

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4779, FOR THE PURPOSE OF ADOPTING LOCAL CONTRACT REVIEW BOARD ADMINISTRATIVE RULES AND INTERIM EQUITY IN CONTRACTING ADMINISTRATIVE RULES

Date: April 6, 2017

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BACKGROUND

This comprehensive set of administrative rules includes Local Contract Review Board Administrative Rules (the “LCRB Contracting Rules”), the Personal Services Contracting Rules, and Equity in Contracting Rules and was developed to meet the different contracting and procurement needs of Metro’s departments and venues and to advance equity in contracting.

Development of rules

The administrative rules were collaboratively developed by a team led by the Office of Metro Attorney and Procurement. The team included representatives from the Oregon Zoo, Portland’s 5 Centers for the Arts, Metro’s Construction Project Management Office and the Communications, Parks and Nature, Parks and Environmental Services, and Planning and Development departments. Staff also consulted with Department Procurement Coordinators, Department Procurement Specialists and staff from the Diversity, Equity and Inclusion team, Portland Expo Center, Oregon Convention Center, Research Center, Finance and Regulatory Services, and Human Resources departments.

These rules largely document many current policies while making some changes based on the following guiding principles set by the project team:

- **Clarity:** The new rules will help staff do the right thing in handling public dollars responsibly and transparently
- **Consistency:** The new rules apply similar practices to areas such as amendment thresholds and solicitation methods
- **Flexibility:** The new rules meet the needs of different internal clients by providing more than one way to meet business goals
- **Accountability:** The new rules increase transparency for external stakeholders and delineate authority in decision-making for staff
- **Legality:** The new rules provide definitions and rules where Oregon statute is silent and bridge gaps in policies currently in Metro Code
- **Simplicity:** The new rules reduce the burden on the Contract Review Board for certain approvals and provide for shorter business processes and forms

Efficiency of rules

The administrative rules will make it easier for staff to carry out the business of contracting and procurement across the agency. Because the rules apply to both MERC and Metro, current discrepancies in separate policies will be eliminated and staff can more efficiently serve both MERC and Metro facilities with one set of rules.

The new rules fill gaps between current Metro policy and state law and reduce the need for staff to interpret contracting and procurement law. Project team and stakeholder staff recognize the efficiency of updating administrative rules and the need for regular review based on changes to state model rules as well as evolving business needs.

Summary of changes in LCRB Contracting Rules and Personal Services Contracting Rules

The new rules apply to all Metro contracts for Goods and Services, Public Improvement, Personal Services and Qualifications Based Selection.

Terms

- “Informal” contracts will now be called “intermediate” contracts
- “Professional services,” which includes architecture, engineering, photogrammetric mapping, transportation planning, land use surveying and related services, will now be called “Qualifications Based Selection”
- “Request for Bid (RFB)” will now be called “Invitation to Bid (ITB)”
- “Sheltered Market” will now be called “COBID Marketplace” (“COBID” refers to minority-owned, women-owned, service-disabled veteran-owned and emerging small businesses certified by the state of Oregon’s Certification Office of Business Inclusion and Diversity)

Solicitations

- Solicitation of intermediate Goods and Services, Personal Services and Qualifications Based Selection contracts will now use a short form Request for Proposal (RFP)
- Solicitation of intermediate Goods and Services and Public Improvement bids will now use a short form Request for Quote (RFQ)
- Notice for formal contracts will now be published on ORPIN or an electronic bidding system as approved by Metro’s Local Contract Review Board

Amendments

- Amendments to contracts are now consistently applied in all categories
- Unauthorized amendments require director sign-off; Metro’s Chief Operating Officer makes decisions regarding contract amendments or opts to send to the Local Contract Review Board

Non-Standard Methods

- Sole source determination findings for Goods and Services, Personal Services and Qualifications Based Selection contracts under \$150,000 may now be made by the Procurement Officer; findings for contracts over \$150,000 will continue to be made by the Local Contract Review Board
- Consolidation and update of current class special procurement categories (see findings attached to Resolution as Exhibit A-1)

Summary of new Equity in Contracting Rules

The new rules apply to all Metro contracts and will increase COBID participation through formalizing and strengthening existing policies and adding two new policies:

- Consider COBID firms in small procurements
- Contact a COBID firm from each state-certified category for intermediate procurements
- Advertise for formal procurements in a minority publication
- Scoring requirements for diversity total 20% in evaluating intermediate and formal proposals
- Required COBID Marketplace allows for quotes accepted only from COBID firms for Public Improvement contracts up to \$50,000

- Subcontractor equity program requires that contractors conduct outreach and negotiation with COBID subcontractors in formal Public Improvement contracts
- *New:* Optional COBID Marketplace allows for direct award to a COBID firm for Personal Services and Qualifications Based Selection contracts under \$50,000 (only one direct award allowed per vendor per department/venue)
- *New:* Required pre-solicitation equity strategy meeting with Procurement Services for formal procurements

Availability of rules

The LCRB Contracting Rules, Personal Services Contracting Rules and Equity Contracting Rules will be posted on Metro's website for ease of staff and stakeholder access.

Equity in Contracting administrative rules are written to support the goals outlined in Metro's Diversity Action Plan and Equity in Contracting data is reported through the Equity in Contracting Annual Report; both these documents are also available on Metro's website.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents** Metro Code 2.04, State of Oregon Revised Statutes (ORS) Chapters 279A, 279B and 279C
3. **Anticipated Effects:** Interim rules will go into effect in Metro's business practices immediately. A promulgation period will allow for persons likely to be affected by the permanent adoption of these rules with an opportunity to provide public comment on the interim rules prior to final adoption by the Local Contract Review Board.
4. **Budget Impacts:** None

RECOMMENDED ACTIONS

Local Contract Review Board adoption of the LCRB Contracting Rules; adoption of findings in Exhibit A-1 to approve classes of special procurements; adoption of the Personal Services Contracting rules; and adoption of the Equity in Contracting Rules.