

DIVISION 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

General Provisions

47-0000 Application

These Division 47 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods and Services. These Division 47 rules are not applicable to the procurement of Personal Services Contracts. Procurements of Personal Services are governed by Metro's Personal Services Contracting Rules. These Division 47 rules are also not applicable to procurements of Public Improvements, which are governed by ORS Chapter 279C and procured in accordance with the rules set forth in Division 49.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Source Selection

47-0250 Methods of Source Selection

- (1) Metro may award a Contract for Goods and Services using any method authorized by State Code or these Administrative Rules. Such different methods are called methods of "source selection." Source selection methods include Cooperative Procurements, competitive Bids, competitive Proposals and small, Intermediate, sole-source, Emergency and special procurements.
- (2) State law requires Metro to use the Services of Qualified Rehabilitation Facilities (QRF's) in certain instances. When required, Metro must use a QRF pursuant to ORS 279 before proceeding with a purchase through other methods of source selection.
- (3) The methods of contractor selection must conform to the procedures identified in these Administrative Rules. The Procurement Officer is authorized, but not required, to waive any nonconformity with the rules of contractor selection if the Procurement Officer determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

~~47-0253 Feasibility Determination; Cost Analysis~~

~~(1) Written Cost Analysis for Contracts for Services. In accordance with ORS 279B.030, before conducting the Procurement of a Contract for Services (other than Personal Services) with an estimated Contract Price that exceeds \$250,000, Metro must, in the absence of a determination that performing the Services with Metro's own personnel and resources is not feasible, conduct a Written cost analysis.~~

~~(1) Feasibility Determination for Contracts for Services. Metro may proceed with the procurement of a Contract for Services without conducting the cost analysis required under ORS 279B.030 if Metro makes Written findings that one or more of the special circumstances described ORS 279B.036 make Metro's use of its own personnel and resources to provide the Services not feasible.~~

~~(2) Special Circumstances. The special circumstances identified in ORS 279B.036 that require Metro to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by Metro's employees, incapable of being managed, utilized or dealt with~~

successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of Metro.

**~~(3) Written Cost Analysis under ORS 279B.033.~~**

~~(a) Basic Comparison.~~ The Written cost analysis must compare an estimate of Metro's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, Metro may proceed with the Procurement for Services only if it determines that Metro would incur more cost in performing the Services with Metro's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost Metro would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets Metro will provide to the Contractor for the performance of the Services.

~~(a) Costs of Using Metro's Own Personnel and Resources.~~ When estimating Metro's cost of performing the Services, Metro shall consider cost factors that include:

~~A.—~~The salary or wage and benefit costs for the employees of Metro who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

~~B.—~~The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

~~C.—~~The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

~~D.—~~Any costs related to stopping and dismantling a project or operation because Metro intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

~~E.—~~The miscellaneous costs related to performing the Services. These costs exclude Metro's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless Metro performed the Services.

~~F.—~~Oregon Revised Statute Chapter 279B.033 (1)(a) provides that an estimate of Metro's costs of performing the Services include the costs described in subsections (4)(b)A through E of this Administrative Rule. Therefore, those costs do not constitute an exclusive list of cost information. Metro may consider other reliable information that bears on the cost to Metro of performing the Services. For example, if Metro has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, Metro may consider those actual costs in making its estimate.

~~(b) Costs a Potential Contractor Would Incur.~~ When estimating the costs a potential Contractor would incur in performing the Services, Metro shall consider cost factors that include:

~~A.—~~The average or actual salary or wage and benefit costs for contractors and contractor employees:

~~(i) —Who work in the business or industry most closely involved in performing the Services; and~~

~~(ii) —Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.~~

~~B. —The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.~~

~~C. —The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsections (4)(c)(A) and (B) of this Administrative Rule over the expected duration of the Procurement.~~

~~D. —Oregon Revised Statute Chapter 279B.033 (1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (4)(c)A through C of this Rule. Therefore, those costs do not constitute an exclusive list of cost information. Metro may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if Metro, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, Metro may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, Metro may consider what it actually paid out under a Contract for the same or similar Services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. Metro must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.~~

~~(4) —**Decision Based on Cost Comparison.** After comparing the difference between the costs estimated for Metro to perform the Services under section (4)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (4)(c), Metro may proceed with the Procurement only if Metro would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.~~

~~(5) —**Exception Based on Salaries or Wages and Benefits.** If the sole reason that the costs estimated for Metro to perform the Services under section (4)(b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (4)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (4)(c)A are lower than the salary or wage and benefit costs for employees of Metro under subsection (4)(b)A, then Metro may not proceed with the Procurement.~~

~~(6) —**Exception Based on Lack of Metro Personnel and Resources; Reporting.** In cases in which Metro determines that it would incur less cost in providing the Services with its own personnel and resources, Metro nevertheless may proceed with the Procurement if, at the time Metro intends to conduct the Procurement, Metro determines that it lacks personnel and resources to perform the Services within the time Metro requires them. When Metro conducts a Procurement under this section, Metro must:~~

~~(a) —Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time Metro requires them and of the basis for Metro's decision to proceed with the Procurement.~~

~~(a) —Provide to the Local Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.~~

#### **47-0255 Competitive Bidding**

(1) **Generally.** Metro may procure Goods or Services by competitive sealed Bids as set forth in ORS 279B.055 and these Administrative Rules. Metro may issue a request for information, a request for interest or other preliminary documents to obtain information useful in the preparation of an Invitation to Bid. An Invitation to Bid is used to initiate a Bidding Solicitation, awarded by low cost only, and must contain the information required by ORS 279B.055(2) and by section (2) of this Rule. Metro shall provide public notice of the competitive Bid Solicitation as set forth below in Administrative Rule 47-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid 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 voluntary; and
  - (iii) A provision that provides that statements made by Metro's representatives at the conference are not binding upon Metro unless confirmed by Written Addenda.
- B. The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by Electronic means (See Administrative Rule 47-0330 for required provisions of Electronic Bids);
- C. The time, date and place of Opening;
- D. The office where the Solicitation Document may be reviewed;
- E. A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);
- F. Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Administrative Rule 46-0210(2)); and
- G. How Metro will notify Bidders of Addenda and how Metro will make Addenda available (See Administrative Rule 47-0430).

(b) **Metro's Need to Purchase.** The character of the Goods or Services Metro is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.055, Metro's description of its need to purchase must:

- A. Identify the scope of the work to be performed under the resulting Contract, if Metro awards one;
  - B. Outline the anticipated duties of the Contractor under any resulting Contract;
  - C. Establish the expectations for the Contractor's performance of any resulting Contract;
- and