CHAPTER 5 – PUBLIC CONTRACTS & AGREEMENTS

5.01 Public Contracts Generally

The Board serves as the Local Contract Review Board for the District and has adopted as its public contracting rules ORS chapter 279A, B and C and the Attorney General's Model Public Contract Rules, OAR Chapter 137, Division 46 (General Provisions Related to Cooperative Procurement), Division 47 (Public Procurements for Goods or Services), Division 48 (Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts) and Division 49 (General Provisions Related to Public Contracts for Construction Services), subject to the exceptions provided in this document.

5.02 Definitions

AWARD, the selection of a person to provide goods, services or public improvements under a public contract. The award of the contract is not binding on the District until the contract is executed and delivered by the Manager.

BID, a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

BIDDER, a person that submits a bid in response to an invitation to bid.

CONCESSION AGREEMENT, a contract that authorizes and requires a person to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned by the District, under which the concessionaire makes payments to the District based, in whole or in part, on the concessionaire's sales revenues. "Concession agreement" does not include an agreement, which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

CONTRACTING AGENCY, a public body authorized by law to conduct procurement.

EMERGENCY, circumstances that (a) could not have reasonably been 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.

EXEMPTIONS, exemptions from the formal competitive selection procedures for public improvement contracts, personal service contracts of architects, engineers, land surveyors, and related services, as well as contracts and classes of contracts designated as "special procurements" under ORS 279B.085.

LOCAL CONTRACT REVIEW BOARD (LCRB), the Board.

PERSONAL SERVICES,

(A) Includes those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include architects, engineers, surveyors, attorneys, accountants, auditors, agents of record, computer programmers, land acquisition specialists, property managers, artists, designers, performers and consultants. The Manager has authority to determine whether a particular service is a "personal service" under this definition.

(B) Personal Services do not include contracts primarily for equipment, supplies or materials. For example, a contract to supply all hardware and standard software is not Personal Services, but a contract with a technology consultant to design or develop a new computer system is Personal Services.

PROPOSAL, a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

PUBLIC CONTRACT, any agreement for the purchase, lease, or sale by the District of personal property, public improvements, or services other than agreements that are for personal and professional services.

PUBLIC IMPROVEMENT, projects for construction, reconstruction, or major renovation on real property by or for the District. "Public improvement" does not include emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a public improvement.

QUOTE, a price offer made in response to an informal solicitation to provide goods, services or public improvements.

REQUEST FOR PROPOSALS (RFP), means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specifications and price will not necessarily be the predominant award criteria.

SURPLUS PROPERTY, any personal property of the District that has been determined by the Manager to be of no use or value to the District.

5.03 Personal Services

(A) Exempt Personal Service Contracts. Exempt Personal Service contracts are defined by the LCRB, and are exempt from the public procurement procedures

and may be executed by direct appointment. The following contracts are considered exempt by the District:

(1) Contracts existing on July 11, 2005; and

(2) Contracts for accounting, legal, underwriting, and investment, financial and insurance advising services, and instructional services.

(B) Contracts for Certain Construction-related Personal Services. This section applies only to personal services meeting the following criteria:

(1) A contract with an Estimated Fee that exceeds $100,000; and

(2) The contract is for personal service that is legally required to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or structure, or an engineer to design a bridge. Because the law requires licensed professionals to design and engineer structures, District would reply on this subsection to hire someone to perform those services. However, if District were hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under the Personal Services in this policy, as defined by ORS 279C.100, as "Related Services".

(3) If either (A) or (B) above is not satisfied then District may rely on the Personal Services in this policy to solicit and award the contract. If the requirements of (1) and (2) are satisfied, then the provisions of OAR 137-048-0210 through OAR 137-048-0220 will be adhered to.

(C) Direct Appointment (Under $100,000). Personal service contracts may be entered into directly with a Consultant if the estimated fee to be paid under the contract does not exceed $100,000.

(D) Informal Selection Process ($100,000 – $250,000).

(1) The use of the informal selection procedures described in OAR 137-047-0270 will be used to obtain a contract if the estimated fee is expected to be $100,000 or more and not to exceed $250,000.

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

(3) Price may be considered, but need not be the determining factor. Proposals may also be solicited by using a written RFP, at the District's discretion.

(E) Formal Selection Process (Over $250,000). The use of the formal selection procedures described in OAR 137-047-0255 and ORS 279B.060 will be used to obtain a contract if the estimated fee is expected to exceed $250,000.

5.04 Delegation

(A) Except as otherwise provided in the Local Rules, the powers and duties of the LCRB under public contract law must be exercised and performed by the Board.

(B) Unless expressly limited by the LCRB, the Model Rules or Local Rules, all powers and duties given or assigned to contract agencies by public contract law may be exercised or performed by the Manager, including the authority to enter into emergency contracts under ORS 279B.080.

(C) All public contracts estimated to cost $150,000 or more in a fiscal year must be approved by the Board.

(D) All public contracts estimated to cost less than $150,000 in a fiscal year may be entered into by the Manager without Board approval. However, either the Board or the Manager may enter into emergency contracts under DCP 5.11, regardless of dollar limits, subject to ORS 294.455.

5.05 Special Procurements and Exemptions

(A) The LCRB may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

(B) The LCRB may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a contract for public improvement from competitive bidding, the LCRB may authorize the contract to be awarded using an RFP process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

5.06 Small Procurements (Under $5,000)

(A) Public contracts under $5,000 are not subject to competitive bidding requirements. The Manager will make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.

(B) The District may amend a public contract awarded as a small procurement beyond the $5,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum greater than $6,000.

5.07 Intermediate Procurements

(A) A contract for procurement of goods and services estimated to cost between $5,000 and $150,000 in a fiscal year, or a contract for a public improvement that is estimated to cost between $5,000 and $150,000 in a fiscal year may be awarded according to the processes for intermediate procurements described in ORS 279B.070.

(B) The District may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price by a sum greater than twenty-five percent (25%) of the original contract price.

5.08 Electronic Advertising

Under ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Manager has the authority to determine when electronic publication is appropriate, and consistent with the District's public contracting policies.

5.09 Notice of intent to award certain contracts

(A) At least seven days before the award of a public contract solicited under a traditional invitation to bid or RFP, the District will post or provide to each bidder or proposer notice of the District's intent to award a contract.

(B) If stated in the solicitation document, the District may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the District's intent.

(C) As an alternate, the District may provide written notice to each bidder or proposer of the District's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

(D) The District may give less than seven days notice of its intent to award a contract if the District determines in writing that seven days is impractical as allowed by ORS 279B.135.

(E) This section does not apply to goods or services contracts awarded under the small procurements under the Local Rules, or other goods and services contracts awarded in accordance with ORS 279B.070, 279B.075, 279B.080 or 279B.085.

(F) This section does not apply to any public improvement contract or class of public improvement contracts exempted from competitive bidding requirements.

(G) A protest of the District's intent to award a contract may only be filed in accordance with OAR 137-047-0740 or OAR 137-049-0450, as applicable.

5.10 Methods for Awarding Contracts Using RFP Process

(A) In making an award using the RFP process in ORS 279B.060, the District may use any evaluation method determined to be most appropriate for the selection process, including the processes described in ORS 279B.060(6)(b), as well as direct appointment of personal services contracts if direct appointment is determined to be most advantageous to the District. The evaluation process used must be stated in the RFP. OAR 137-047-0261 through 137-047-0263 applies to evaluation of proposals.

(B) The District may require prequalification of bidders or proposers as stated in ORS 279B.125 for public improvement contracts in excess of $300,000.

5.11 Emergency Contracts

(A) The President of the Board or General Manager has the authority to determine when emergency conditions exist sufficient to warrant an emergency contract. If the President is not available, approval by a Board member may be sought in the following successive order: Secretary, Secretary Pro-temp, Board member. The nature of the emergency and the method used for the selection of the contractor must be documented.

(B) Emergency contracts may be awarded as follows:

(1) Goods and Services. Emergency contracts for procurement of goods and services may be awarded under ORS 279B.080 and DCP 5.04.

(2) Public Improvements. The District adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

5.12 Disposal of Surplus Property

(A) The Manager may dispose of surplus property as follows:

(1) For surplus property deemed to have an estimated salvage value of $50,000 or less, the Manager may authorize the property to be sold, donated or destroyed.

(2) For surplus property deemed to have an estimated salvage value of more than $50,000, the Board may authorize the Manager to dispose of the property in any appropriate manner.

(B) Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large including the following:

(1) Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the District may purchase surplus property from the District only at an advertised auction, and only if the employee submits the highest bid for such property.

(2) Donation. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.

(3) Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

5.13 Prequalification

(A) The District will allow prequalification for specifically the 2008 Bond trail projects valued at $1 million or more.as authorized by ORS 279C.430 using forms approved by the Manager.

(B) The Manager will determine qualifications based on the factors listed in ORS 279C.375(3)(b):

(1) The financial resources of the applicant, including insurance and bonding capacity, solvency and past payment history with employees, subcontractors and suppliers.

(2) The equipment and technology of the applicant available to perform the contract, including licensing and contract rights to use equipment and technology.

(4) The key personnel of applicant available to perform the contract, including their experience and capabilities as demonstrated by performance on comparable contracts.

(5) Holds current licensees that business or service professional operating in this state must hold in order to undertake or perform work specified in the contract.

(6) Completed previous contracts of a similar nature with a satisfactory records of performance, including planning, phasing, and scheduling; safety programs and records; compliance with local, state and federal laws relating to employment; dispute resolution; and references from owners, engineers and other contract agencies.

(7) Has a satisfactory record of integrity, and may consider, previous criminal convictions for offenses related to obtaining or subcontracting or in the connection with the bidders performance of a contract or subcontract.

(C) The Manager will notify applicants of qualification or disqualification within 30 days of applications. Applicants may appeal disqualifications by filing a written notice of appeal with the Manager within three days of receipt of notice of disqualification. The District presumes receipt at the earliest of date of personal delivery, facsimile, actual oral or written notice, or three days after mailing of a notice of disqualification.

(D) The Manager may debar a prospective bidder or proposer for the reasons listed in ORS 279C.375(3)(b). The Manager must provide written notice of such determination to the person or applicant and comply with the decision requirements of ORS 279C.375(4).

5.14 Appeals of Prequalification Decisions and Debarment Decisions

Review of the District's prequalification and debarment decisions are as stated in ORS 279B.425. The following additional procedures apply to hearings on such decisions by the LCRB:

(A) Notices must be submitted in writing to the Manager. Appeals filed after the filing period stated in ORS 279B.425 will not be considered.

(B) Upon opening of the hearing, District staff will explain the decision being appealed and the justification thereof. The appellant will then be heard. Time for the appellant's testimony will be established by the President. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal will then be heard, subject to time limits established by the President.

(C) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District decision will be heard, with time limits set by the President. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the President will close the hearing.

(D) When issued in writing according to the requirements of ORS 279B.425, the LCRB decision is final.

5.15 Concession Agreements

Concession agreements are not required to be competitively bid. However, when it is in the District's best interests to do so, the District may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

5.16 Purchases from Federal Catalogs

Subject to Board approval requirements stated in the Local Rules, the District may purchase goods from federal catalogs without competitive bidding when the procurement is under to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the LCRB that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

5.17 Intergovernmental Agreements

(A) Applicability. This policy provides guidance for approval and execution of, Intergovernmental Agreements (IGAs) as defined by ORS chapter 190 and for non-IGA agreements between the District and other government agencies.

(B) Policy. The Board will exercise authority to approve and authorize the Manager to execute IGAs. The Manager is delegated authority to approve and authorize non-IGA agreements for general business with other government agencies that meet any of the following conditions:

(1) Agreements where the funding does not exceed $100,000, exclusive of staff time for business in the following categories:
- (a) acquisition of services;
- (b) membership; and
- (c) facility use / property leases;

(2) Agreements for compensation to the District that do not exceed $100,000 and do not adversely affect District physical assets; or

(3) Grant applications that do not require Board approval.

5.18 Sustainable Purchasing

(A) Purpose. To ensure that staff know what authority they have to make sustainable purchases that are not specified in normal purchasing guidelines by defining how and when to use the sustainable cost model while defining exceptions to the lowest cost criteria frequently applied to other purchases. All purchases will be made in accordance with existing policies (such as THPRD Operational Policies & Procedures 2.02.01 through 2.02.06).

(B) Policy. It shall be the policy of the Tualatin Hills Park & Recreation District (THPRD) to ensure that goods are purchased in a sustainable manner that provides environmental, social, and economic benefits. Sustainable purchasing shall be based on appropriate standards/criteria and will include a consideration of life cycle costs of products.

(C) General Criteria

(1) THPRD will purchase items with the highest level of sustainable attributes possible, in compliance with applicable purchasing laws and regulations.
   (a) Staff will seek to utilize to the fullest extent possible "environmentally friendly" or "green" products which, to whatever extent possible, have sustainable attributes.
   (b) THPRD will use appropriate standards/criteria to document sustainable purchasing. The General Manager will establish these standards and may amend them from time to time in accordance with this policy.
   (c) For purchases where there are no appropriate standards/criteria, THPRD will develop and maintain a list of acceptable "green product" resources.

(2) THPRD staff will use Life Cycle Cost (a method of economic analysis that takes into account expected costs over the useful life of an asset), based on THPRD's sustainability cost model, as the basis of selection on all purchases when a single item is over $50,000 or weighs more than 1,000 pounds. The model, although required for the purchases described above, may also be used for any level of expenditure where staff deems the use of the model appropriate. If the initial cost from a selection based on the sustainability cost model exceeds the initial cost of the least-cost selection by more than 10%, the life cycle costing requirement may be waived.

(3) Nothing contained in this policy shall be construed as requiring a buyer or contractor to procure products that do not perform adequately for their intended use, or exclude adequate competition, procure products that are not available at a reasonable price, or available within a reasonable time frame.

(D) Solicitation for Services

(1) Service contracts shall include sustainability criteria to highlight the importance of sustainability issues to THPRD and to ensure that priority issues are addressed with vendors. Sustainability criteria can be incorporated into service contracts to set both minimum performance standards that all vendors must meet and further optional criteria that they are encouraged to achieve.

(a) All Requests for Proposals (RFP) will include, where appropriate, criteria to evaluate sustainable practices, materials, services and design work by consultants.

(b) When determining criteria for an RFP, staff should consider not only the direct service provided, but can also consider the operations of the contractor's business and past projects and how they incorporated sustainable practices.

(c) The selection may be based on criteria including, but not limited to, environmental, and social sustainability factors, or sustainability factors related to services.

(E) Responsibility. Prospective vendors will be responsible for providing evidence of meeting the standards used in the procurement, or for providing information necessary to complete a life cycle cost or other sustainability assessment. A prospective vendor who fails to provide this information may be considered non-responsive and removed from consideration for the procurement.