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**CLASS EXEMPTIONS****E-1 Purpose and Statutory Authority**

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

**E-2 Advertising Contracts**

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

**E-3 Equipment Repair and Overhaul**

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

**E-4 Contracts for Price Regulated Items**

Contracting Agency may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

**E-5 Copyrighted Materials**

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

**E-6 Investment Contracts**

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

**E-7 Requirements Contracts**

(1) Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

(2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.

(3) The term of any requirement contract, including renewals, shall not exceed five years.

**E-8 Office Copier Purchases**

(1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.

(2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

**E-9 Manufacturer Direct Supplies**

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

**E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt**

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

**E-11 Hazardous Material Removal; Oil Cleanup**

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

- (a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- (b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

**E-12 Insurance, Employee Benefit**

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

**E-13 Medical and Laboratory Supplies**

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;

- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

**E-14 Concession Agreements**

- (1) A concession agreement is a contract that authorizes and requires a private entity or individual 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 or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "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.
- (2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

**USED PERSONAL PROPERTY****E-15 Used Personal Property, Purchase of**

- (1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.
- (2) "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.
- (3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings

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to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

**E-16 Surplus Personal Property, Disposition of**

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Prior to surplus property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

**PERSONAL SERVICES****E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services**

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

(6) The following procedure shall be observed in the selection of personal service contractors:

(a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.

(b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each

prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.

(c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.

(d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.

(7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.

(8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:

(a) Total cost of services to Contracting Agency.

(b) Specialized experience in the type of work to be performed.

(c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

(d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

(e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

(f) Any other factors relevant to the particular contract.

(9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.

(10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.

(11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

### **E-18 Liability Insurance Contracts**

Contracts for insurance where either the annual or aggregate premium exceeds \$10,000 must be let using one of the following procedures:

(1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract.

Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area where the contract is to be performed. The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$20,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.



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(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area where Contracting Agency is located. If the amount of annual premium for insurance, other than employee benefits insurance, is likely to exceed \$20,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

(b) Contracting Agency shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.