in the Contract, for damages of any nature, economic or otherwise, including corrective work attributable to the design aspect of such a project, or for the costs of design revisions needed to implement corrective work. The Board may waive the requirement of a performance bond. The Purchasing Agent may permit the successful Bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

- (2) A payment bond in an amount equal to the full Contract Price, solely for the protection of claimants under ORS 279C.600.
- (3) If the Public Improvement Contract is with a single person or Entity to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the Contractor shall provide the required performance and payment bonds upon execution of an amendment establishing the guaranteed maximum price. LRAPA shall also require the Contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- (4) Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to LRAPA, and shall be in a form approved by LRAPA.
- (5) In cases of Emergency, or when the interest or property of LRAPA probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any Public Improvement Contract may be excused, if a declaration of such Emergency is made in accordance with these Rules.
- (6) Unless exempt under ORS 279C.836(7) or (8), the Contractor under a Public Improvement Contract shall file with the Construction Contractors Board a Public Works bond with a corporate surety authorized to do business in this state in the amount of Thirty Thousand Dollars (\$30,000). The bond must provide that the Contractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor on Public Works projects. Before permitting a subcontractor to start work on a Public Works project, the Contractor shall verify the subcontractor has also filed a Public Works bond with the Construction Contractors Board. Before starting work on the Public Improvement Contract, the Contractor shall provide LRAPA with a written statement certifying the Contractor and any subcontractors have filed a Public Works bond as required in this subsection.
- (7) The Purchasing Agent may require payment and performance bonds for other Public Contracts. Such requirements shall be expressly set forth in the Bid Documents.

- (8) Upon LRAPA's request, the apparent successful Bidder must furnish the required payment and performance bonds within ten (10) Days, but in no event may the bonds be delivered after the commencement of the labor or other Services the payment and performance of which are to be secured by the bonds. If the Bidder fails to furnish the bond within the ten (10) Day period, LRAPA may reject the Bid and award the Contract to the next lowest responsive and Responsible Bidder, and, at LRAPA's discretion, the Bidder shall forfeit its Bid security.

Section 1-045 Requests for Proposals

1. Contents of Request Documents. A Request for Proposals must contain the same materials and information as the Bid Documents. In addition, the Request for Proposals Solicitation Documents must:
 - A. Negotiable Contract Provisions. Identify those contractual terms or conditions, if any, that LRAPA wishes to reserve for negotiation with Proposers, and may also:
 - (1) Request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; or
 - (2) Contain or incorporate the form and content of the Contract that LRAPA will accept, or suggested Contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.
 - B. Method of Selection. Announce the method of Contractor selection that LRAPA intends or reserves the right to use, which methods may include, but are not limited to, negotiations with the highest ranked Proposer, competitive simultaneous or ranked negotiations, multiple-tiered competition 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, or any combination of methods;
 - C. Evaluation Criteria. Contain a description of the manner in which Proposals will be evaluated, including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Purchasing Agent will develop and provide notice of the criteria and evaluation methods to be used in each subsequent tier; and
 - D. Time for Consideration. Contain a description of the period of time during which Proposals may be considered and will be irrevocable and may provide for extension of the time for consideration of Proposals for Proposers who proceed into competitive range evaluations.
2. Disclosure of Proposals.

- A. Before Award. Notwithstanding ORS 192.410 to 192.505, Proposals may be opened in a manner to avoid disclosure of contents to competing Proposers during, when applicable, the process of negotiation, but the LRAPA shall record and make available the identity of all Proposers as part of LRAPA's public records from and after the Opening of the Proposals. Notwithstanding ORS 192.410 to 192.505, Proposals are not required to be open for public inspection until after the notice of intent to award a Contract is issued. The fact that Proposals are opened at a meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the Proposals fails to give notice of or provide for an executive session for the purpose of opening Proposals.
 - B. After Intent to Award. Notwithstanding any requirement to make Proposals open to public inspection after LRAPA's issuance of notice of intent to award a Contract, LRAPA may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.
 - C. Prior to Solicitation Closing. If a Request for Proposals is cancelled after Proposals are received, but prior to the Closing of the Proposals, LRAPA may return a Proposal to the Proposer that made the Offer. LRAPA shall keep a list of returned Proposals in the file for the Solicitation.
3. Tours, Demonstrations and Discussions. As provided in the Request for Proposals or in written Addenda issued thereunder, LRAPA may conduct site tours, demonstrations, individual or group discussions and other informational activities with Proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements or to consider and respond to requests for modifications of the Proposal requirements. LRAPA shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.
 4. Methods of Selection. For purposes of evaluation, when provided for in the Request for Proposals, or in written Addenda issued at any time during the Solicitation, LRAPA may employ methods of Contractor selection that include, but are not limited to:
 - A. An award or awards based solely on the ranking of initially submitted Proposals;
 - B. Discussions leading to best and final Offers, in which LRAPA may not disclose private discussions leading to best and final Offers;
 - C. Discussions leading to best and final Offers, in which LRAPA may not disclose information derived from Proposals submitted by competing Proposers;

- D. Serial negotiations, beginning with the highest-ranked Proposer and negotiating with the second-ranked Proposer only after the highest-ranked Proposer is eliminated;
- E. Competitive negotiations in which LRAPA enters into separate but simultaneous negotiations with all Proposers in a final competitive tier;
- F. Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked Proposers;
- G. A multi-step Request for Proposers requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals LRAPA had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
- H. Any combination of methods described in this paragraph, as determined by the Purchasing Agent to be most likely to result in selection of the Contractor who will best serve the needs of LRAPA.

Revisions of Proposals may be permitted after the submission of Proposals and before award during negotiations or during any competitive range evaluation.

- 5. **Post-Closing Addenda.** After the opening of Proposals, LRAPA may issue or electronically post an Addendum to the Request for Proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the Addendum applies. LRAPA shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. LRAPA shall issue or post the Addendum at least five (5) Days before the start of the subject tier of competition or as otherwise determined by LRAPA to be adequate to allow eligible Proposers to prepare for the ensuing competition.
- 6. **Notice of Competitive Range.** In the Request for Proposals, LRAPA shall describe the methods by which LRAPA will make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. LRAPA shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the Purchasing Agent's decision.
- 7. **Posting of Notice of Intent.** LRAPA shall issue the notice of intent to award to, at a minimum, each Proposer who was evaluated in the final competitive tier.
- 8. **Selection for Award.** If a Contract is awarded, LRAPA shall award the Contract to the Responsible Proposer whose Proposal LRAPA determines in writing to be the most advantageous to LRAPA based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable and federally-permissible preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the Request for Proposals. Other factors may

not be used in the evaluation. When the Request for Proposals specifies or authorizes the award of multiple Public Contracts, LRAPA shall award Public Contracts to the Responsible Proposers who qualify for the award of a Contract under the terms of the Request for Proposals.

9. Request for Preliminary Documents. LRAPA may issue a Request for Information, a Request for Interest, a Request for Qualifications or other preliminary documents to obtain information useful in the preparation of a Request for Proposals.
10. Cancellation of Solicitation. LRAPA may cancel a Solicitation under a Request for Proposals for the same reasons, and in the same manner, as is provided for cancellations of Solicitations under Invitations to Bid.

Section 1-050 Informal Solicitation

An informal Solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to entities selected by the Purchasing Agent, or in any other manner which the Purchasing Agent deems suitable for obtaining competitive Quotes or Proposals.

1. A minimum of three (3) written or verbal Quotes or Proposals, based on a written scope of work approved by the Purchasing Agent, shall be obtained. The written description shall also describe the criteria for award.
2. A written record of all Entities solicited and Quotes or Proposals received shall be maintained. If three (3) Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quotes or Proposals.
3. If an original Contract does not exceed \$100,000, but it is anticipated that Amendments increasing the value of the Contract to greater than the limit will be negotiated, the selection of a Contractor to perform such work shall be guided by the process appropriate for the anticipated expenditure level.
4. If the award is made solely on the basis of price, LRAPA shall award the Contract to the Offeror that submits the lowest responsive Quote or Proposal and meets the Standards of Responsibility. If the award is based on criteria other than, or in addition to, price, LRAPA shall award the Contract to the Offeror that will best serve the interest of LRAPA, based on the criteria for award and the Standards of Responsibility.

Section 1-055 Contract Management

1. Amendments. No Amendment shall be made for the purpose of avoiding the requirement to issue a Request for Proposals or Invitation to Bid. Public Contracts may be amended in accordance with their terms, subject to the following limitations.
 - A. Amendments To Be in Writing. All amendments to a Public Contract must be in writing and executed by all parties to the Contract.

- B. Execution and Authorization. Unless expressly provided for in the Contract, an Amendment must be executed on behalf of LRAPA by the official who originally executed the Contract, or his or her successor.
 - C. Limit on Amendments. Except in cases of Emergency, no Contract Amendment shall:
 - (1) Extend the term of a fixed-term Contract except as provided in these Rules; or
 - (2) Increase the Contract Price by more than twenty percent (20%) over the threshold Contract Price that qualified the Contract for award by Quotes or discretionary award, unless required to comply with a law or regulation that was enacted or adopted after the execution of the Contract and not anticipated by either party.
2. Public Improvement Change Orders. The official or agent designated in a Public Improvement Contract may execute any Change Order for a modification of the Contract project subject to the following limitations:
- A. No Change Order, by itself or together with other Change Orders, shall so alter the project that a different or significantly larger pool of potential Contractors would have qualified to participate in the Solicitation if the Contract project had been described as modified by the Change Order(s).
 - B. No Change Order shall be made for the purpose of avoiding the requirement to issue a Request for Proposals or Invitation to Bid.
 - C. Notwithstanding any other provision of this section, the Purchasing Agent may expand a Public Improvement Contract that was awarded under a publicly advertised competitive Solicitation process to incorporate an additional project of the same type as the contracted project when the added project would qualify for award under an informal verbal or written Quote procedure and the addition of the project will result in an increase in safety, quality or cost savings to LRAPA that would not be available if the project was constructed under a separate Solicitation. The Purchasing Agent shall make a record of the facts that support the decision to expand the project.

Section 1-060 Performance and Liquidated Damages

Upon execution of the Contract and issuance of a Notice to Proceed, the successful Offeror shall complete the work according to the scope and schedule set forth in the Contract. Failure to satisfactorily complete all work within the specified performance period may result in the assessment of liquidated damages, termination, or other penalties as set forth in the Contract Documents.

Section 1-065 Debarment

1. General. LRAPA may in its discretion disqualify a prospective Contractor from consideration for award of LRAPA's Contracts for the reasons listed below after providing the prospective Contractor with notice and a reasonable opportunity to be heard. The Debarment shall not be for a period of more than three (3) years.
2. Reasons for Debarment. A prospective Contractor may be Debarred from eligibility for consideration for award of LRAPA's contracts for any of the following reasons:
 - A. Conviction for the commission of a criminal offense in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
 - B. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective Offeror's responsibility as a Contractor;
 - C. Conviction under state or federal antitrust statutes; or
 - D. Violation of a Contract provision that is regarded by LRAPA to be so serious as to justify Debarment. A violation may include, but is not limited to a failure to perform the terms of a Contract or failure to comply with any provision of law applicable to the Contractor's performance of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for Debarment.
3. Non-Waiver. The failure to Debar an Offeror for any of the above reasons shall not in any way impair or waive the Purchasing Agent's right to reject an Offer or Offeror as not responsive or not responsible.
4. Debarment Decision. LRAPA shall issue a written decision to Debar a prospective Offeror and shall provide the decision to the prospective Offeror immediately. The decision shall state the reasons for the action taken and inform the prospective Offeror of the right to appeal to the decision under these Rules.
 - A. Appeal of Disqualification. Any prospective Contractor who wishes to appeal Debarment as a Contractor shall, within three (3) business days after receipt of notice of Debarment, notify the Purchasing Agent that the prospective Contractor appeals the Debarment. Immediately upon receipt of such notice of appeal, the Board shall be notified.
 - B. Debarment Appeal Procedure. The procedure for appeal from a Debarment pursuant to ORS 279B.130 shall be in accordance with ORS 279B.425 and the

procedure for appeal from a Debarment pursuant to ORS 279C.440 through and including 279C.450. Debarment is not subject to ORS Chapter 183 et seq. except where specifically provided herein. The procedure shall be as follows:

- (1) Promptly upon receipt of notice of appeal, LRAPA shall notify the appellant of the time and place of the hearing;
- (2) The Board shall conduct the hearing and decide the appeal within thirty (30) Days after receiving notice of the appeal from the Purchasing Agent;
- (3) In the hearing, the Board shall consider de novo the notice of Debarment, the reasons listed for Debarment, and any evidence provided by the parties;
- (4) The Board shall set forth in writing the reasons for the decision;
- (5) The Board may allocate the Board's costs for the hearing between the appellant and LRAPA. The allocation shall be based upon facts found by the Board and stated in the Board's decision. If the Board does not allocate costs, the costs shall be paid by the losing party; and
- (6) The decision of the Board may be reviewed only upon a petition in the circuit court of Lane County filed within fifteen (15) Days after the date of the decision.

Section 1-070 Surplus Property

1. General Methods. Surplus property may be disposed of by any of the methods set forth in this section upon a determination by the Purchasing Agent that the method of disposal is in the best interest of LRAPA. Factors that may be considered by the Purchasing Agent include costs of sale, administrative costs and public benefits. The Purchasing Agent shall maintain a record of the reason for the disposal method selected and the manner of disposal. An advertisement required to be given under this section shall be published in a newspaper of general circulation in the Eugene area and in such media as the Purchasing Agent deems necessary to promote competition for the property being disposed of.
 - A. By transfer to another public agency;
 - B. By publicly advertised auction;
 - C. By publicly advertised Invitation to Bid;

- D. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with these Rules for the award of Personal Services Contracts;
 - E. By fixed price sale which shall be based on an appraisal or published schedule of values generally accepted by the insurance industry. The Purchasing Agent shall schedule and advertise a sale date and sell to the first buyer meeting the sales terms. The advertisement must be first published at least three (3) Days prior to the date upon which the Offers may be accepted;
 - F. By trade-in, in conjunction with the acquisition of other price-based items under a competitive Solicitation. The Solicitation shall require the Offer to state the total value assigned to the surplus property to be traded; or
 - G. By donation to any organization operating within or providing a service to residents of the Eugene area which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code.
2. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$500 or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost effective, including by disposal as waste. The Purchasing Agent shall make a record of the value of the item and the manner of disposal. Disposal of property to LRAPA employees under this section is strictly prohibited.