

# PORTLAND PUBLIC SCHOOLS

~~2016~~2019 PUBLIC

## CONTRACTING RULES



Portland Public Schools Public Contracting Rules ~~2016~~ 2019

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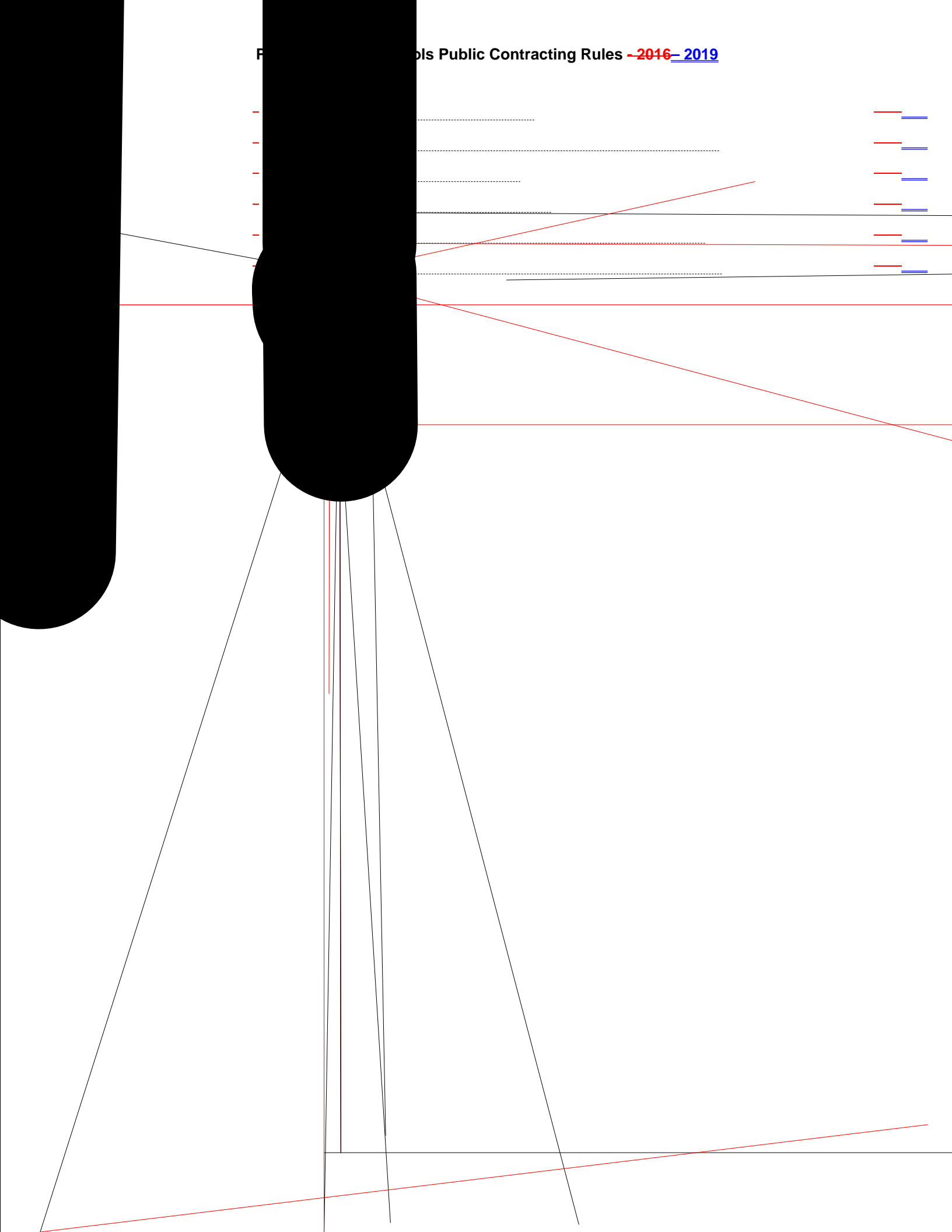


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Portland Public Schools Public Contracting Rules ~~2016~~ 2019

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Public Contracting Rules -2016-2019







**Portland Public Schools Public Contracting Rules**  
Division 45 ~~Public Contracting Rules~~ Applicable to All Public Contracts  
and Personal Services Contracts

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**ETHICS IN CONTRACTING**

**PPS-45-0300 PolicyPol**

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**Portland Public Schools Public Contracting Rules**

Division 45  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts



**Portland Public Schools Public Contracting Rules**

Division 45 

**Portland Public Schools Public Contracting Rules**  
Division 46 Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS DIVISION 46**

**PUBLIC CONTRACTING RULES APPLICABLE TO ALL PUBLIC CONTRACTS  
AND PERSONAL SERVICES CONTRACTS**

**PPS- 46-0000 Generally**

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**PPS- 46-0100 Application; ~~Federal Law Supremacy~~**

(1)

(a)

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**PPS- 46-0110 Definitions**

(1) "Addendum" "Addenda"

(2) "Administering Contracting Agency"





**Portland Public Schools Public Contracting Rules**  
Division 46 ~~—~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(a)

(b)

(c)

(30) ~~(29)~~ "Emergency Procurement"

(31) ~~(30)~~ "Energy Savings Performance Contract"

(32) ~~(31)~~ "Engineer"

(33) ~~(32)~~ "Facsimile"

(34) Federal Award

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(a)

(i)

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(ii)

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(b)

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(c)

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(35) ~~(33)~~ "Findings"

(a)

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**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(c)

(A)

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(i)

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**Portland Public Schools Public Contracting Rules**

Division 46 ~~48~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(50) ~~(48)~~ "Model Rules"

(51) ~~(49)~~ "Nonprofit Procurement Organization"

(50)



**Portland Public Schools Public Contracting Rules**  
Division 46 ~~—~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(a)

(b)

(77) ~~(75)~~ "Public Improvement Contract"

(78) ~~(76)~~(a) "Public Works"

(A)

(B) ~~(A)~~

(C) ~~(B)~~

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**Portland Public Schools Public Contracting Rules**

Division 46 ~~—~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(83) ~~(81)~~ "Recycled Product"

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**Portland Public Schools Public Contracting Rules**  
Division 46 ~~—~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(96) ~~(94)~~ "Services"

(97) ~~(95)~~ "Signature"

(98) ~~(96)~~ "Signed"

(99) ~~(97)~~ "Solicitation Document"

(100) ~~(98)~~ "Specifications"

(101) ~~(99)~~ "Superintendent"

(102) "Uniform Guidance"

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(103) ~~(100)~~ "Work"

(104) ~~(101)~~ "Writing"

(105) ~~(102)~~ "Written"

~~PPS- 46-0120~~ Policy

**PPS- 46-0130 Application of the Code and Rules; Exceptions**

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**Portland Public Schools Public Contracting Rules**

Division 46 ~~Public Contracting Rules Applicable to All Public Contracts~~  
and Personal Services Contracts

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**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts

**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts 

(4) **~~DBE~~ Disqualification**

(a)


(b)

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**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

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**Portland Public Schools Public Contracting Rules**

Division 46 — Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts


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**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts

**Portland Public Schools Public Contracting Rules**  
Division 46 ~~—~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(c)

**PPS-46-0420 Joint Cooperative Procurements**

(1) **Applicability**

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(2) **Solicitation Requirements**

(a)

(b)

(c)

**PPS-46-0430 Permissive Cooperative Procurements**

(1) **Applicability**

(2) **Solicitation Requirements**

(a)

(b)

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**Portland Public Schools Public Contracting Rules**

Division 46 ~~=~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts


**PPS-46-0440 Required Public Notice if Permissive Cooperative Procurement is Is Over \$250,000**

(1)

(2)

(a)


**Portland Public Schools Public Contracting Rules**

Division 46 

**Portland Public Schools Public Contracting Rules**

Division 46 –

**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**(b)**

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**Portland Public Schools Public Contracting Rules**  
Division 46  Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS-46-0515 Other Approved Solicitation Methods**

**(1) Request for Qualifications**

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**Portland Public Schools Public Contracting Rules**  
Division 46 ~~=~~ Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(d) ! ,

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(2) Contracting for Work ~~from~~From an FSCP.

(a)

(A)

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**Portland Public Schools Public Contracting Rules**  
Division 46 Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

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**PPS- 46-0530\_ PSC Contract Requirements**



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**PPS- 46-0535\_ PSC Contract Amendments**

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**Portland Public Schools Public Contracting Rules**

Division 46   Public Contracting Rules Applicable to All Public Contracts and Personal Services Contracts

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**Portland Public Schools Public Contracting Rules**  
Division 46 = Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS 46-0605 Procurements Subject to the Uniform Guidance**

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**PPS 46-0610 General Procurement Standards for Contracts Subject to the Uniform Guidance**

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**Portland Public Schools Public Contracting Rules**

Division 46  Public Contracting Rules Applicable to All Public Contracts and Personal Services Contracts

**PPS 46-0630 Procurement by Sealed Bids (Formal Advertising)**

**(1)**

**(a)**

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**Portland Public Schools Public Contracting Rules**  
Division 46 = Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

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**PPS 46-0655 Contract Cost and Price**

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**PPS 46-0660 Federal Awarding Agency or Pass-Through Entity Review**

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**PPS 46-0665 Bonding Requirements**

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## Portland Public Schools Public Contracting Rules

**Portland Public Schools Public Contracting Rules**

Division 46 — Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended

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(8) Debarment and Suspension (Executive Orders 12549 and 12689)



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**Portland Public Schools Public Contracting Rules**  
Division 47   Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS DIVISION 47**

**PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR  
SERVICES OTHER THAN PERSONAL SERVICES**

**PPS-47-0000 Generally**

**PPS-47-0250 Methods of Source Selection**

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**PPS-47-0252**






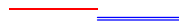
**Portland Public Schools Public Contracting Rules**

Division 47 –


**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(b) \_\_\_\_\_




**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(H)**

**PPS-47-0255\_ Competitive Sealed Bidding; One-Step Solicitations**

**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(ii)**

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**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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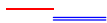
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**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(B)

(b) \_\_\_\_\_

**(7) Discussions**

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(b)

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(d)

(A)

(B)

(C)

**(8) Negotiations**

(a) \_\_\_\_\_

(A)


(B)

(C)

(b) \_\_\_\_\_





**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



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**Portland Public Schools Public Contracting Rules**  
Division 47   Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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(c) \_\_\_\_\_


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**Portland Public Schools Public Contracting Rules**

Division 47 




**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(3) Protest**

**Portland Public Schools Public Contracting Rules**


Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**


Division 47 –

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services

**Portland Public Schools Public Contracting Rules**  
Division 47 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(f) \_\_\_\_\_

**(13) Purchase of Products for Resale to Students and Staff**

**(14) Radio and Television Contracts for Student Activities**

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

**(15) Donated Materials or Services**

(a)

(b)

**(16) Manufacturer Direct Supplies**

~~(17) Purchases through Federal Programs.~~

(17) ~~(18)~~ Benson House Program Contracts

**Portland Public Schools Public Contracting Rules**  
Division 47 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

~~(18)~~ ~~(19)~~ Purchases ~~under~~ Under Contracts Solicited by Nonprofit Procurement Organizations of Which the District ~~is~~ Is a Member

~~(19)~~ ~~(20)~~ Secure, Specialized Transportation for Special Needs Students

~~(20)~~ ~~(21)~~ FSCP

(a) \_\_\_\_\_

(A)

(B)


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**Portland Public Schools Public Contracting Rules**


Division 47 

**Portland Public Schools Public Contracting Rules**

Division 47 ~~24~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(23) ~~(24)~~ Investment Contracts

~~(25)~~ Rating Agency Contracts

**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**PROCUREMENT PROCESS**

**PPS- 47-0300 Public Notice of Solicitation Documents**

**(1) Notice of Solicitation Documents; Fee**

**(a)**

**(b)**

**Portland Public Schools Public Contracting Rules**

Division 47 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(4) **Posting Advertisement for Offers**


(5) **Fees**

(6) **Notice of Addenda**

PPS-47-0310 Bids or Proposals ~~are~~ Are Offers

(1) **Offer and Acceptance**

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(a)

(b)

(c)

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**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(d)**

**Rules Governing Electronic Procurements**

**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(B)

(C)

(6) **Failure of the E-Procurement System**

**BID AND PROPOSAL PREPARATION**

**PPS- 47-0400 Offer Preparation**

(1) **Instructions**

(2) **Forms**

(3) **Documents**

**PPS- 47-0410 Offer Submission**

(1) **Product Samples and Descriptive Literature**

(2) **Identification of Offers.**

(a)

(b)

(3) **Receipt of Offers**


**PPS- 47-0420 Pre-Offer Conferences**

(1) **Purpose**

(2) **Required Attendance**

**Scheduled Time**

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(4) Statements Not Binding**

**(5) District Announcement**





**PPS-47-0460 Late Offers, Late Withdrawals, and Late Modifications**

**PPS-47-0470 Mistakes**

**(1) General**

**(2) District Treatment of Mistakes**

**(a)**

**(A)**

**(B)**

**(C)**

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**(b)**

**(c)**

**(A)**

**(B)**

**(C)**

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**Portland Public Schools Public Contracting Rules**


Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(d)**

**Portland Public Schools Public Contracting Rules**


Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**


Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(5) ~~Department Process~~ (

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**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(6) Reasons for Debarment**

**(a)**

**(b)**

**(c)**

**(d)**











**Portland Public Schools Public Contracting Rules**

Division 47   Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(C)

(D)

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**Portland Public Schools Public Contracting Rules**  
Division 47 Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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(v)


(vi)

**(2) Required Tax Certification**

(A)


(B)

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(a)**

**(b)**


**Portland Public Schools Public Contracting Rules**  
Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**LEGAL REMEDIES**

**PPS-47-0700 Protests and Judicial Review of Special Procurements**

- (1) **Purpose**
- (2) **Delivery**
- (3) **Content of Protest**
  - (a)
  - (b)
  - (c)
- (4) **Contract Review Board Response**

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**65) Judicial Review**

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**Portland Public Schools Public Contracting Rules**  
Division 47 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(b)

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(4) **District Response**

(5) **Extension of Closing**

(6) **Clarification**

(7) **Judicial Review**

(8) **Failure to Protest or Request a Clarification Precludes Protest of Award on Such Issue**

**PPS-47-0740 Protests and Judicial Review of Contract Award**

(1) **Purpose**

(a)

(b)


(A)

(B)

(C)


(D)

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(2) Delivery**

**Portland Public Schools Public Contracting Rules**

Division 47  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**PPS-47-0800 Amendments to Goods or Services Contracts and Price Agreements**

(1) **Generally**

**Portland Public Schools Public Contracting Rules**

Division 47 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

~~(3) — Contract~~ (4) Reporting Requirement for Amendments ~~Not to~~ /Change Orders That Exceed 125%  
of Original Contract Price; ~~Exceptions~~


(a)

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**Portland Public Schools Public Contracting Rules**  
Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**DIVISION 48**

**CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC  
MAPPING, TRANSPORTATION PLANNING OR LAND SURVEYING SERVICES AND  
RELATED SERVICES CONTRACTS**

**PPS-48-0100\_Application**

**Portland Public Schools Public Contracting Rules**

Division 48 ~~—~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(8) "Photogrammetrist"

(9) "Price Agreement"

(a)

(b)

(10) "Project"


(11) "Related Services" ~~—~~

(12) "Transportation Planning Services" ~~—~~





**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**

Division 48 –


**Portland Public Schools Public Contracting Rules**

Division 48 Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**(9) Application of Section (8)**

**(a)**


**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**


Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**  
Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**

Division 48 –




**Portland Public Schools Public Contracting Rules**

Division 48 –



**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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**(xi)**

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**(xiv)**

**Portland Public Schools Public Contracting Rules**  
Division 48 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

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**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 48 ~~—~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

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PPS-48-0240



**Portland Public Schools Public Contracting Rules**

Division 48 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**(3) Resolution of Protests**

**PPS- 48-0250 Solicitation Cancellation, Delay, or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility ~~For~~for Costs**

**PPS- 48-0260 Two-Tiered Selection Procedure for District Public Improvement Projects**

**(1)**

**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(A)



**Portland Public Schools Public Contracting Rules**

Division 48 ~~Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services~~

(5)

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~~(5)~~




**Portland Public Schools Public Contracting Rules**

Division 48  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(c)

**Portland Public Schools Public Contracting Rules**

Division 48 

**Portland Public Schools Public Contracting Rules**  
Division 48 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(2)

(a)

(b)

(c)

**PPS-48-0320 Contract Amendments**

**81)**

(2)

(3)

(4) ~~\_\_\_\_\_~~ Amendments That Would Cause a Contract to Exceed the Superintendent's Authority

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(5) Reporting Requirement for Amendments/Change Orders That Exceed 125% of Original Contract Price ~~\_\_\_\_\_~~

**Portland Public Schools Public Contracting Rules**  
Division 48 Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

~~(B)~~ \_\_\_\_\_  
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## **Portland Public Schools Public Contracting Rules**

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(3) Application of ORS 279C**



**Portland Public Schools Public Contracting Rules**  
Division 49 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(2) Benson House Program Contracts**


**(3) Purchases ~~under~~Under Contracts Solicited by Nonprofit Procurement Organizations of Which the District ~~is~~Is a Member**


**(4) FSCP**

**(a)** \_\_\_\_\_

**(A)**

**Portland Public Schools Public Contracting Rules**

Division 49 

**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(d)

(e)

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

(a)

(b)


(c)

(d)

(e)

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(5) Excusing Bonds**

**PPS-49-0160 Intermediate Procurements; Competitive Quotes and Amendments**

**(1) General**

**(2) Selection Criteria**


**(3) Request for Quotes**

**(4) Number of Quotes; Record Required**

**(5) Award**

**(6) Amendments**

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(iii)

(C)

(D)

(E)

(F)

(G)

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
(O)

(b) \_\_\_\_\_





**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(A)

(B)


(C)

(D)

(E)

(c) \_\_\_\_\_

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(K)

(L)

(M)

(N)

(O)

(P)

(Q)

(R)

(S)

(T)


(U)

(2) **Assignment or Transfer Restricted**

**PPS-49-0210 Notice and Advertising Requirements; Posting**

(1) **Notice and Distribution Fee**

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(a)

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(b)

*Handwritten text: "SIGNATURE" written vertically.*

(c)


(d)

(A)


(B)

*Illegible text, possibly a list of items or a signature line.*

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 49 

**Portland Public Schools Public Contracting Rules**  
Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

**PPS-49-9250 Addenda to Solicitation Documents**

- (1) **Issuance; Receipt**
- (2) **Notice and Distribution**
- (3) **Timelines; Extensions**
- (4) **Request for Change or Protest**

## **Portland Public Schools Public Contracting Rules**

**Portland Public Schools Public Contracting Rules**  
Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(b) \_\_\_\_\_

**PPS-49-0280 Offer Submissions**

**(1) Offer and Acceptance**

(a)

-

(b)

-

-

-

-

**(2) Responsive Offer**

**(3) Contingent Offers**

-

**(4) Offeror's Acknowledgement**

-


**(5) Instructions**

**(6) Forms**

**(7) Documents**

~~\_\_\_\_\_~~  
\_\_\_\_\_



**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(8) Facsimile or Electronic Submissions**

**(9) Product Samples and Descriptive Literature**

**(10) Identification of Offers**

**(a)**

**(b)**

**(11) Receipt of Offers**

**Portland Public Schools Public Contracting Rules**

Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(a)

(b)

(c)


(2) **Provisions ~~To~~To Be Included in Solicitation Document**

(a) \_\_\_\_\_

(b) \_\_\_\_\_

-


**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**(2) Alternative Procedures**

-

**Portland Public Schools Public Contracting Rules**

Division 49 


**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(D)



**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(c)

(d)

(e)

(f)

(g)

(h)

(i)




(j)






**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a)
- (b)
- (c)



**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**(a)**

**(b)**

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-

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services


**(5) Offeror Submissions**

**(a)**

**(A)**

**(B)**

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(C)

(b)

**(6) Evaluation of Bids**

(a)

**Portland Public Schools Public Contracting Rules**  
Division 49 ~~=~~ Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(2) Contents of Award Record for Bids**

- (a)
- (b)
- (c)

**(3) Contents of Award Record for Proposals**

- (a)
- (b)
- (c)
- (d)

**(4) Contract Document**

**(5) Bid Tabulations and Award Summaries**

**(6) Availability of Procurement Files**

**(7) Copies from Procurement Files**

**PPS-49-0410 Time for District Acceptance; Extension**

**(1) Time for Offer Acceptance**


**(2) Extension of Acceptance Time**

**PPS-49-0420 Negotiation With Bidders Prohibited**

**(1) Bids**


**Requests for Proposals**

**Portland Public Schools Public Contracting Rules**

Division 49 





**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(4) \_\_\_\_\_  
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(a) \_\_\_\_\_

(A) \_\_\_\_\_  
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(B) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(C) \_\_\_\_\_  
\_\_\_\_\_

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(c)

(d)

(e)

(f)

**PPS-49-0450 Protest of Contractor Selection, Contract Award**


**(1) Purpose**

**Notice of Competitive Range**

**Portland Public Schools Public Contracting Rules**

Division 49




**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS-49-0610 Definitions for Alternative Contracting Methods**

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- (1) "Affiliate"
- (2) "Alternative Contracting Methods"

**Portland Public Schools Public Contracting Rules**


Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

|

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**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(16) "Savings"**


**(17) "Technical Energy Audit "**

**PPS-49-0620 Use of Alternative Contracting Methods**

**(1) Competitive Bidding Exemptions**


  
  


**(2) Energy Savings Performance Contracts**



**(3) Post-Project Evaluation**

**Portland Public Schools Public Contracting Rules**

Division 49 



**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(6) Class Exemptions**


**(a)**

**(b)**






**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(b)

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(A)

(B)

(c) \_\_\_\_\_

**(4) Competitive Range; Protest; Award**

(a) \_\_\_\_\_


(A)


(B)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(6) Negotiation**

(a) \_\_\_\_\_

(A)

(B)

(b) \_\_\_\_\_

(A)

(i)

(ii)

(iii)

(c) \_\_\_\_\_

(A)

(B)

**(7) Terminating Discussions or Negotiations**

(a)

(b)

**PPS-49-0660\_RFP Pricing Mechanisms**

**(1)**

**Portland Public Schools Public Contracting Rules**  
Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(a) ~~\_\_\_\_\_~~ \_\_\_\_\_

(b) ~~\_\_\_\_\_~~ \_\_\_\_\_

(4)

**PPS-49-0670 Design-Build Contracts**

(1) **General** ~~\_\_\_\_\_~~

(a)

(b)

(c)

(d)

(e)

(2) **Authority** ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~

(3) **Selection** ~~\_\_\_\_\_~~

(4) **QBS Inapplicable**

(5) **Licensing**


~~\_\_\_\_\_~~ \_\_\_\_\_




## **Portland Public Schools Public Contracting Rules**




**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules d-


**Portland Public Schools Public Contracting Rules**

Division 49 


**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(b) \_\_\_\_\_

**Portland Public Schools Public Contracting Rules**  
Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services





(h) \_\_\_\_\_

(i) \_\_\_\_\_

(j) \_\_\_\_\_

(k) \_\_\_\_\_

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(B)


(i)

(ii)


   

**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(A)



(B)




(c)

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**Portland Public Schools Public Contracting Rules**

Division 49  Public Contracting Rules for Contracts for Goods and/or Services

**Portland Public Schools Public Contracting Rules**  
Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(d)

(e)

(f)

**(3) Requirements for Specifications**

(a)

(A)

(B)

(C)

(b)

(c)

**PPS-49-0870 Specifications; Brand Name Products**

**(1) Generally**

**(2) Equivalentents**

**(3) Product Exemption**

(a)

(b)

(c)

## **Portland Public Schools Public Contracting Rules**



**Portland Public Schools Public Contracting Rules**

Division 49 ~~Public Contracting Rules for Contracts for Goods and/or Services~~  
Other Than Personal Services

(a)

(b)

(c)

(d)

(5) ~~Contract Reporting Requirement for~~ Amendments/Change Orders ~~Not to~~ That Exceed 125% of Original Contract Price; ~~Exceptions~~

(e)

(D) ~~(a)~~

~~(A)~~

~~(B)~~





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# **PORTLAND PUBLIC SCHOOLS**

## **2019 PUBLIC**

## **CONTRACTING RULES**

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**Portland Public Schools Public Contracting Rules – 2019**

PPS 46-0440 Required Public Notice if Permissive Cooperative Procurement Is Over \$250,000 ..... 30

PPS 46-0450 Interstate Cooperative Procurements ..... 31

PPS 46-0460 Advertisements of Interstate Cooperative Procurements..... 32

PPS 46-0470 Protest and Disputes; Cooperative Procurements ..... 33

PPS 46-0480 Contract Amendments; Cooperative Procurements ..... 33

PPS 46-0500 Personal Services Contract Definition ..... 33

PPS 46-0505 Personal Service Contract Formal Selection Procedures ..... 34

PPS 46-0510 PSC Informal Selection Procedures ..... 34

PPS 46-0515 Other Approved Solicitation Methods ..... 34

PPS 46-0520 Flexible Services Contractor Pool ..... 35

PPS 46-0525 PSC Selection by Negotiation..... 36

PPS 46-0530 PSC Contract Requirements ..... 37

PPS 46-0535 PSC Contract Amendments ..... 37

PPS 46-0600 General Rule: Federal Law Prevails in Case of Conflict ..... 38

PPS 46-0605 Procurements Subject to the Uniform Guidance..... 38

PPS 46-0610 General Procurement Standards for Contracts Subject to the Uniform Guidance ..... 38

PPS 46-0615 Required Competition..... 39

PPS 46-0620 Procurement by Micro-Purchases ..... 40

PPS 46-0625 Procurement by Small Purchase Procedures..... 40

PPS 46-0630 Procurement by Sealed Bids (Formal Advertising) ..... 40

PPS 46-0635 Procurement by Competitive Proposals..... 41

PPS 46-0640 Procurement by Noncompetitive Proposals..... 41

PPS 46-0645 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms ..... 41

PPS 46-0650 Procurement of Recovered Materials..... 42

PPS 46-0655 Contract Cost and Price ..... 42

PPS 46-0660 Federal Awarding Agency or Pass-Through Entity Review..... 42

PPS 46-0665 Bonding Requirements..... 42

PPS 46-0670 Mandatory Contract Provisions ..... 43

PPS DIVISION 47 ..... 46

**PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR SERVICES OTHER THAN PERSONAL SERVICES..... 46**

    PPS 47-0000 Generally..... 46

    PPS 47-0250 Methods of Source Selection ..... 46



**Portland Public Schools Public Contracting Rules – 2019**

PPS 47-0620 Documentation of Award..... 85

PPS 47-0630 Availability of Award Decisions ..... 86

PPS 47-0640 Rejection of an Offer ..... 86

PPS 47-0650 Rejection of All Offers..... 88

PPS 47-0660 Cancellation of Procurement or Solicitation ..... 89

PPS 47-0670 Disposition of Offers if Solicitation Cancelled..... 89

PPS 47-0700 Protests and Judicial Review of Special Procurements..... 89

PPS 47-0710 Protests and Judicial Review of Sole-Source Procurements ..... 90

PPS 47-0720 Protests and Judicial Review of Multi-Tiered and Multi-Step  
Solicitations ..... 90

PPS 47-0730 Protests and Judicial Review of Solicitations ..... 91

PPS 47-0740 Protests and Judicial Review of Contract Award..... 92

PPS 47-0750 Judicial Review of Other Violations..... 93

PPS 47-0760 Review of Prequalification and Debarment Decisions ..... 93

PPS 47-0800 Amendments to Goods or Services Contracts and Price Agreements ..... 93

DIVISION 48..... 95

    CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING,  
    PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING OR  
    LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS ..... 95

    PPS 48-0100 Application..... 95

    PPS 48-0110 Definitions ..... 95

    PPS 48-0120 List of Interested Consultants; Performance Record ..... 96

    PPS 48-0130 Applicable Selection Procedures; Pricing Information; Disclosure of  
    Proposals; Conflicts of Interest..... 97

    PPS 48-0200 Direct Appointment Procedure ..... 101

    PPS 48-0220 Formal Selection Procedure ..... 102

    PPS 48-0230 Ties Among Proposers..... 109

    PPS 48-0240 Protest Procedures..... 109

    PPS 48-0250 Solicitation Cancellation, Delay, or Suspension; Rejection of All  
    Proposals or Responses; Consultant Responsibility for Costs..... 110

    PPS 48-0260 Two-Tiered Selection Procedure for District Public Improvement  
    Projects ..... 110

    PPS 48-0270 Price Agreements ..... 112

    PPS 48-0280 FSCP ..... 113

    PPS 48-0300 Prohibited Payment Methodology; Purchase Restrictions..... 115

    PPS 48-0310 Expired or Terminated Contracts; Reins4p3 ENGINEERING,  
    rements .....5(Expired or Te)8.31.... ement or Soli0003( )147.69 Tel10



**Portland Public Schools Public Contracting Rules – 2019**

PPS DIVISION 49 ..... 117

    DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS ..... 117

        PPS 49-0100 Application..... 117

        PPS 49-0110 Policies..... 117

        PPS 49-0120 Definitions ..... 117

        PPS 49-0130 Competitive Bidding Requirement ..... 117

        PPS 49-0140 Contracts for Construction Other Than Public Improvements; Emergency Construction Contracts ..... 117

        PPS 49-0146 Class Exemptions; Public Improvement Contracts..... 118

        PPS 49-0150 Emergency Contracts; Bidding and Bonding Exemptions..... 120

        PPS 49-0160 Intermediate Procurements; Competitive Quotes and Amendments ..... 121

        PPS 49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer ..... 122

        PPS 49-0210 Notice and Advertising Requirements; Posting ..... 124

        PPS 49-0220 Prequalification of Offerors ..... 125

        PPS 49-0230 Eligibility to Bid or Propose; Registration or License ..... 127

        PPS 49-0240 Pre-Offer Conferences ..... 127

        PPS 49-0250 Addenda to Solicitation Documents ..... 128

        PPS 49-0260 Request for Clarification or Change; Solicitation Protests ..... 128

        PPS 49-0270 Cancellation of Solicitation Document ..... 129

        PPS 49-0280 Offer Submissions..... 130

        PPS 49-0290 Bid or Proposal Security ..... 131

        PPS 49-0300 Facsimile Bids and Proposals ..... 132

        PPS 49-0310 Electronic Procurement..... 133

        PPS 49-0320 Pre-Closing Modification or Withdrawal of Offers ..... 133

        PPS 49-0330 Receipt, Opening, and Recording of Offers; Confidentiality of Offers..... 133

        PPS 49-0340 Late Bids, Late Withdrawals, and Late Modifications ..... 134

        PPS 49-0350 Mistakes ..... 134

        PPS 49-0360 First-Tier Subcontractors; Disclosure and Substitution; ITB..... 135

        PPS 49-0370 Disqualification of Persons ..... 137

        PPS 49-0380 Bid or Proposal Evaluation Criteria ..... 140

        PPS 49-0390 Offer Evaluation and Award; Determination of Responsibility ..... 140

        PPS 49-0395 Notice of Intent to Award ..... 142

        PPS 49-0400 Documentation of Award; Availability of Award Decisions..... 142

        PPS 49-0410 Time for District Acceptance; Extension..... 143

        PPS 49-0420 Negotiation With Bidders Prohibited..... 143

**Portland Public Schools Public Contracting Rules – 2019**

PPS 49-0430 Negotiation When Bids Exceed Cost Estimate..... 143  
PPS 49-0440 Rejection of Offers..... 144

**Portland Public Schools Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS DIVISION 45**

**DISTRICT CONTRACTS GENERALLY**

**PPS 45-0000 Generally**

Except as expressly provided in other School Board Policies, PPS Divisions 45, 46, 47, 48, and 49 (collectively, the "Portland Public Schools Public Contracting Rules") govern all District Contracts. These Division 45 Rules address delegation of contracting authority under ORS 279A.075 and 332.075, Ethics in Contracting, and Procurement from Qualified Rehabilitation Facilities. Divisions 46, 47, 48, and 49 govern Public Contracts as defined in ORS Chapters 279A, 279B, and 279C (the Public Contracting Code). Except as otherwise expressly provided in School Board Policy or these Rules, these Division 45 Rules apply to all District Contracts, including Public Contracts as defined in the Public Contracting Code.

**PPS 45-0100 Definitions**

As used in the Public Contracting Code and Divisions 45, 46, 47, 48, and 49 of these Rules, and except as otherwise provided in School Board Policy:

(1) **"District Contract"** means all Contracts entered into by the District, including Public Contracts subject to the Public Contracting Code and Divisi

**Portland Public Schools Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (D) The District Contract is an Emergency Procurement;
  - (E) The District Contract is a Change Order or Contract amendment to a prior-approved Contract authorized under these Rules;
  - (F) An offer of judgment made in the course of litigation in with the District is a party when the Superintendent and general counsel determine that such an offer is in the best interest of the District or is to the District's tactical advantage; or
  - (G) These Rules otherwise expressly authorize the Superintendent to approve the Contract.
- (5) The Superintendent may designate in Writing any District employee or employees to exercise all or a portion of the Superintendent's powers and duties under these Rules.
- (6) If the Superintendent authorizes an offer of judgment pursuant to PPS 45-0200(4)(b)(F) in an amount exceeding \$25,000, the superintendent shall request that the general counsel draft a lawyer-client privileged memo to the School Board to explain the legal basis for the offer of judgment.
- (7) No district employee or official shall authorize and no contractor shall undertake any work under a district contract prior to full execution of the contract by all authorized signatories. Notwithstanding the forgoing, the Superintendent may authorize work to begin under a contract prior to full execution in the following circumstances:
- (a) The contract is an intergovernmental agreement pursuant to ORS Chapter 190, the parties have agreed in principal to the terms of the contract, and the only remaining step is circulation of the Contract for approval; or
  - (b) The contract is an amendment that is subject to approval of the Board of Education because it will increase the cost of the contract above the superintendent's contract approval authority, but the Board approval process will cause a delay in work completion that will prevent timely delivery of essential services. For the purposes of this exception, "essential services" means goods, services, personal services, or construction services necessary for a school to open on time, a class to start on time, a class or program to complete on time, to comply with conditions of grant that is otherwise at risk of loss, or other services critical to timely and complete education of district students. The Superintendent will only authorize such work in cases where the delay is caused by factors outside of the District's control and that could not have been identified when the contract was first negotiated.

**ETHICS IN CONTRACTING**

**PPS 45-0300 Policy**

These Rules supplement and do not replace the Oregon Government Ethics Law (ORS 244.010 through 244.400). These Rules are designed to accomplish the policy of ORS 244.010 that service as a public official is a public trust and that implementation of District Contracting under these Rules and the Public Contracting Code should be free of undisclosed conflicts or undue influence.

**PPS 45-0305 Ethics in the Solicitation and Award of District Contracts**

District officers who participated in the process of development, selection, and Award of District Contracts must comply with the following Rules:

**(1) Definitions:**

- (a) "**Business**" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, and any other legal entity operated for economic gain, but excluding any income producing, not-for-profit corporation that is tax exempt

**Portland Public Schools Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

under Section 501(c) of the Internal Revenue Code with which the District officer or relative is associated only as a member or board director or in a non-remunerative capacity. If the business is privately held, the District official or relative is "associated with the business" if the Person is a director, officer, owner, or employee, or in which the Person owns or has owned stock, debt instruments, stock options, or other form of equity interest worth more than \$1,000 in the preceding calendar year. If the business is publicly held, the District official or relative is "associated with the business" if the Person is a director or officer or owns or has owned \$100,000 or more of stock, debt instruments, stock options, or other form of equity interest in the preceding calendar year. If the District official is required to file a statement of economic interest, "business" also includes a business listed as a source of income as required under ORS 244.060(3).<sup>1</sup>

- (b) **"Conflict of interest"** means any action, decision, or recommendation by a District officer in the course of participating in a Procurement under these Rules that would ("actual conflict of interest") or could ("potential conflict of interest") be to the private pecuniary benefit or detriment of the District officer, a relative of the District officer, or a business with which the District officer or relative is associated. For the purpose of this requirement:
- (c) **"District officer"** means any person who is serving the District as an elected official, appointed official, employee, or agent, whether or not the person is compensated for those services.
- (d) **"Gift"** means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions. "Gift" also includes something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.
- (e) **"Relative"** means:
  - (A) The District officer's spouse or domestic partner;
  - (B) Children of the District officer, spouse, or domestic partner;
  - (C) Siblings, spouses of siblings, or parents of the public official, spouse, or domestic partner;
  - (D) Any individual for whom the District officer has a support obligation;
  - (E) Any individual for whom the District officer provides benefits related to the public official's public employment or from whom the District officer receives benefits; and
  - (F) Any person who resides with the public official.

(2) **Disclosure of Conflict of Interest Required.** Any District official participating in a District Procurement, whether for Goods and Services, Personal Services, Public Works, Public Improvements, or any other District Contract shall disclose actual or potential conflicts of interest.

- (a) **Appointed District Officials.** An appointed District official must disclose actual or potential conflicts of interest in Writing to the District official's appointing authority (the person who has hire-and-fire authority over the official). This Writing must disclose the nature of the conflict and request the appointing authority to dispose of the matter. The appointing authority shall respond in Writing by designating an alternate to dispose of the matter or directing the District officer to dispose of the matter as directed by the appointing authority.

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<sup>1</sup> The only District officials required to file a statement of economic interest are the Superintendent and the chief financial officer.

**Portland Public Schools Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**Portland Public Schools Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PROCUREMENT FROM QUALIFIED REHABILITATION FACILITIES ("QRF")**

**PPS 45-0405 QRF Definitions**

- (1) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services that the State Procurement Office has determined to be qualified under OAR 125-055-0015.
- (2) "QRF Procurement List" means a listing of those nonprofit agencies for disabled individuals who currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 through 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Contracting Agencies such as the District.

**PPS 45-0410 Required Procurement of QRF Products or Services**

- (1) As required by ORS 279.850(1), if the District intends to procure a Product or Service that is listed on the QRF Procurement List, the District must procure that Product or Service, at the Price determined by the State of Oregon Procurement Office, from a QRF if the Product or Service is of Specifications appropriate to the District's Procurement needs and is available within the time required by the District.
- (2) The most 1224 0 TD1.1694i04 Twt8.2076 RCmam procNi Tc.0005 0005v0.42s.





**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (4) **"Bid"** means a Written response to an Invitation to Bid.
- (5) **"Bidder"** means a Person who submits a Bid in response to an Invitation to Bid.
- (6) **"Brand Name or Equal Specification"** is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers, or similar identifying characteristics to describe the standard of quality, performance, functionality, or other characteristics needed to meet the District's requirements, and that authorizes Offerors to offer Goods and Services that are equivalent or superior to those named or described in the Specification.
- (7) **"Brand Name Specification"** is defined in ORS 279B.200(2) and means a Specification limited to one or more products, Brand Names, makes, manufacturers' names, catalog numbers, or similar identifying characteristics.
- (8) **"CFR"** means the Code of Federal Regulations of the United States of America.
- (9) **"Class Special Procurement"**

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (19) **"Cooperative Procurement Group"** means a group of authorized Contracting Agencies or other governmental body, domestic or foreign, joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements pursuant to ORS 279A.200.
- (20) **"Days"** means calendar Days.
- (21) **"Designated Procurement Officer"** means the individual designated and authorized by the Superintendent to perform certain Procurement functions described in these Rules.
- (22) **"Descriptive Literature"** means the Offeror's materials submitted to provide information concerning the Goods and Services available in response to a solicitation.
- (23) **"District"** means School District No. 1J, Multnomah County, Oregon, doing business as Portland Public Schools.
- (24) **"District Price Agreement"** means a Price Agreement issued by the District. Such Agreements may result from a Cooperative Procurement.
- (25) **"Disqualification"** means a disqualification, suspension, or debarment pursuant to ORS 200.065, 200.075, 279A.110, or PPS 46-0210.
- (26) **"Electronic Advertisement"** means the District's Solicitation Documents or Request for Quotes, Request for Information, or other document inviting participation in the District's Procurements available over the Internet via (a) the World Wide Web, (b) ORPIN, or (c) an Electronic Procurement System other than ORPIN.
- (27) **"Electronic Offer"** means a response to the District's Solicitation Documents or Request for Quotes submitted to the District via (a) the World Wide Web or some other Internet protocol or (b) an Electronic Procurement System utilized by the District.
- (28) **"Electronic Procurement System"** means ORPIN or other system constituting an information system that Persons may access through the Internet, using HTTP (i.e., the World Wide Web), Telnet, or some other Internet protocol, or that Persons may otherwise remotely access using a computer. An Electronic Procurement System enables the District to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to Procurement.
- (29) **"Emergency"** means circumstances that:
- (a) Could not have been reasonably foreseen;
  - (b) Create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety; and
  - (c) Require prompt execution of a Contract to remedy the condition.
- (30) **"Emergency Procurement"** means a sourcing method pursuant to ORS 279B.080.
- (31) **"Energy Savings Performance Contract"** means a Public Contract between the District and a Qualified Energy Service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
- (32) **"Engineer"** is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(2).

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide Fringe Benefits, but only when the Contractor or subcontractor is not required by other federal, state, or local law to provide any of these benefits.

**(38) "Good-Faith Dispute"** is defined in ORS 279C.580 and means a documented dispute concerning:

- (a)** Unsatisfactory job progress;
- (b)** Defective Work not remedied;
- (c)** Third-party claims filed or reasonable evidence that claims will be filed;
- (d)** Failure to make timely payments for labor, equipment, and materials;
- (e)** Damage to the prime Contractor or subcontractor; or
- (f)** Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

**(39) "Goods"** is defined in ORS 279A.010(1)(i) and means supplies, equipment, materials, and personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified herein.

**(40) "Goods and Services" or "Goods or Services"** is defined in ORS 279A.010(1)(j) and means any combinations of any of the items identified in the definitions of "Goods" and "Services."

**(41) "Grant"** is defined in ORS 279A.010(k) and means:

- (a)** An agreement under which the District receives money, property, or other assistance including,

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

Contracts and in which one or more of the participating governmental bodies are located outside of their state.

**(43) "Invitation to Bid" or "ITB"** means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

**(44) "Joint Cooperative Procurement"** is defined in ORS 279A.200 and means a Cooperative Procurement that identifies:

- (a) The participating governmental bodies or the Cooperative Procurement Group;
- (b) The Contract requirements or estimated Contract requirements for Price Agreements.

**(45) "Land Surveyor"** is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(5).

**(46) "Life-Cycle Cost"** means the total cost to the District of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

**(47) "Life-Cycle Costing"** means the various quantifiable cost factors, in addition to the acquisition cost of Goods and Services (also referred to in this Rule as

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(58) **"ORS"** means the Oregon Revised Statutes.

(59) **"Original Contract"** is defined in ORS 279A.200(f) and means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.

(60) **"Permissive Cooperative Procurement"** is defined in ORS 279A.200 and means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.

(61) **"Person"** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization, or any official representative of an employee or employer association.

(62) **"Personal Services"** means the Services or type of Services performed under a Personal Services Contract as defined in PPS 46-0500.

(63) **"Personal Services Contract"** or

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(73) **"Public Body"** is defined in ORS 279A.010(1)(y) and has the meaning given that term in ORS 174.109.

(74) **"Public Contract"** or **"Contract"** means, except where these Rules otherwise expressly indicate, a "Public Contract" as defined in ORS 279A.010 and means a sale or other disposal, or a purchase, lease, rental, or other acquisition by the District of personal property, Services, including Personal Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants.

(75) **"Public Contracting"** is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying, or administering Public Contracts or Price Agreements.

(76) **"Public Improvement"** is defined in ORS 279A.010 and means a Project for construction, reconstruction, or major renovation on real property by or for the District. "Public Improvement" does not include:

- (a) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to Project design or inspection; or
- (b) Emergency Work, minor alteration, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(77) **"Public Improvement Contract"** means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(78) (a) **"Public Works"** is defined in ORS 279C.800 and includes, but is not limited to:

- (A) 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 any Public Agency to serve the public interest;
- (B) A Project for the construction, reconstruction, major renovation, or painting of a privately owned road, highway, building, or structure of any type that uses funds of a private entity and \$750,000 or more of funds of a Public Agency; or
- (C) A Project for the construction of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed Project will be occupied or used by a Public Agency.

(b) "Public Works" does not include:

- (A) The reconstruction or renovation of privately owned real property that is leased by a Public Agency; or
- (B) The renovation by a private nonprofit entity of publicly owned real property that is more than 75 years old if:
  - (i) The real property is leased to the private nonprofit entity for more than 25 years;
  - (ii) Funds of a Public Agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and
  - (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007.





**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

or education-related social service providers, or Contracts with other community partners in furtherance of the District's educational mission.

**(94) "School Board"** means the District Board of Directors acting as the governing body of the District pursuant to ORS Chapter 332.

**(95) "Secondary Waste Content" or "Secondary Waste Materials"** is defined in ORS 279A.010(1)(jj) and means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process, such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

**(96) "Services"** is defined in ORS 279A.010(1) and means Services other than Personal Services designated under PPS 46-0500 and ORS 279A.055.

**(97) "Signature"** means any Written mark, word, or symbol that is made or adopted by a Person with the intent to be bound and that is attached or logically associated with a Written document to which the Person intends to be bound.

**(98) "Signed"** means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

**(99) "Solicitation Document"** means an Invitation to Bid, a Request

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS 46-0120 Policy**

The District shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

**PPS 46-0130 Application of the Code and Rules; Exceptions**

(1) Except as set forth in this section, the District must exercise all rights, powers, and authority related to Public Contracting in accordance with the Public Contracting Code and these Rules.

(2) The District may make a Procurement without Competitive Sealed Bidding, Competitive Sealed Proposals, or other competition required under ORS 279B.050 through 279B.085 or PPS 47-0255 through 47-0670, provided the Procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347), or other federal law that is, as determined by the Local Contract Review Board, similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002, in effectuating or promoting transfers of property to the District.

(3) Except as expressly provided herein, these Rules do not apply to the Contracts or classes of Contracts described in ORS 279A.025(2), including the following District Contracts:

(a) Contracts between the District and:

(A) Another Contracting Agency;

(B) The Oregon Health and Science University;

(C) The Oregon State Bar;

(D) A governmental body of another state;

(E) The federal government;

(F) An American Indian tribe or an agency of an American Indian tribe;

(G) A nation, or a governmental body in a nation, other than the United States; or

(H) An intergovernmental entity formed between or among:

(i) Governmental bodies of this or another state;

(ii) The federal government;

(iii) An American Indian tribe or an agency of an American Indian tribe;

(iv) A nation other than the United States; or

(v) A governmental body in a nation other than the United States.

(b) Agreements authorized by ORS Chapter 190 or by a statute, charter provision, ordinance, or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;

(c) Insurance and Service Contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection;

(d) Grants;

(e) Contracts for professional or expert witnesses or Consultants to provide Services or testimony relating to existing or potential litigation or legal matters in which a Public Body is or may become interested;

(f) Acquisitions or disposals of real property or interest in real property;

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;
- (h) Contracts for the Procurement or distribution of textbooks;
- (i) Procurements by the District from an Oregon Corrections Enterprises program;
- (j) Contracts, agreements, or other documents entered into, issued, or established in connection with:





**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.

- (c) If the District receives identical Offers and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced, or to be performed in Oregon, then the District must Award the Contract by drawing lots among the identical Offers. The District will provide to the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.

**(2) Determining if Offers Are Identical.** The District will consider Offers identical in price, fitness, availability, and quality as follows:

- (a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability, and quality if the Bids are Responsive and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.
- (b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
- (c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability, and quality if, after completing the contracting procedure approved by the Contract Review Board, the District determines, in Writing, that two or more Proposals are equally advantageous to the District.
- (d) Offers received in response to an Intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the District in accordance with ORS 279B.070(4).

**(3) Determining if Goods or Services or Personal Services Are Manufactured or Produced in Oregon.** In applying Section (1) of this Rule, the District will determine whether a Contract is predominantly for Goods, Services, or Personal Services and then use the predominant purpose to determine if the Goods, Services, or Personal Services are manufactured, produced, or performed in Oregon. The District may request, either in a Solicitation Document, following Closing, or at any other time the District determines is appropriate, any information the District may need to determine if the Goods, Services, or Personal Services are manufactured or produced in Oregon. The District may use any reasonable criteria to determine if Goods, Services, or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the District applies those criteria equally to each Offer.

**(4) Procedure for Drawing Lots.** When this Rule calls for the drawing of lots, the District shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

**(5) Discretionary Preference and Award.** Under ORS 279A.128, the District may provide, in a Solicitation Document for Goods, Services, or Personal Services, a specified percentage preference of not more than 10 percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the District provides for a preference under this section and more than one Offeror qualifies for the preference, the District may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The District may establish a preference percentage higher than 10 percent by Written order that finds good cause to establish the higher percentage and that explains the District's reasons and evidence for finding good cause to establish a higher percentage. The District may not apply the preferences described in this section in a Procurement for Emergency Work, minor alterations,

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

ordinary repairs or maintenance of public improvements, or construction Work that is described in ORS 297C.320.

**PPS 46-0310 Reciprocal Preferences**

(1) When evaluating Bids pursuant to PPS 47-0255 through 47-0257, 49-0390, or PPS 49-0640 through 49-0660, the District must add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The District may rely on the list prepared and maintained by the state pursuant to ORS 279A.120(4) to determine both whether the Nonresident Bidder's state gives preference to in-state Bidders and the amount of such preference.

**PPS 46-0320 Preference for Recycled Materials**

(1) Notwithstanding provisions of law requiring the District to Award a Contract to the lowest or best Offeror, and in accordance with Section (2) of this Rule, the District may give preference to the Procurement of Goods manufactured from Recycled Materials whenever the District uses Competitive Sealed Bidding or Competitive Sealed Proposals and as set forth in this Rule.

(2) In comparing Goods from two or more Offerors, if at least one Offeror Offers Goods manufactured from Recycled Materials and at least one Offeror does not, the District may select the Offeror offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

(a)

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

limited to Board Policy 3.30.080-P (Resource Conservation), 3.30.082-P (Environmentally Sustainable Business Practices), and 8.80.010-P (High Performance Facility Design), and related Administrative Directives adopted by the Superintendent.

**COOPERATIVE PROCUREMENT**

**PPS 46-0400 Authority for Cooperative Procurements**

- (1) The District may participate in, sponsor, conduct, or administer any of the following:
  - (a) Joint Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services using a source-selection method substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085, or to establish Original Contracts or Contracts for Public Improvements that use a Competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
  - (b) Permissive Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services only, using a source-selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
  - (c) Interstate Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
- (2) The District must determine, in Writing, whether the solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060, or 279B.085 in accordance with ORS 279A.200(2). This Written documentation must be maintained in the District's Procurement File.

**PPS 46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

- (1) If the District is an Administering Contracting Agency of a Cooperative Procurement, the District may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the District. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether each Person must enter into a Written agreement with the District, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. When acting as an Administering Contracting Agency, the District may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.
- (2) If the District is acting as a Purchasing Contracting Agency and enters into a Contract based on a Cooperative Procurement, the District shall comply with the Code and these Rules, including, without limitation, those sections of the Code and these Rules that govern:
  - (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;
  - (b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and
  - (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

**PPS 46-0420 Joint Cooperative Procurements**

- (1) **Applicability.** The District may participate in, sponsor, conduct, or administer a Joint Cooperative Procurement for the purchase of Goods or Services or Public Improvements. The District must comply with



**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

the procedures set out in ORS 279A.210 and these Rules to procure Goods and Services or Public Improvements using a Joint Cooperative Procurement. Only the Participating agencies listed in the solicitation and original Contract Documents may enter into a Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

**(2) Solicitation Requirements.** The District may administer or participate in a Joint Cooperative Procurement only if:

- (a)** The Administering Contracting Agency's solicitation and Award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060, or 279B.085, or uses a Competitive Bidding process substantially equivalent to the Competitive Bidding process in ORS 279C;
- (b)** The Administering Contracting Agency's solicitation and the Original Contract or Price

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (a) The District intends to make payments, in aggregate, over the term of the Contract in excess of \$250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;
  - (b) The District's Contract expressly provides for payment, whether a fixed or maximum price, in excess of \$250,000; or
  - (c) At the time the District enters into the Contract, the District reasonably contemplates, based on historical or other data available to the District, that the total payments it will make for the Goods or Services, or Personal Services, under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.
- (3) The notice of intent must contain the following information:
- (a) A description of the Procurement;
  - (b)

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**PPS 46-0470 Protest and Disputes; Cooperative Procurements**

- (1) An Offeror or potential Offeror wishing to protest the Procurement process, the contents of a Solicitation Document related to a Cooperative Procurement, or the Award or proposed Award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425, unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.
- (2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.
- (3) The failure of the District or other Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of the District or any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

**PPS 46-0480 Contract Amendments; Cooperative Procurements**

The District may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in PPS 47-0800 or PPS 49-0910, as applicable.

**PERSONAL SERVICES CONTRACTS**

**PPS 46-0500 Personal Services Contract Definition**

- (1) Pursuant to ORS 279A.055(2), a Contract for Personal Services ("PSC") is a Contract primarily for the provision of 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 Services depends on attributes that are unique to the service provider.
- (2) PSCs that fall within the definition in Section (1) of this Rule include, but are not limited to, the following:
  - (a) Contracts for Services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant, or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying Services and other construction-related professional services subject to Division 48 of these Rules;
  - (b) Contracts for Services as an artist in the performing or fine arts, including any Person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
  - (c) Contracts for Services that are specialized, creative, or research-oriented;
  - (d) Contracts for educational services;
  - (e) Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and
  - (f) Contracts for other professional or technical consulting services not listed above.
- (3) The Contract Review Board delegates to the Superintendent the discretion to decide whether a particular type of Contract or Service falls within the definition of "Personal Services Contract" as set forth in Sections (1) and (2) of this Rule.

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(4) The District shall not use PSCs to obtain and pay for the Services of an employee. A PSC may be used only to obtain and pay for the Services of an independent Contractor.

**PPS 46-0505 Personal Service Contract Formal Selection Procedures**

The District will use a formal selection procedure if the estimate contract amount of personal services contract is greater than \$150,000. All formal RFP and RFQ solicitations must comply with the requirements for Competitive Sealed Proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the Sealed Proposal Procurement methods set forth in PPS 47-0260 to 47-0263.

**PPS 46-0510 PSC Informal Selection Procedures**

The District may use an informal selection process to obtain Personal Services when a formal selection process is not required.

(1) The informal selection process must solicit responses/Proposals from at least three qualified Contractors offering the required Services. If three Proposals are not reasonably available, fewer will suffice, but the District shall make a Written record of the effort made to obtain at least three Proposals.

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

- (a) Particular capability to perform the Services required;
- (b) Experienced staff available to perform the Services required, including each Proposer's recent, current, and projected workloads;
- (c) Performance history;
- (d) Approach and philosophy used in providing Services;
- (e) Fees or costs;
- (f) Geographic proximity to the Project or the area where the Services are to be performed; and
- (g) Work volume previously Awarded by the District, with the object of effecting an equitable distribution of Contracts among qualified Contractors. But distribution must not violate the policy of selecting the most highly qualified Contractor to perform the Services at a fair and



**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (B) Contract negotiations with the next-listed Contractor are not successful.
- (C) The Project is for Work that is a continuation of, addition to, or connected with Work previously performed by a Contractor on the list and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work.
- (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal Procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (b) An FSCP established under this section will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule.
- (c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of Work or any Work at all.
- (d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of Work from other Contractors through any other Procurement method authorized under these Rules.
- (e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of Work.

**PPS 46-0525 PSC Selection by Negotiation**

The Superintendent may procure Personal Services with Contractors through direct negotiation in any of the following circumstances:

- (1) The Contract Price is not more than \$50,000.
- (2) The Superintendent has established an FSCP pursuant to PPS 46-0520(2) for a particular class of Projects, and the Contractor is on the FSCP list.
- (3) The nature of the Work is not Project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such Work include insurance brokerage/agent of record services, medical services, and audit services.
- (4) The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such Services can include, but are not limited to, education Services, academic and staff coaching, school sports officiation, and community relations.
- (5) The Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.
- (6) A Contract for which a non-District funding source, e.g., a Grant or a federal, state, or city contract, identifies the Contractor in the funding award or makes a funding award conditioned upon the Service being performed by a specific Contractor. The following must be documented to the Procurement File:
  - (a) The name of the external funding source;
  - (b) The background on how the funding source selected the Contractor(s); and
  - (c) A copy of the funder's document naming the Contractor.

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (7) A Contract where the student, parent, or other third-party participant selects the service provider and the process for selecting qualified Contractors has been approved in advance by the Director of Procurement.
- (8) The Contract is entered into pursuant to an emergency declared by the Superintendent.
- (9) The Contract is for the provision of child care services to District students where the Contractor is paid directly by a non-District funding source (generally parents).
- (10) The Contract is for the provision of tutoring to eligible District students attending private schools as per Title I.
- (11) The Contract is for interim staff or temporary staffing services.
- (12)



## Portland Public Schools Public Contracting Rules

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

## Portland Public Schools Public Contracting Rules

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (f) of this section.

**PPS 46-0650 Procurement of Recovered Materials**

The District and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program



**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**(5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(6) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**(7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(8) Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appD.001 Tc.t appl

**Portland Public Schools Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**END OF DIVISION 46**



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS DIVISION 47**

**PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR  
SERVICES OTHER THAN PERSONAL SERVICES**

**PPS 47-0000 Generally**

These Division 47 Rules implement ORS 279B applicable to public Procurements for Goods or Services, or both.

**PPS 47-0250 Methods of Source Selection**

(1) Except as permitted in these Rules, the District must Award a Public Contract for Goods or Services, or both, by one of the following sourcing methods:

(a)

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Services may include, but are not limited to (where these terms are used in another statute, they must have that meaning):

- (A) Housing, including utilities, rent, or mortgage, or assistance to pay utilities, rent, or mortgage;
  - (B) Sustenance, including clothing;
  - (C) Employment training or skills training to improve employability;
  - (D) Services for people with disabilities;
  - (E) Foster care or foster care facilities;
  - (F) Residential care or residential care facilities;
  - (G) Community housing;
  - (H) In-home care, including home-delivered meals;
  - (I) Medical care, services, and treatment, including, but not limited to:
    - (i) Medical, dental, hospital, psychological, psychiatric, therapy, vision;
    - (ii) Alcohol and drug treatment;
    - (iii) Smoking cessation;
    - (iv) Drugs, prescriptions, and non-prescriptions; or
    - (v) Nursing services and facilities.
  - (J) Transportation or relocation;
  - (K) Quality of life, living skills training;
  - (L) Personal care;
  - (M) Legal services and expert witness services;
  - (N) Religious practices, traditions, and services, separately or in any combination thereof; and
  - (O) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an agency.
- (2) In the cost analysis required under Section (1) of this Rule, the District shall consider cost factors that include the following:
- (a) Cost of Using the District's Own Personnel and Resources. When estimating the District's costs of performing the Services, the District

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (D) Any costs related to stopping and dismantling a Project or operation because the District intends to procure a limited quantity of Services or procure the Services within a defined or limited period of time.

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules fo

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

utilized, or dealt with successfully in terms of the quantity, timeliness of completion, success in obtaining desired results, or other reasonable needs of the District.

**PPS 47-0255 Competitive Sealed Bidding; One-Step Solicitations**

**(1) Generally.** The District may procure Goods and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The District must provide public notice of the Competitive Sealed Bidding solicitation as set forth in PPS 47-0300.

**(2) Invitation to Bid.** In accordance with ORS 279B.055(2), an



**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) That the District requests unpriced submittals and that the District will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
  - (C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope; and
  - (D) The criteria to be used in the evaluation of unpriced submittals.
- (b) **Evaluation.** The District shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- (6) **Procedure for Phase Two of Multi-Step Sealed Bidding.**
- (a) After the completion of phase one, if the District does not cancel the solicitation, the District shall invite each eligible Bidder to submit a price Bid.
  - (b) The District shall conduct phase two as any other Competitive Sealed Bid Procurement except:
    - (A) As specifically set forth in this Rule or the Invitation to Bid;
    - (B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

**PPS 47-0260 Competitive Sealed Proposals; One-Step Solicitations**

- (1) **Generally.** The District may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060. The District shall use a Request for Proposal to initiate a Competitive Sealed Proposal. The Request for Proposal must contain the information required by ORS 279B.060(2) and by Section (2) of this Rule. The District shall provide public notice of the Request for Proposals as set forth in PPS 47-0300.
- (2) **Request for Proposal.** In accordance with the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:
- (a) General Information.
    - (A) Notice of any pre-Offer conference as follows:
      - (i) The time, date, and location of any pre-Offer conference;
      - (ii) Whether attendance at the conference will be mandatory or optional; and
      - (iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by Written Addendum.
    - (B) A Procurement description.
    - (C) A time, date, and place that prequalification applications, if any, must be filed, and the classes of work, if any, for which Bidders must be prequalified in accordance with ORS 279B.120.
    - (D) The form and instructions for submission of Proposals, including the time, date, and place that Proposals are due, and any other special information, e.g., whether Proposals may be submitted by electronic means;
    - (E) The time, date, and place of Opening;
    - (F) The office where the Solicitation Document may be reviewed;
    - (G) Key contact information, as follows:



**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (i) The office or location where the Solicitation Documents may be reviewed;
- (ii) The name of the Person designated for receipt of Proposals.
- (iii) The name and title of the person designated by the District as the contact Person for the Procurement, if different from the Person designated to receive Proposals.

**(H)**



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(4)

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (F) Multi-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 Proposals requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the District 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 authorized or prescribed by these Rules.
- (c) Revisions of Proposals may be permitted after the submission of Proposals and before Award for the purpose of obtaining best Offers or best and final Offers.
  - (d) After the opening of Proposals, the District 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. The District 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. The District shall issue or post the Addendum at least five Days before the start of the subject tier of competition or as otherwise determined by the District to be adequate to allow eligible Proposers to prepare for the competition in accordance with rules adopted under ORS 279A.065.
- (7) The cancellation of Requests for Proposals and the rejection of Proposals must be in accordance with ORS 279B.100.
- (8) In the Request for Proposals, the District shall describe the methods by which the District will make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. The District shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the District's decision.
- (9) The District shall issue or electronically post the notice of intent to Award described in ORS 279B.135 to each Proposer who was evaluated in the final competitive tier.
- (10) If a Contract is Awarded, the District shall Award the Contract to the responsible Proposer whose Proposal the District determines in Writing to be the most advantageous to the District based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable 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, the District shall Award Public Contracts to the responsible Proposers who qualify for the Award of a Contract under the terms of the Request for Proposals.
- (11) The District 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.

**PPS 47-0261 Procedures for Competitive Range; Multi-Tiered and Multi-Step Solicitations**

- (1) **Generally.** The District may procure Goods and Services employing any combination of the methods of Contractor selection as set forth in PPS 47-0260(3)(b). In addition to the procedures set forth in PPS 47-0300 through 47-0490 for methods of Contractor selection, the District may provide for a Multi-Tiered or Multi-Step selection process that permits Award to the highest-ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(7) Discussions**

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) Competitive Simultaneous Negotiations. If the District chooses to conduct competitive negotiations, the District may negotiate simultaneously with competing eligible Proposers. The District:
- (A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
  - (B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the District notifies all of the eligible Proposers with whom the District will engage in negotiations of the District's intent to disclose before engaging in negotiations with any eligible Proposer.
- (e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.
- (9) **Best and Final Offers**. If the District requires best and final Offers, the District must establish a common date and time by which eligible Proposers must submit best and final Offers. If the District is dissatisfied with the best and final Offers, the District may make a Written determination that it is in the District's best interest to conduct additional discussions, negotiations or change the District's requirements and require another submission of best and final Offers. The District must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The District shall evaluate Offers as modified by the best and final Offers. The District shall conduct the evaluations as described in OAR PPS 47-0600. The District may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.
- (10) **Multi-Step Sealed Proposals**. The District may procure Goods or Services by using Multi-Step Competitive Sealed Proposals under ORS 279B.060(8)(b)(g). Multi-Step Sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit Competitive Sealed Price Proposals on the technical Proposals. The District must Award the Contract to the Responsible Proposer submitting the most advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.
- (a) Public Notice. When the District uses Multi-Step Sealed Proposals, the District shall give public notice for the first phase in accordance with PPS 47-0300. Public notice is not required for the second phase. However, the District shall give

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.
- (d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and Contractor responsibility under ORS 279B.110.

**(5) Amendments.** The District may amend a Contract Awarded as an Intermediate Procurement in accordance with PPS 47-0800.

**(6) No Fragmentation.** A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement. See ORS 279B.070(2).

**PPS 47-0275 Sole-Source Procurements**

**(1) Generally.** The Superintendent is delegated the authority to determine whether Goods and Service or a class of Goods and Services are available from only one source pursuant to ORS 279B.075. The Superintendent's determination must be based on Written Findings that may include information that:

- (a)** The efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
- (b)** The Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
- (c)** The Goods or Services are for use in a pilot or an experimental Project; or
- (d)** Other Findings that support the conclusion that the Goods or Services are available from only one source.

**(2) Public Notice.** If the Contract amount is greater than \$150,000, the District shall give public notice of the Superintendent's determination that the Goods or Services or class of Goods or Services are available from only one source. The District shall publish such notice in a manner similar to public notice of Competitive Sealed Bids under ORS 279B.055(4) and PPS 47-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor, and include the date, time, and place that protests are due. The District shall give affected Persons at least seven Days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole-source determination.

**(3) Protest.** An affected Person may protest the Superintendent's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with PPS 47-0710.

**PPS 47-0280 Emergency Procurements**

**(1) Generally.** The Superintendent may Award a Public Contract as an Emergency Procurement. The Superintendent will document the nature of the emergency and describe the method used for selection of the

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Special Procurements. The Contract Review Board may approve the following two types of Special Procurements:

- (1) A "Class Special Procurement" is a Procurement procedure for entering into a series of Contracts over time or for multiple Projects based on the classification of the Contract.
- (2) A "Contract-Specific Special Procurement" is a Procurement procedure for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single Project.

**PPS 47-0287 Special Procurements; Request Procedures**

- (1) To seek approval of an additional Special Procurement, the Superintendent shall submit a Written request to the Contract Review Board. The request must describe the contracting procedure, the Goods and Services or class of Goods and Services that are the subject of the Special Procurement, and the circumstances that justify the use of a Special Procurement under the standards set forth in Section (2) of this Rule.
- (2) The Contract Review Board shall review and may approve a request for a Special Procurement if the Contract Review Board finds that the use of the Special Procurement:
  - (a) Is unlikely to encourage favoritism in the Awarding of Public Contracts or to substantially diminish competition for Public Contracts; and
  - (b) (A) Is reasonably expected to result in substantial cost savings to the District or to the public; or  
(B)

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(1) Advertising Contracts.** The District may purchase advertising in any medium, regardless of the dollar value of the Contract. The District may sell advertising for District publications or activities, regardless of the dollar value of the Contract.

**(2)**

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

textbooks, workbooks, curriculum kits, on-line curriculum, instructional software applications and related digital resources, assessments, assessment materials and reports, reference materials, books, periodicals, audio and visual media, and non-mass-marketed software. Examples of creative works covered by this Class Special Procurement include, but are not limited to, artwork, music, uncopyrighted writings, and similar works.

**(5) Insurance and Employee Benefits.** The District may purchase liability, property damage, workers' compensation, and other insurance and insurance services Contracts, and employee benefits, without Competitive Procurement and regardless of dollar amount, by selecting either a vendor directly or by appointing an agent of record. For the purpose of this Special Procurement, "employee benefits" includes, but is not limited to, "employee benefit plans" as defined in ORS 243.105(1), plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886, plans provided through the School District No. 1J Health and Welfare Trust, flexible benefit plans as defined in ORS 243.221, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans, long-term care insurance, health care coverage to retired officers, employees, spouses, and children, employee assistance plans, and expense reimbursement plans.

**(6) Spot Buys.** This Special Procurement provides a process for the District to procure products that are available for a limited period of time at "lower-than-normal" prices (also referred to as "spot buys").

**(a)**

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

requirements for volume discounts, creating standardization among agencies, and reducing lead

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

exceed the value of the used personal property, the Superintendent may dispose of the property as the Superintendent determines is in the best interest of the District.

**(10) Reverse Auctions.**

- (a) A reverse auction means a process for the purchase of Goods and Services from the lowest Bidder. The District must conduct reverse auctions by first publishing a solicitation that describes its requirements and Contract terms and conditions. Then the District must solicit online Bids from all interested Bidders through an Internet-based program. The solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the reverse auction:
  - (A) The prices of the other Bidders or the price of the most Competitive Bidder;
  - (B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");
  - (C) The scores of the Bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or
  - (D) Any combination of (A), (B), and (C) above. Before the reverse auction commences, Bidders must be required by the District to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the Award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the District. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores, and related details, separately or in any combination thereof, will be revealed to the participants. The District may cancel this solicitation if the District determines that it is in the District's best interest. At the end of this Bidding process, the District must Award any potential Contract to the lowest Responsible Bidder, or in the case of multiple Awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows the District to test and determine the suitability of the Goods and Services before making the Award.

**(11) Software and Hardware Maintenance, Licenses, Subscriptions, and Upgrades.** The Superintendent may directly enter into a Contract or renew existing Contracts for information technology and telecommunications hardware or software maintenance, licenses, subscriptions, and upgrades without competitive solicitation where the maintenance, upgrades, subscriptions, and licenses are either available from only one source or, if available from more than one provider, are obtained from the District's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the District's hardware or software system. The Superintendent shall document in the Procurement File the facts that justify either that maintenance, licenses, subscriptions, and upgrades were available from only one source or, if from more than one source, from the current vendor.

**(12)**

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services





**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Services or Goods will be offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the Superintendent has offered a Contract to all of the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer a Contract to Contractors out of sequence in the following circumstances:

- (A) The Contractor that is next on the list declines or is unavailable during the time period needed.
- (B) Contract negotiations with the next-listed Contractor are not successful.
- (C) The Project is for Goods or Services that is a continuation of, addition to, or connected with Goods or Services previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work or provided the prior Goods.
- (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an Intermediate Procurement pursuant to PPS 47-0270 limited to Contractors in the FSCP.

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

or constitution. The Superintendent shall use competitive methods where possible to achieve the best value for the District.

**(24) Rating Agency Contracts.** The District may purchase the Services of Moody's Investors Service, Standard & Poor's, or similar rating agencies.

**(25) Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt.** The Superintendent may purchase gasoline, diesel fuel, heating oil, lubricants, and asphalt using the Intermediate Procurement Process set forth in PPS 47-0270 regardless of dollar amount.

**(26) Hotel, Catering, and Space Rental Contracts.**

- (a) The Superintendent may rent a room or meeting facility in a hotel, event space, or other venue for District purposes without competitive procurement.
- (b) The Superintendent may hire a caterer without competitive procurement where use of a particular caterer or catering service is a condition of rental of a facility.

**(27) Specialized Assistive Equipment for Students.** The superintendent may directly procure specialized assistive equipment for students, including without limitation positioning equipment for orthopedically impaired students and assistive technology for blind/vision impaired, deaf/hard of hearing, and deaf/blind students, and augmentative and alternative communication equipment for students who require such assistance.

**(28) Service, Repair, or Maintenance Services for Products under Warranty.** The superintendent may directly procure service, repair, or maintenance services from a manufacturer, dealer, or authorized service provider for a product or a system subject to a warranty when the terms of the warranty require use of a particular maintenance service provider or providers, or when the manufacturer or approved provider must diagnose a problem because the system or part is proprietary.

**PROCUREMENT PROCESS**

**PPS 47-0300 Public Notice of Solicitation Documents**

**(1) Notice of Solicitation Documents; Fee.** The District shall provide public notice of every Solicitation Document in accordance with Section (2) of this Rule. The District may give additional notice using any method it determines appropriate to foster and promote competition, including:

- (a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the District's Procurements;
- (b)

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) A general description of the Goods or Services to be acquired;
  - (c) The interval between the first date of notice of the Solicitation Document given in accordance with Sections (2)(a) or (b) above and Closing, which shall not be less than seven Days for an Invitation to Bid and 14 Days for a Request for Proposals, unless the District determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with Section (2)(a) or (b) above and Closing be less than seven Days as set forth in ORS 279B.055(4)(f). The District shall document the specific reasons for the shorter public notice period in the Procurement File;
  - (d) The date that Persons must file applications for prequalification if prequalification is a requirement, and that the class of Goods or Services is one for which Persons must be prequalified;
  - (e) The office where Contract terms, conditions, and Specifications may be reviewed;
  - (f) The name, title, and address of the individual authorized by the District to receive Offers;
  - (g) The scheduled Opening; and
  - (h) Any other information the District deems appropriate.
- (4) **Posting Advertisement for Offers.** The District shall post a copy of each advertisement for Offers at the principal business office of the District. An Offeror may request a copy of the advertisement for Offers.
- (5) **Fees.** The District may charge a fee or require a deposit for the Solicitation Document.
- (6) **Notice of Addenda.** The District shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with PPS 47-0430.

**PPS 47-0310 Bids or Proposals Are Offers**

- (1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.
- (a) In Competitive Bidding and Competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the District's acceptance for the period specified in PPS 47-0480. The District may elect to accept the Offer at any time during the specified period, and the District's Award of the Contract constitutes acceptance Biddingr8. The Di3rs

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Offer shall include any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Dist

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS 47-0330 E-Procurement**

**(1) Electronic Procurement Authorized.**

- (a) The District may conduct all phases of a Procurement, including, without limitation, the posting of Electronic Advertisements and the receipt of electronic Offers, by electronic methods if and to the extent the District specifies in a Solicitation Document, a Request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.
- (b) The District must open an Electronic Offer in accordance with electronic security measures in effect at the District at the time of its receipt of the Electronic Offer. Unless the District provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- (c) The District's use of electronic Signatures must be consistent with applicable statutes and Rules. The District must authorize, and may limit the use of, electronic methods of conducting a Procurement based on the best interests of the District, as determined by the District.
- (d) If the District determines that Bid or Proposal security is or will be required, the District should not authorize Electronic Offers unless the District has another method for receipt of such security.

**(2) Rules Governing Electronic Procurements.** The District must conduct all portions of an Electronic Procurement in accordance with these Division 47 Rules, unless otherwise set forth in this Rule.

**(3) Preliminary Matters.** As a condition of participation in an Electronic Procurement, the District may require potential Contractors to register with the District before the date and time on which the District will first accept Offers, to agree to the terms, conditions,

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (A) Following receipt of the first Electronic Offer after the date and time that the District first receives Electronic Offers, the District must post and update on a real-time basis:
  - (i) The prices of the other Bidders or the price of the most Competitive Bidder;
  - (ii) The rank of each Bidder (e.g., (1) "winning" or "not winning" or (2) "1st, 2nd, or higher";
  - (iii) The scores of the Bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or
  - (iv) Any combination of (i), (ii), and (iii) above. At any time before the date and time after which the District will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.
- (B) A Person may not increase the price set forth in an Electronic Offer after the date and time that the District first accepts Electronic Offers.
- (C) A Person may withdraw an Electronic Offer only in compliance with these Division 47 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure that interferes with the ability of Persons to submit Electronic Offers, protest, or to otherwise participate in the Procurement, the District may cancel the Procurement in accordance with PPS 47-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the system becomes available.

**BID AND PROPOSAL PREPARATION**

**PPS 47-0400 Offer Preparation**

- (1) **Instructions.** Offerors must submit and Sign their Offers in accordance with the instructions set forth in the Solicitation Document. Offerors must initial any corrections or erasures to their Offers.
- (2) **Forms.** Offerors must submit their Offer on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.
- (3) **Documents.** Offerors must provide the District with all documents and Descriptive Literature required by the Solicitation Document.

**PPS 47-0410 Offer Submission**

- (1) **Product Samples and Descriptive Literature.** The District may require Product Samples or Descriptive Literature if the District determines either is necessary or desirable to evaluate the quality, features, or characteristics of an Offer. The District will dispose of Product Samples, or make them available for the Offeror to retrieve, in accordance with the Solicitation Document.
- (2) **Identification of Offers.**
  - (a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked. If the District permits Electronic Offers or Facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or Facsimile Offers in accordance with these Division 47 Rules and the instructions set forth in the Solicitation Document. The District will not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
  - (b) The District is not responsible for Offers submitted in any manner, format, or to any delivery point other than as required in the Solicitation Document.

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(3) **Receipt of Offers.** Offerors are responsible for ensuring that the District receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**PPS 47-0420 Pre-Offer Conferences**

- (1) **Purpose.** The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the Procurement requirements, obtain information, or conduct site inspections.
- (2) **Required Attendance.** The District may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If the District holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **District Announcement.** The District must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 47-0255(2) or 47-0260(2).

**PPS 47-0430 Addenda to Solicitation Document**

- (1) **Issuance; Receipt.** The District may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda.
- (2) **Notice and Distribution.** The District must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the District will provide notice of Addenda and how the District will make the Addenda available before Closing, and at each subsequent step or phase of evaluation if the District will engage in a Multi-Step Competitive Sealed Bidding process in accordance with PPS 47-0257, or a Multi-Tiered or Multi-Step Competitive Sealed Proposals process in accordance with PPS 47-0261. The following is an example: "The District will not mail notice of Addenda, but will post public notice of any Addenda on the District's Web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of Closing."
- (3) **Timelines; Extensions.**
  - (a) The District must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the District must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
  - (b) Notwithstanding Section (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process, or procedure for any step or phase of competition under a Multi-Step Sealed Bidding or Multi-Step Sealed Proposals process issued in accordance with PPS 47-0257 or 47-0261 must be issued no fewer than five Days before the beginning of that step or phase of competition, unless the District determines that a shorter period is sufficient to allow the Offerors to prepare for that step or phase of competition. The District must document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

whether shortening the period between issuing an Addendum and the beginning of the next step or phase of competition favors or disfavors any particular Proposer or Proposers.

**(4) Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in PPS 47-0730, by the close of the District's next business Day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest of the solicitation under PPS 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with PPS 47-0730, then the District may consider an Offeror's request for change or protest to the Addendum only, and the District shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Section (4) of this Rule, the District is not required to provide a protest period for Addenda issued after the initial Closing during a Multi-Tiered or Multi-Step Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

**PPS 47-0440 Pre-Closing Modification or Withdrawal of Offers**

**(1) Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the District in accordance with PPS 47-0400 and PPS 47-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

- (a) Bid (or Proposal) Modification; and
- (b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

**(2) Withdrawals.**

- (a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(2) **Opening and Recording.** The District must publicly open Offers including any modifications made to the Offer pursuant to PPS 47-0440(1). In the case of Invitations to Bid, to the extent practicable, the District must read aloud the name of each Bidder and such other information as the District considers appropriate. However, the District may withhold from disclosure information marked by the Offeror as "confidential" or a "trade secret" in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

**PPS 47-0460 Late Offers, Late Withdrawals, and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District must not consider late Offers, withdrawals, or modifications except as permitted in PPS 47-0470 or 47-0261.

**PPS 47-0470 Mistakes**

(1) **General.** To protect the integrity of the Competitive Procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) **District Treatment of Mistakes.** The District must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before the Award of the Contract, the District may take the following action:

- (a) The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
  - (A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
  - (B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer evidencing an intent to be bound; and
  - (C) Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality, or delivery.
- (b) The District may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the District's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices will prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;
  - (G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
  - (H) That the Offeror promptly gave notice of the claimed error to the District.
- (d) The criteria in Section (2)(c) of this Rule must determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question whether the District will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or Proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the District, whether by Award to the next lowest Responsive and Responsible Bidder, the most advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.
- (3) **Rejection for Mistakes.** The District must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.
- (4) **Identification of Mistakes After Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

and examination. Any potential Contractor, seller, or supplier, even though not solicited, may offer its Goods for consideration.

**(3) Inclusion to Be Based on Tests or Examinations.** The District'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 through 192.505, the District 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 through 192.505, the District 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) List Does Not Constitute Prequalification.** 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.

**PPS 47-0550 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions**

**(1) Prequalification of Prospective Offerors.** Pursuant to ORS 279B.120 and 279B.125, the District may prequalify prospective Bidders or Proposers to submit Bids or Proposals for Public Contracts to provide particular types of Goods or Services.

**(2) Notice of Prequalification.** The District shall, in response to the receipt of a prequalification application submitted under Section (1) of this Rule, notify the prospective Bidder or Proposer whether the prospective Bidder or Proposer is qualified based on the standards of responsibility listed in Section (7), the type and nature of Contracts that the prospective Bidder or Proposer is qualified to compete for and the time period for which the prequalification is valid. If the District does not prequalify a prospective Bidder or Proposer as to any Contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in Section (7) the prospective Bidder or Proposer failed to meet. Unless the reasons are specified, the prospective Bidder or Proposer shall be deemed to have been prequalified in accordance with the application.

**(3) Revocation of Prequalification.** If the District subsequently discovers that a prospective Bidder or Proposer that prequalified under Sections (1) and (2) of this Rule is no longer qualified, the District may revoke the prequalification upon reasonable notice to the prospective Bidder or Proposer, except that a revocation is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued. Notwithstanding this prohibition against revocation of prequalification, the District may determine that a prequalified Offeror is not Responsible prior to Contract Award.

**(4) Application.** When the District permits or requires prequalification of Bidders or Proposers, a prospective Bidder or Proposer who wishes to prequalif

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

or Proposer is not qualified as to any Contracts covered by the Rule, resolution, ordinance, or other regulation, the notice must specify the reasons given under Section (7) below. To be entitled to a hearing under PPS 47-0760, a prospective Bidder or Proposer shall, within three business Days after receipt of the notice, notify the District that the prospective Bidder or Proposer demands a hearing under PPS 47-0760.

**(6) Revocation or Reissuance Process.** If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective Bidder or Proposer and that the prospective Bidder or Proposer is no longer qualified or is less qualified, the District may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective Bidder or Proposer. The notice must specify the reasons given under Section (2) for revocation or revision of the prequalification of the prospective Bidder or Proposer and inform the prospective Bidder or Proposer of the



**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) The District may not debar a prospective Bidder or Proposer under this section for more than three years.
- (6) Reasons for Debarment.** A prospective Bidder or Proposer may be debarred from consideration for Award of the District's Contracts if:
- (a) The prospective Bidder or Proposer has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract.
  - (b) The prospective Bidder or Proposer has been convicted 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 Bidder's or Proposer's responsibility as a Contractor.
  - (c) The prospective Bidder or Proposer has been convicted under state or federal antitrust statutes.
  - (d) The prospective Bidder or Proposer has committed a violation of a Contract provision that is

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (E) Is late;
  - (F) Is not in substantial compliance with the Solicitation Document; or
  - (G) Is not in substantial compliance with all prescribed public Procurement procedures.
- (c) The District must reject an Offer upon the District's Finding that the Offeror:
- (A) Has not been prequalified and the District required mandatory prequalification;
  - (B) Has been debarred or has been disqualified under PPS 46-0210(4) (Disqualification);
  - (C) Has not met the requirements of ORS 279A.105 (emerging small business), if required by the Solicitation Document;
  - (D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
  - (E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
  - (F) Is Non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the District must determine under ORS 279B.110 that the Offeror:
    - (i) Has available the appropriate financial, material, equipment, facility and personnel resources, and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
    - (ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or has recently been materially deficient in contract performance. In reviewing the Offeror's performance, the District should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The District must make its basis for determining an Offeror non-Responsible under this section part of the Procurement File as required by ORS 279B.110(2)(b).
    - (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if the District determines that the Offeror demonstrates a lack of business ethics, such as violation of state environmental laws or false certifications made to the District. The District may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the contract or a parent company, predecessor, or successor person). The standards for debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The District may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract, or in connection

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules fo

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (3) Content of Protest.** The Written protest must include:
- (a)** A detailed statement of the legal and factual grounds for the protest;
  - (b)**

**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

filed and meets the conditions set forth in Section (3) of this Rule. The District will issue a Written disposition of the protest no fewer than three business Days before Offers are due. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum reflecting its disposition under PPS 47-0430 or cancel the Procurement or solicitation under PPS 47-0660.

**(5) Extension of Closing.** If the District receives a protest from a prospective Offeror in accordance with this Rule, the District may extend Closing if the District determines an extension is necessary to consider and respond to the protest.

**(6) Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

**(7) Judicial Review**

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(5) Judicial Review**



**Portland Public Schools Public Contracting Rules**

Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than one hundred and fifty percent (150%) of the original Contract Price.
- (c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

**END OF DIVISION 47**

**Portland Public Schools Public Contracting Rules**

Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**

Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the Informal Selection procedure of PPS 48-0210, the District may use abbreviated Requests for Proposals that nevertheless meet the requirements of PPS 48-0210, when the District determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the District would be adequately addressed by a more abbreviated Request for Proposals document generally comparable to the Intermediate Procurement procedures and related documentation under ORS 279B.070 and PPS 47-0270. The District may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, submitted with a proposal.

(3)

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(b)**

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**SELECTION PROCEDURES**

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (f) The Contract Review Board Grants Approval for a Direct Appointment or Alternative Procurement Process.
- (A) The Superintendent may seek approval from the Local Contract Review Board for direct appointment or an alternative procurement process for Consultant services.
- (B) The Superintendent must submit a written request to the Board demonstrating that:
- (i) Approval by the Board is unlikely to encourage favoritism in the award of public contracts or substantially diminish competition for public contracts; and
  - (ii) Is reasonably expected to result in substantial cost savings to the District or to the public; or
  - (iii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the selection procedures otherwise required by these rules.
- (2) The District may select a Consultant for a Contract under this Rule from the following sources:
- (a) District's list of Consultants that is created under PPS 48-0120;
  - (b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under PPS 48-0120 or similar local rule, with Written consent of that Contracting Agency; or
  - (c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the District reasonably can identify under the circumstances.
- (3) The District shall direct negotiations with Consultants selected under this Rule toward obtaining Written agreement on:
- (a) The Consultants' performance obligations and performance schedule;
  - (b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (c) Any other provisions that the District believes to be in the District's best interest to negotiate.

**PPS 48-0220 Formal Selection Procedure**

- (1) Subject to PPS 48-0130, the District shall use the formal selection procedure described in this Rule to select a Consultant if the Consultant cannot be selected under PPS 48-0200. The formal selection procedure described in this Rule may otherwise be used at the District's discretion.
- (2) When using the formal selection procedure, the District shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.
- (a) Except as provided in Section (2)(b) of this Rule, the District shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located, and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the disadvantaged business enterprise ("DBE"), service-disabled veteran business ("SDVB"), minority business enterprise

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules fo

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (H) A statement that Consultants responding to the RFQ do so solely at their expense, and that the District is not responsible for any Consultant expenses associated with the RFQ.
- (b) Optional RFQ Requirements. The District may include a request for any or all of the following in each RFQ:
- (A) A statement describing Consultants' general qualifications and related performance information;
  - (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including Consultants' available resources and recent, current, and projected workloads;
  - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
  - (D) A copy of all records, if any, of Consultants' performance under contracts with any other Contracting Agency;
  - (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those Services;
  - (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
  - (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
  - (H) Consultants' ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (I) If the District is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals, or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates, and overhead;
  - (J) Consultants' ability to assist the District in complying with any art acquisition requirements imposed by the District;
  - (K) Consultants' ability to assist the District in complying with State of Oregon energy efficient design requirements established by the District;
  - (L) Consultants' ability to assist the District in complying with the solar energy technology requirements of ORS 279C.527; and
  - (M) Any other information the District deems reasonably necessary to evaluate Consultants' qualifications.
- (c) RFQ Evaluation Committee. The District shall establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the evaluation criteria. The District may appoint to the evaluation committee District employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related

**Portland Public Schools Public Contracting Rules**

Division 48 – Public Contracting Rules for Contracts for Goods and/or Services

## **Portland Public Schools Public Contracting Rules**

### Division 48 – Public Contracting Rules for Contracts for Goods and/or Services Other Than Personal Services

- (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on comparable projects;
- (iii) The amount and type of resources and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (iv) The recent, current, and projected workloads of the staff and resources referenced in Section (4)(a)(B)(iii), above;
- (v) The proportion of time Proposers estimate that the staff referenced in Section (4)(a)(B)(iii) above would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under PPS 48-0120;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls, and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the District is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead; and
- (xiv) Any other criteria that the District deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, that these additional criteria cannot include pricing policies and



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

- (C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in Sections (4)(a)(B)(i) through (4)(a)(B)(xii) of this rule; and
  - (D) The information listed in Sections (4)(a)(C) through (4)(a)(N) of this rule pertaining to the Related Services described in the RFP.
- (c) RFP Evaluation Committee. The District shall establish a committee of at least three individuals to review, score, and rank Proposals according to the evaluation criteria set forth in the RFP. The Director of the Department of Procurement or the Director's designee shall serve as chair of the evaluation committee, but will not participate in th



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (e) The District shall, either orally or in Writing, formally terminate negotiations with the highest-ranked Proposer if the District and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second-ranked Proposer, and if necessary, with the third-ranked Proposer, and so on, in accordance with Section (4)(c) of this Rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the District may end the particular formal solicitation. Nothing in this Rule precludes the District from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveyin



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the District's public improvement; or
- (b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the District's Public Improvement through an alternative process adopted by the District consistent with the provisions of the applicable RFP, if any, and these Division 48 Rules. The District's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular procurement of the District, and may include provisions to allow the District to perform its tier-two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The District's alternative process may include, but is not limited to, one or more of the following methods:
  - (A) A general Written direction from the District to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements, or during the course of the Procurement or series of Procurements, that the District's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the District is required. However, the District may provide Written notice to the State Contracting Agency that the District's general Written direction is not to be applied for a particular Procurement and describe the process that the District will utilize for the particular Procurement. In order for a Written direction from the District consistent with this section to be effective for a particular Procurement, it must be received by the Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple Award under the terms of the applicable Procurement, the Written direction from the District may apply to the highest-ranked Proposers that are selected under the terms of the Procurement document.
  - (B) An intergovernmental agreement between the District and the Contracting Agency outlining the alternative process that the District has adopted for a Procurement or series of Procurements.
  - (C) Where multiple Local Government Contracting Agencies are involved in a two-tiered selection procedure, the Local Government Contracting Agencies may name one or more



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.
- (4) When the solicitation materials and terms and conditions for a Price Agreement involve a two-tiered selection process pursuant to ORS 279C.125 and OAR 137-048-0260(1), the solicitation materials and terms

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Procurement as demonstrating that the procurement qualifies for use of an FSCP under these Rules.

- (b) The solicitation shall describe the class of Contracts that can be Awarded to Contractors in the FSCP. The District may not Award Contracts outside of the designated class of Contracts to the FSCP.
- (c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.
- (d) The solicitation may request a binding Price Quote or rate that will become part of a subsequent Contract or may establish the pool based on qualifications alone.
- (e) The solicitation may set or limit the value of the Work to be performed by the FSCP.

**(2) Contracting for Work From an FSCP.**

- (a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual Projects within the established scope of the Work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Projects will be offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:
  - (A) The Contractor that is next on the list declines or is unavailable during the time period needed.
  - (B) Contract negotiations with the next-listed Contractor are not successful.
  - (C) The Project is for Work that is a continuation of, addition to, or is connected with Work previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work.
  - (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal Procurement pursuant to PPS 46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (b) An FSCP established under this section will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule.
- (c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of Work or any Work at all.
- (d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of Work from other Contractors through any other Procurement method authorized under these Rules.
- (e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of Work.

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**POST-SELECTION CONSIDERATIONS**

**PPS 48-0300 Prohibited Payment Methodology; Purchase Restrictions**

- (1) Except as otherwise allowed by law, the District shall not enter into any Contract in which:

**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (2) The District may proceed under either Sections (1)(a) or (1)(b) of this Rule only after making Written Findings that Amending the existing Contract or entering into a new Contract with the Consultant will:
- (a) Promote efficient use of public funds and resources and result in substantial cost savings to the District;
  - (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the Award of Contracts; and
  - (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

**PPS 48-0320 Contract Amendments**

- (1) The District may amend any Contract if the District, in its sole discretion, determines that the Amendment is within the scope of the Solicitation Document and that the Amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the District shall consider potential alternative methods of procuring the Services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the Services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional Services.
- (2) The District may Amend any Contract if the additional Services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.
- (3) All Amendments to Contracts must be in Writing, must be Signed by an authorized representative of the Consultant and the District, and must receive all required approvals before the Amendments will be binding on the District.
- (4) **Amendments That Would Cause a Contract to Exceed the Superintendent's Authority.** An amendment to a contract approved by the Superintendent that would cause the total Contract Price to exceed



**Portland Public Schools Public Contracting Rules**  
Division 48 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) Contracts subject to the reporting requirement under this Rule shall be reported to the School Board a second time if subsequent Amendments or Change Orders increase the total Contract Price to greater than one hundred and fifty percent (150%) of the original Contract Price.
  
- (c) Contracts subject to the reporting requirement under this Rule shall be reported to the Board at the next regular business meeting of the Board following approval of the amendment or change triggering the reporting requirement. The report shall include an explanation of the basis for the amendment or change order.

**END OF DIVISION 48**

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS DIVISION 49**

**DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS  
FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS**

**PPS 49-0100 Application**

These Division 49 Rules are intended to implement the requirements of ORS 279C in regard to Public Improvements, Public Works, and construction services.

**PPS 49-0110 Policies**

In addition to the policies of the Code as set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these Division 49 Rules.

**PPS 49-0120 Definitions**

- (1) **"Conduct Disqualification"** means a disqualification under ORS 279C.440 in accordance with PPS 49-0370.
- (2) **"Disqualification"** means the preclusion of a Person from contracting with the District for a period of time in accordance with PPS 49-0370.
- (3) **"Foreign Contractor"** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See PPS 49-0490.
- (4) **"Notice"** means any of the alternative forms of Public announcement of Procurements, as described in PPS 49-0210.
- (5) **"Work"** means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

**PPS 49-0130 Competitive Bidding Requirement**

The District must solicit Bids for Public Improvement Contracts by Invitation to Bid, except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see PPS 49-0600 through 49-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

**PPS 49-0140 Contracts for Construction Other Than Public Improvements; Emergency Construction Contracts**

- (1) **Procurement Under ORS 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and Amended as general trade Services under the provisions of ORS 279B rather than under the provisions of ORS 279C and these Division 49 Rules.
- (2) **Emergency Construction Contracts.** Emergency Contracts for construction services are not Public Improvement Contracts and are regulated under ORS 279B.080. See PPS 49-0150.
- (3) **Application of ORS 279C.** Non-procurement provisions of ORS 279C and these Division 49 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on disqualification (ORS 279C.440, 445, and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(ORS 279C.505, 515, 520, and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560, and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620, and 625); Termination (ORS 279C.650, 655, 660, and 670); and all of the Prevailing Rate of Wage requirements (ORS 279C.800 through 279C.870) for Public Works Contracts.

**PPS 49-0146 Class Exemptions; Public Improvement Contracts**

The Local Contract Review Board declares the following Contracts listed in this section as classes of Public Improvement Contracts exempt from Competitive Bidding.

- (1) **Donated Public Improvements.** The Superintendent may authorize a Person to construct a Public Improvement without Competitive Bidding or other Competitive process and regardless of dollar amount, if:
  - (a) The Person has agreed to donate all or a significant portion of the materials or Services necessary to construct the Public Improvement or perform the Service; and
  - (b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular Project and any requirements that the District deems necessary or beneficial to protect the District.
- (2) **Benson House Program Contracts.** The Superintendent may directly negotiate a Public Improvement Contract without complying with the Competitive Procurement requirements of these Rules where the Contract is for the purpose of supporting the Benson Polytechnic High School Building Construction Class, and all or a portion of the Contract Price is discounted or donated to the District.
- (3)

**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.
- (D) The solicitation may request a binding Price Quote or time and materials rate that will



**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**FORMAL PROCUREMENT RULES**

**PPS 49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer**

**(1) Solicitation Document**

**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(E) Payment of claims by public officers (ORS 279C.515(1));

(F)

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

generally describe the Public Improvement Project or Work. The Notice may contain any other appropriate information. The District may charge a fee or require a deposit for the Solicitation Document. The District may furnish Notice using any method determined to foster and promote competition, including:

- (a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the District's Procurements;
- (b) Placing Notice on the District's Electronic Procurement System; or
- (c) Placing Notice on the District's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this Rule, the District shall advertise every solicitation for Competitive Bids or Competitive Proposals for a Public Improvement Contract, unless the Contract Review Board has exempted the solicitation from the advertisement requirement as part of a Competitive Bidding exemption under ORS 279C.335.

- (a) Unless the District publishes by Electronic Advertisement as permitted under Section (2)(b) of this Rule, the District shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the District may determine to be necessary or desirable to foster and promote competition.
- (b) The District may publish by Electronic Advertisement if the Contract Review Board determines that Electronic Advertisement is likely to be cost-effective and, by Rule or order, authorizes Electronic Advertisement.
- (c) In addition to the District's publication required under Sections (2)(a) or (2)(b), the District shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
- (d) All advertisements for Offers shall set forth:
  - (A) The Public Improvement Project;
  - (B) The office where Contract terms, conditions, and Specifications may be reviewed;
  - (C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
  - (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
  - (E) The name, title, and address of the District Person authorized to receive Offers;
  - (F) The scheduled Opening; and
  - (G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 through 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

**PPS 49-0220 Prequalification of Offerors**

(1) **Prequalification.** Pursuant to ORS 279C.430 and this Rule, two types of prequalification are authorized:

- (a) **Mandatory Prequalification.** The District may require mandatory prequalification of Offerors. The District must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the District conditions a Person's

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

submission of an Offer on the Person's prequalification. The District must not consider an Offer from a Person that is not prequalified if the District required prequalification.

- (b) Permissive Prequalification. The District may prequalify a Person for the District's solicitation list, but in permissive prequalification the District must not limit distribution of a solicitation to that list.
  - (c) Prequalification Procedure. When prequalification is required or allowed, a Person shall submit a prequalification application to the District on the form prescribed by the District. The District shall determine if the applicant is qualified within 30 Days of the date of application, or sooner if practicable and so requested by the applicant to enable the applicant to participate in Bidding on an advertised Contract. If the District finds that the applicant is qualified, the District will provide Notice to the applicant of the nature and type of Contracts the applicant is qualified to Bid on and the period of time for which the qualification is valid.
- (2) **Prequalification Presumed**. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror must be rebuttably presumed qualified to perform similar Work for the District. When qualifying for the same kind of Work for the District, the Person may submit proof of the prequalification in lieu of a prequalification application under Section (1) of this Rule.
- (3) **Standards for Prequalification**. A Person may prequalify by demonstrating to the District's satisfaction that:

- (a)



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(4) **Statements Not Binding.** Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a Written Addendum to the Solicitation Document.

(5) **District Announcement.** The District must set forth Notice of any pre-Offer conference in the Solicitation Document in accordance with PPS 49-0200(1)(a)(B).

**PPS 49-0250 Addenda to Solicitation Documents**

(1) **Issuance; Receipt.** The District may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda or in the Solicitation Document.

(2) **Notice and Distribution.** The District must notify prospective Offerors of Addenda consistent with the standards of Notice set forth in PPS 49-0210(1). The Solicitation Document must specify how the District will provide Notice of Addenda and how the District will make the Addenda available (see PPS 49-0200(1)(a)(N)). For example, "The District will not mail Notice of Addenda, but will publish Notice of any Addenda on the District's Web site. Addenda may be downloaded off the District's Web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing, and at least once daily during the week of the Closing."

(3) **Timelines; Extensions.** The District must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the District must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in PPS 49-0260, by the close of the District's next business Day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest under PPS 49-0260, whichever date is later. The District must consider only an Offeror's request for change or protest to the Addendum; the District must not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in PPS 49-0260(2) and (3).

**PPS 49-0260 Request for Clarification or Change; Solicitation Protests**

(1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the District unless the District amends the Solicitation Document by Addendum.

(2) **Request for Change.**

(a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the District not less than five Days prior to Closing;

(b) **Content of Request for Change.**

(A) An Offeror's Written request for change must include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror must mark its request for change as follows:

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (i) "Contract Provision Request for change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

**(3) Protest.**

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the District not less than five Days prior to Closing.

(b) Content of Protest.

(A) An Offeror's Written protest must include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror must mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) **The Response**. The District is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The District must provide Notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District must either issue an Addendum reflecting its determination under PPS 49-0260 or cancel the solicitation under PPS 49-0270.

(5) **Extension of Closing**. If the District receives a Written request for change or protest from an Offeror in accordance with this Rule, the Dist

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(3) Disposition of Offers.**

- (a) Prior to Offer Opening.** If the District cancels a solicitation prior to Offer Opening, the District will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District will open the Offer to determine the source and then return it to the Offeror.
- (b)**

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(7) **Documents.** An Offeror must provide the District with all documents and Descriptive Literature required under the Solicitation Document.

(8) **Facsimile or Electronic Submissions.** If the District permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The District will not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.

(9) **Product Samples and Descriptive Literature.** The District may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features, or characteristics of the offered items. The District will dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable.

(b) The District is not responsible for Offers submitted in any manner or format, or to any delivery point, other than as required in the Solicitation Document.

(11) **Receipt of Offers.** The Offeror is responsible for ensuring that the District receives the Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**PPS 49-0290 Bid or Proposal Security**

(1) **Security Amount.** If the District requires Bid or Proposal security, it must be not more than 10 percent or less than 5 percent of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. The District must not use Bid or Proposal security to discourage competition. The District must clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror must forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) **Requirement for Bid Security (Optional for Proposals).** Unless the District has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, the District must require Bid security for its solicitation of Bids for Public Improvements. The District may require Bid security even if it has exempted a class of solicitations from Bid security. The District may require Proposal security in RFPs. See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security.** The District may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c)





**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post Notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that the District desires to allow Electronic Offers for a Public Improvement Contract, the District will comply with PPS 47-0330 (Electronic Procurement under ORS 279B), taking into account ORS 279C requirements for Written Bids, opening Bids publicly, Bid security, first-tier subcontractor disclosure, and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this Rule must be construed as prohibiting the District from making Procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

**PPS 49-0320 Pre-Closing Modification or Withdrawal of Offers**

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the District in accordance with PPS 49-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

- (a) Bid (or Proposal) modification; and
- (b) Solicitation number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals.**

- (a) An Offeror may withdraw its Offer by Written Notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;
- (b) The District may release an unopened Offer withdrawn under Section (2)(a) of this Rule to the Offeror or its authorized representative after voiding any date and time-stamp mark;
- (c) The Offeror must mark the Written request to withdraw an Offer as follows:
  - (A) Bid (or Proposal) withdrawal; and
  - (B) Solicitation number (or other identification as specified in the Solicitation Document).

(3) **Documentation.** The District must include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File.

**PPS 49-0330 Receipt, Opening, and Recording of Offers; Confidentiality of Offers**

(1) **Receipt.** The District must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District must not open the Offer or modification upon receipt, but must maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District must return the Offer or modification to its secure and confidential state until Opening. The District must document the resealing for the Procurement File (e.g., "The District inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** The District must publicly open Offers, including any modifications made to the Offer, pursuant to PPS 49-0320. In the case of Invitations to Bid, to the extent practicable, the District must read aloud the name of each Bidder, the Bid price(s), and such other information as the District

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

**(3) Availability.** After Opening, the District must make Bids available for public inspection, but pursuant to ORS 279C.410, Proposals are not required to be available for public inspection until after the Notice of Intent to Award is issued. In any event, the District may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 through 646.475. To the extent that the District determines such designation is not in accordance with applicable law, the District must make those portions available for public inspection. The Offeror must separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, models, or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and must be publicly available regardless of an Offeror's designation to the contrary.

**PPS 49-0340 Late Bids, Late Withdrawals, and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District will not consider late Offers, withdrawals, or modifications except as permitted in PPS 49-0350 or 49-0390.

**PPS 49-0350 Mistakes**

**(1) Generally.** To protect the integrity of the Competitive Procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

**(2) District Treatment of Mistakes.** The District must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before Award of the Contract, the District may take the following action:

- (a)** The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
  - (A)** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
  - (B)** Sign the Offer in the designated block, provide

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
  - (E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
  - (F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;
  - (G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
  - (H) That the Offeror promptly gave Notice of the claimed error to the District.
- (d) The criteria in Section (2)(c) of this Rule must determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question of whether the District will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the District, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.
- (3) **Rejection for Mistakes.** The District will reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.
- (4) **Identification of Mistakes After Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this Division 49 only to the extent permitted by applicable law.

**PPS 49-0360 First-Tier Subcontractors; Disclosure and Substitution; ITB**

- (1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the District to exceed \$100,000, all Bidders must submit to the District a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
- (a) 5 percent of the total Contract Price, but at least \$15,000; or
  - (b) \$350,000, regardless of the percentage of the total Contract Price.
- (2) **Bid Closing, Disclosure Deadline, and Bid Opening.** For each ITB to which this Rule applies, the District must:
- (a) Set the Bid Closing on a Tuesday, Wednesday, or Thursday, and at a time between 2:00 p.m. and 5:00 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges, or other transportation facilities, and provided that the two-hour disclosure deadline described by this Rule would not then fall on a legal holiday;
  - (b) Open Bids publicly immediately after the Bid Closing; and
  - (c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the District.

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(3) Bidder Instructions and Disclosure Form.** For the purposes of this Rule, the District in its solicitation must:

- (a)** Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
- (b)** Provide instructions in a Notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure:

Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5 percent of the Project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (A)** The subcontractor's name,
- (B)** The category of Work that the subcontractor would be performing, and
- (C)** The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE DISTRICT MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see PPS 49-0360)."

- (4) Submission.** A Bidder must submit the disclosure form required by this Rule either in its Bid submission or within two working hours after Bid Closing in the manner specified by the ITB.
- (5) Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and will not be considered for Contract Award.
- (6) District Role.** The District must obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Rule. The District must also provide copies of disclosure forms to BOLI as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- (7) Substitution.** Pursuant to ORS 279C.585, a Contractor whose Bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 and this Rule by submitting the name of the new subcontractor and the reason for the substitution in Writing to the District. A Contractor may substitute a first-tier subcontractor under this section in the following circumstances:
  - (a)** When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a Written Contract after having had a reasonable opportunity to do so after the Written Contract, which must be reasonably based on the general terms, conditions, plans, and Specifications for the Public Improvement Project or the terms of the subcontractor's Written Bid, is presented to the subcontractor by the Contractor.
  - (b)** When the disclosed subcontractor becomes bankrupt or insolvent.
  - (c)** When the disclosed subcontractor fails or refuses to perform the subcontract.



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) Standards for Disqualification. As provided in ORS 200.065, 200.075, or 279A.110, the District may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:
- (A) For a Disqualification under ORS 200.065, the District may disqualify a Person upon finding that:
- (i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women owned business, emerging small business enterprise, or a business that a service-disabled veteran owns; or
  - (ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or
  - (iii) The Person has been disqualified by another district under ORS 200.065.
- (B) For a Disqualification under ORS 200.075, the District may disqualify a Person upon finding that:
- (i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or
  - (ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or
  - (iii) The Person uses a Certified Enterprise to perform Services under a Contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.
  - (iv) If a Person is Disqualified for a Disqualification under ORS 200.075, the affected District must not permit that Person to participate in that District's Contracts.
- (C) For a Disqualification under ORS 279A.110, the District may disqualify a Person if the District finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business enterprise, or a business that a service-disabled veteran owns, Contract with that District.
- (2) **Notice of Intent to Disqualify**. The District must notify the Person in Writing of a proposed disqualification personally or by registered or certified mail, return receipt requested. This Notice must:
- (a) State that the District intends to disqualify the Person;
  - (b) Set forth the reasons for the disqualification;
  - (c) Include a statement of the Person's right to a hearing if requested in Writing within a time period established by the District and that if the District does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;
  - (d) Include a statement of the authority under which the hearing will be held;

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (e) Include a reference to the particular sections of the statutes and Rules involved;
  - (f) State the proposed disqualification period; and
  - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Superintendent will schedule a hearing upon the District's receipt of a timely hearing request. Within a reasonable time prior to the hearing, the Superintendent will notify the Person of the time and place of the hearing and provide information on hearing procedures, right to representation and other matters relating to the conduct of the hearing. Following the hearing, the Superintendent will make a decision on whether to disqualify the Person.
- (4) **Notice of Disqualification.** The District will notify the Person in Writing of its disqualification, personally or by registered or certified mail, return



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS 49-0380 Bid or Proposal Evaluation Criteria**

- (1) **General.** A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See PPS 49-0390 and Rules for Alternative Contracting Methods at PPS 49-0600 to 49-0690.
- (2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.
- (a) **Lump Sum.** If the ITB requires a lump-sum Bid without additive or deductive alternates, or if the District elects not to Award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base-Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the District for the purpose of comparing Bids.
  - (b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the District for the purpose of comparing Bids. The District must specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. See PPS 49-0350(2)(b).
- (3) **Proposal Evaluation Criteria.** If the District has exempted the Procurement of a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1) and has directed the District to use an Alternative Contracting Method under ORS 279C.335(4), the District shall set forth the evaluation criteria in the Solicitation Documents. See PPS 49-0640, 49-0650, 49-0670, 049-0690, ORS 279C.335 and 279C.405.

**PPS 49-0390 Offer Evaluation and Award; Determination of Responsibility**

- (1) **General.** If Awarded, the District must Award the Contract to the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (See ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The District may Award by item, groups of items, or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on Competitive Bids, ORS 279C.375(5) permits multiple Contract Awards when specified in the ITB.
- (2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the District must determine that the Offeror:
- (a) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all Contractual responsibilities;
  - (b) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
  - (c) Is covered by liability insurance and other insurance in amounts the District requires in the Solicitation Documents;

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407, or has elected coverage under ORS 656.128;
- (e) Has made the disclosure required under ORS 279C.370.
- (f) Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The District shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (g) Has a satisfactory record of integrity. In evaluating the Bidder's record of integrity, the District may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract. The District shall document the Bidder's record of integrity in the Procurement File if the District finds under this subparagraph that the Bidder is not responsible;
- (h) Is legally qualified to contract with the District; and
- (a) Supplied all necessary information in connection with the inquiry concerning responsibility. If a Bidder fails to promptly supply information concerning responsibility that the District requests, the District shall determine the Bidder's responsibility based on any available information, or may find that the Bidder is not responsible.

**(3) Documenting Agency Determinations.** The District must document its compliance with ORS 279C.375(3) and the above sections of this Rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 Days after Contract Award.

**(4) District Evaluation.** The District must evaluate an Offer only as set forth in the Solicitation edodocument and in accordance with applicable law. The

**(4)**

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

District's rejection of an Offer because it offers nonconforming Work or materials is not disqualification and is not appealable under ORS 279C.445.

- (6) Evaluation of Bids.** The District must use only objective criteria to evaluate Bids as set forth in the ITB. The District must evaluate Bids to determine which Responsible Offeror Offers the lowest Responsive Bid.
- (a) Nonresident Bidders.** In determining the lowest Responsive Bid, the District must add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
  - (b) Clarifications.** In evaluating Bids, the District may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict, or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.
  - (c) Negotiation Prohibited.** The District must not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) Evaluation of Proposals.** See PPS 49-0650 regarding Rules applicable to Requests for Proposals.

**PPS 49-0395 Notice of Intent to Award**

- (1) Notice.** At least seven Days before the Award of a Public Improvement Contract, the District shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a Notice of the District's Intent to Award the Contract. This requirement does not apply to Award of a Small (under \$5,000) or Intermediate (informal Competitive Quotes) Public Improvement Contract Awarded under ORS 279C.335(1)(c) or (d).
- (2) Form and Manner of Posting.** The form and manner of posting Notice shall conform to customary practices within the District's Procurement system, and may be made electronically.
- (3) Finalizing Award.** The District's Award shall not be final until the later of the following:
- (a)** Seven Days after the date of the Notice, unless the Solicitation Document provided a different period for protest; or
  - (b)** The District provides a Written response to all timely filed protests that denies each protest and affirms the Award.
- (4) Prior Notice Impractical.** Posting of Notice of Intent to Award shall not be required when the District determines that it is impractical due to unusual time constraints in making prompt Award for its immediate Procurement needs, documents the Procurement File as to the reasons for that determination, and posts Notice of that action as soon as reasonably practical.

**PPS 49-0400 Documentation of Award; Availability of Award Decisions**

- (1) Basis of Award.** After Award, the District must make a record showing the basis for determining the successful Offeror part of the District's Procurement File.
- (2) Contents of Award Record for Bids.** The District's record must include:
- (a)** Bids.
  - (b)** Completed Bid tabulation sheet; and
  - (c)** Written justification for any rejection of lower Bids.
- (3) Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in PPS 49-0650, the District's record must include:

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) Proposals.
- (b) The completed evaluation of the Proposals;
- (c) Written justification for any rejection of higher-scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
- (d) If the District permitted negotiations in accordance with PPS 49-0650, the District's completed

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

- (b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in PPS 49-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.
- (c) **"Project"** means a Public Improvement.
- (d) **"Value Engineering"** means the identification of alternative methods, materials, or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements that may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life-Cycle Costing, which may either increase or decrease absolute costs over varying time periods.

(3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the District, must be excluded from consideration.

(4) **Scope of Negotiations.** The District must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the District to participate in the Bidding process had the change been made during the solicitation process rather than during negotiation. This Rule must not be construed to prohibit solicitation of trade subcontracts.

(5) **Discontinuing Negotiations.** The District may discontinue negotiations at any time, and must do so if it appears to the District that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-Bid any portion of the Project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.

(6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or
  - (D) Offers Work that fails to meet the Specifications of the Solicitation Document; or
  - (E) Is late; or
  - (F) Is not in substantial compliance with the Solicitation Document; or
  - (G) Is not in substantial compliance with all prescribed public solicitation procedures.
- (c) The District will reject an Offer upon the District's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification; or
  - (B)

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);
  - (B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;
  - (C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);
  - (D) That the District may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.
- (b) In the administration of Contracts that are subject to Section (4) of this rule, the District must verify the Contractor's and any subcontractor's compliance with Subsection (4)(a) of this rule.
  - (c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This Section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.
- (5) **Rejection of all Offers.** The District may reject all Offers for good cause upon the District's Written Finding that it is in the public interest to do so. The District must notify all Offerors of the rejection of all Offers, along with the good-cause justification and Finding.
- (6) **Criteria for Rejection of All Offers.** The District may reject all Offers upon a Written Finding that:
- (a) The content of or an error in the Solicitation Document or the solicitation process unnecessarily restricted competition for the Contract;
  - (b) The price, quality, or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
  - (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the Competitive process;
  - (d) Causes other than legitimate market forces threaten the integrity of the Competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
  - (e) The District cancels the solicitation in accordance with PPS 49-0270; or
  - (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

**PPS 49-0450 Protest of Contractor Selection, Contract Award**

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract Award decision.

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(2) Notice of Competitive Range.** Unless otherwise provided in the RFP, when the Competitive Proposal process is authorized under PPS 49-0650, the District must provide Written Notice to all Proposers of the District's determination of the Proposers included in the Competitive Range. The District's Notice of the Proposers included in the Competitive Range must not be final until the later of the following:

- (a) Ten Days after the date of the Notice, unless otherwise provided therein; or
- (b) Until the District provides a Written response to all timely filed protests that denies the protest and affirms the Notice of the Proposers included in the Competitive Range.

**(3) Notice of Intent to Award.** Unless otherwise provided in the Solicitation Document, the District must provide Written Notice to all Offerors of the District's Intent to Award the Contract as provided in PPS 49-0395.

**(4) Right to Protest Award.**

- (a) An adversely affected or aggrieved Offeror may submit to the District a Written protest of the District's Intent to Award within seven Days after issuance of the Notice of Intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.
- (b) The Offeror's protest must be in Writing and must specify the grounds on which the protest is based.
- (c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:
  - (A) Because their Offers were Non-Responsive; or
  - (B) The District committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.
- (d) The District will not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

**(5) Right to Protest Competitive Range.**

- (a) An adversely affected or aggrieved Proposer may submit to the District a Written protest of the District's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the Notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at PPS 49-0650.)
- (b) The Proposer's protest must be in Writing and must specify the grounds on which the protest is based.
- (c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

- (A) Their Proposals were not Responsive; or
- (B) The District committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.
- (d) The District must not consider a protest submitted after the time period established in this Rule or

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Contractor must perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the Competitive

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(3) **"Construction Manager/General Contractor"** (or **"CM/GC"**) has the meaning set forth in ORS 279C.332(2).

(4) **"Construction Manager/General Contractor Method"** (or **"CM/GC Method"**) means the



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of ORS 279C.335. In any of these circumstances, use of Alternative Contracting Methods must be justified in accordance with any applicable Code and District requirements and, if require, these PPS 049-0600 to 049-0690 Rules. See PPS 49-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirements under ORS 279C.335.

(2)

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and
  - (b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355, and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the Project or Projects at issue in the exemption request; and
  - (c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the District may make a Finding that identifies the Project as a "pilot Project" under ORS 279C.335(2)(c). Nevertheless, the District must still make the findings required in ORS 279C.335(2)(a).
- (4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is likely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public Notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award will be made based on identified selection criteria, and an opportunity will be given to protest that Award.
- (5) **Descriptions.** Findings supporting a competitive bidding exemption must describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (Request for Proposals), two-step (beginning with a Request for Qualification, followed by a Request for Proposals) or other solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the District. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) require completion on a related schedule in order to avoid unnecessary disruption of District operations;
  - (C) share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;
  - (D) otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and
  - (E) otherwise meet the requirements of the Director of the District Local Contract Review Board.
- (7) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract from

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) In CM/GC contracting, in addition to Section (2)(a) above, those factors may also include the ability to respond to the technical complexity or unique character of the Project, analyze and propose solutions or approaches to complex Project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.
- (c) In Design-Build contracting, in addition to Sections (2)(a) and (2)(b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that affect cost or quality.
- (d) In ESPC contracting, in addition to the factors set forth in Sections (2)(a)-(c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the Project, information on the specific methods, techniques, and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the Project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular Project between the District and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's Project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work, and the ESCO's fee structure for all phases of the ESPC Project.

**(3) Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and PPS 49-0600 through PPS 49-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See PPS 49-0650. Terms that may be negotiated consist of details of Contract performance; methods of construction, timing, and assignment of risk in specified areas; fee; and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the District has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO, and scope of Work, methodologies, and compensation terms and conditions during



**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

the District will endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular Contractor to provide Goods and Services from those Contractors Awarded Contracts.

**(3) Evaluation of Proposals.**

- (a) Evaluation.** The District must evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The District must evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.
- (A) Clarifications.** In evaluating Proposals, the District may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications must become part of the Proposer's Proposal.
- (B) Limited Negotiation.** If the District did not permit negotiation in its Request for Proposals,

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Range may protest the District's evaluation and determination of the Competitive Range in accordance with PPS 49-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these Rules expires, or after the District has provided a final response to any protest, whichever date is later, the District may either:

(A) Provide Written Notice to all Proposers in the Competitive Range of its Intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the District's Intent to Award in accordance with PPS 49-0450.

(ii) After the protest period provided in accordance with PPS 49-0450 expires, or after the District has provided a final response to any protest, whichever date is later, the District must commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the District chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the District must proceed as follows:

(a) Initiating Discussions. The District must initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the District identified in the RFP as the subject of discussions. The District may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the District would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the District to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.

(b) Conducting Discussions. The District may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The District may terminate discussions with any Proposer in the Competitive Range at any time. The District must, however, offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the District before the District notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the District:

(i) Must treat all Proposers fairly and must not favor any Proposer over another;

(ii) Must not discuss other Proposers' Proposals;

(iii) Must not suggest specific revisions that a Proposer should make to its Proposal, and must not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the District may:

(i) Continue discussions with a particular Proposer;



**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) Shortening Project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion

**Portland Public Schools Public Contracting Rules**

Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (e) Incentives. The Contract must clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.
- (f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the District is

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

the Competitive Bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the Competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the District is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these PPS 49-0600 through 49-0690 Rules.

**(5) Selection.** ESPC selection criteria may include those factors set forth above in PPS 49-0640(2)(a), (b), (c), and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

**(6) Qualifications Based Selection (QBS).** Because the value of construction services predominates in the ESPC method of contracting, the QBS process mandated by ORS 279C.110 for the District in obtaining certain Consultant Services is not applicable.

**(7) Licensing.** If the ESCO is not an Oregon-licensed design professional, the District must require that the ESCO disclose in the ESPC that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design Services. See ORS 671.030(5) regarding the offer of Architectural Services, and ORS 672.060(11) regarding the offer of Engineering Services that are appurtenant to construction services.

**(8) Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100 percent of the full Contract Price, including the construction and design and related professional Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional Services" include conventional design Services, commissioning Services, training Services for the District's operations and maintenance staff, and any similar professional Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V Services, and any Services associated with the ESCO's Energy Savings Guarantee, are not included in these ORS 279C.380(1)(a) "design and related professional Services." Nevertheless, the District may require that the ESCO provide performance security for M & V Services and any Services associated with the ESCO's Energy Savings Guarantee, if the District so provides in the RFP.

**(9) Contracting Requirements.** The District must conform their ESPC contracting practices to the following requirements:

- (a) General ESPC Contracting Practices.** An ESPC involves a multi-phase Project, which includes the following contractual elements:
  - (A)** A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the Project, the contractual terms governing the Project Development Plan for the Project, the contractual terms governing the final design and construction of the Project, the contractual terms governing the performance of the M & V Services for the Project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the Project.
  - (B)** The various phases of the ESCO's Work will include the following:
    - (i)** The Technical Energy Audit phase of the Work;
    - (ii)** The Project Development Plan phase of the Work;
    - (iii)** A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that





**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

professional, although with the CM/GC Method there is a separate contract between the District and design professional. In order to utilize the CM/GC Method, the District must be able to reasonably anticipate the following types of benefits:

- (a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and c

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services contracting approach, however, also contemplates that the District will only authorize the CM/GC to perform the preconstruction Personal Services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

- (b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP must define both what Personal Services and construction Work are included and excluded from the GMP, fixed Contract price or other maximum Contract Price. A set of project drawings and Specifications must be produced establishing the scope of construction Work contemplated by the GMP fixed Contract price or other maximum Contract Price.
- (c) Adjustments to the GMP Fixed Contract Price or Other Maximum Contract Price. The Contract must clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the scope of Work that warrants an increase in the GMP, fixed Contract price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract price or most recent Amendment to the GMP, fixed Contract price or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the District and other changes to the Work.
- (d) Cost Savings. The Contract must clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP; fixed Contract price or other maximum Contract price, that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the District's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the District.
- (e) Cost Reimbursement. The Contract must clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price, including any category of GC Work costs (a general grouping of direct costs that are not separately invoiced, subcontracted, or included within either overhead or fee), and may also incorporate a mutually agreeable cost-reimbursement standard.
- (f) Audit. Cost reimbursements must be made subject to final audit adjustment, and the Contract must establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.
- (g) Fee. Compensation for the CM/GC's Personal Services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead, and all other

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services



**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the District.

**CONTRACT PROVISIONS**

**PPS 49-0800 Required Contract Clauses**

Except as provided by PPS 49-0150 and 49-0160, the District must include in all Solicitation Documents for Public Improvement Contracts all of the ORS 279C-required Contract clauses, as set forth in the checklist contained in PPS 49-0200(1)(c) regarding Solicitation Documents. The following series of Rules provides further guidance regarding particular Public Contract provisions.

**PPS 49-0810 Waiver of Delay Damages Against Public Policy**

The District must not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the District's unreasonable delay in performing the Contract. However, Contract provisions requiring Notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages are permissible.

**PPS 49-0815 BOLI Public Works Bond**

Pursuant to ORS 279C.830(2), the Specifications for ev

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules fo





**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (e) Requirement for payment of Prevailing Rate of Wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal Prevailing Rate of Wage.
  - (f) A requirement for filing a public works bond by the Contractor and every subcontractor, as set forth in ORS 279(C).830(1)(a).
- (3) Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the Procurement package (such as the Project Manual, Bid or Proposal booklets, Request for Quotes, or similar Procurement Specifications), must contain the following provisions:
- (a) The State Prevailing Rate of Wage, and, if applicable, the federal Prevailing Rate of Wage, as required by ORS 279C.830(1)(a):
    - (A) Physically contained within or attached to hard copies of Procurement Specifications;
    - (B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference in compliance with OAR 839-025-0020; or
    - (C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.
  - (b) If both state and federal prevailing rates of wage apply, a requirement that the Contractor shall pay the higher of the applicable state or federal prevailing rate of way to all workers. See BOLITHC9Tt4TtC

Page 175 ofS 279(C).83TT4 3( 2f bo)38 1 Tf-1.9672 -1.6995 T

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**PPS 49-0880 Records Maintenance; Right to Audit Records**

- (1) **Records Maintenance; Access.** Contractors and subcontractors must maintain all fiscal records

**Portland Public Schools Public Contracting Rules**  
Division 49 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this Section (2), the District must pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The District must also pay for all Work completed based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment must be calculated based on

