



**Public Contracting Rules
for the
Mid-Willamette Valley Council of Governments**

Adopted by the Board of Directors
Resolution No. 2019-03
March 19, 2019

Table of Contents

	<u>Pg</u>
1. Contracting Policy	2
2. General Provision	2
A. Intent	2
B. Contract Review Board	2
C. Executive Director	2
D. Practices and Procedures	2
E. Public Notice	3
F. Procedure for Competitive Verbal Quotes and Proposals	3
G. Procedure for Informal Written Solicitations	3
H. Retroactive Approval	4
3. Source Selection Methods for Professional Services and Public Improvements	4
4. Source Selection Methods for Goods and Services	4
A. Small Procurements	4
B. Intermediate Procurements	4
C. Sole-Source Procurements	5
5. Source Selection Methods for Personal Services Contracts	5
A. Personal Service Contract	5
B. Executive Director Authority	5
C. Request for Qualifications	6
D. Direct Negotiations Exception	6
E. Formal Selection	7
1. Announcement	7
2. Application	7
3. Initial Screening	7
4. Final selection	7
F. Informal Selection	8
G. Alternative Procedures	8
H. Emergency Selection Procedures	8
6. Cooperative Procurement Contracts	8
7. Notice of Intent to Award Certain Contracts	9
8. Surplus Property	9
A. General Disposal	9
B. Disposal of Property with Minimal Value	10
C. Restriction on Sale to Employees	10
D. Conveyance to Purchaser	10

1. Contracting Policy – It is the policy of the Mid-Willamette Valley Council of Governments (MWVCOG) in adopting this Contracting Policy to utilize public contracting practices and methods that maximize the efficient use of MWVCOG resources and purchasing power of its funds.
2. General Provisions.
 - A. Intent - Except as provided within these rules, it is the MWVCOG’s intent that to the extent reasonably practical and/or required by law, its public contracting is governed by the Oregon Public Contracting Code, codified in ORS Chapters 279A, 279B, and 279C and the Attorney General adopted Model Rules to implement the Code, found in OAR 137, divisions 46,47,48, and 49, it is authorized to make full use of all contracting powers and authorities available to it.
 - B. Contract Review Board - Pursuant to ORS 279A.060 the MWVCOG Board of Directors is the Contract Review Board (Board). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies by the Code or Model Rules will be exercised by the Executive Director acting as MWVCOG’s purchasing manager and is hereby authorized to award all MWVCOG contracts for which there is an appropriation. Subject to this policy, the Executive Director may adopt and amend all rules, regulations, procedures and forms as convenient for the MWVCOG’s contracting needs.
 - C. Executive Director - For the purposes of these rules, “Executive Director” means the Executive Director of the MWVCOG, and the Executive Director’s designee. Any of the responsibilities and authorities of the Executive Director under this Policy may be delegated by the Executive Director by written directive.
 - D. Practices and Procedures - When adopting public contracting rules, regulations, procedures and forms, the Executive Director shall establish practices and procedures that:
 - Do not encourage favoritism or substantially diminish competition;
 - Allow the MWVCOG to take advantage of the cost-saving benefits of alternative contracting methods and practices;
 - Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal (OAR 137-046-0300); and
 - Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products

without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products (OAR 137-046-0320).

- E. Public Notice – Unless otherwise specifically provided by these rules, any notice required to be published by these rules shall be published at least once in one newspaper of general circulation within Salem, and in as many additional issues or publications as the Executive Director deems appropriate. Additional notice may be given using any other method deemed appropriate, including, but not limited to, mailing notice to persons that have requested notice in writing, or placing notice on the MWVCOG website.
- F. Procedure for Competitive Verbal Quotes and Proposals – Where allowed by this Policy, solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, or facsimile or e-mail if authorized by the Executive Director. A good faith effort shall be made to contact at least three potential providers. If three potential providers are not reasonably available, fewer will suffice, provided that the reasons three potential providers are not reasonably available is documented as part of the procurement file.
- G. Procedure for Informal Written Solicitations – Where allowed by this Policy, informal written solicitations shall be made by a solicitation document sent to not less than three prospective providers. Price quotes or proposals shall be received by the Executive Director at the date, time and place established in the solicitation document. The Executive Director shall keep a written record of the sources of the quotes or proposals. If three quotes or proposals are not reasonably available, fewer will suffice, but the Executive Director shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file. The solicitation document shall request competitive price quotes or competitive proposals, and include:
- The date, time and place that price quotes or proposals are due;
 - A description or quantity of the good or service required;
 - Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - Any required contract terms or conditions; and
 - Any required bid form or proposal format.

- H. Retroactive Approval – The Executive Director may make a retroactive approval of a contract when work was commenced without final award or execution only if the responsible staff person submits a copy of the proposed contract to the Executive Director along with a written request for contract retroactive approval containing:
- an explanation of why work was commenced before the contract was finally awarded or executed;
 - a description of steps being taken to prevent similar occurrences in the future;
 - evidence that, but for the failure to finally award or execute the contract, the responsible staff person complied with all other steps required to properly select a contractor and negotiate the contract; and
 - a proposed form of consent.
3. Source Selection Methods for Professional Services and Public Improvements – The MWVCOG will apply the Public Contracting Code and the Attorney General’s Model Rules of procedure for Public Contracting when procuring professional services and public improvements, and processing protests thereof.
4. Source Selection Methods for Goods and Services.
- A. Small Procurements – As provided by ORS 279B.065, any procurement of goods or services not exceeding a price of \$10,000 may be awarded in a manner the Executive Director finds practical or convenient, including direct selection or award. A small procurement contract may be amended in accordance with OAR 137-047-0800 if the cumulative amendments do not increase the total contract price by more than twenty-five percent of the original contract price. A procurement may not be artificially divided or fragmented to qualify for this section.
- B. Intermediate Procurements – Contracts for goods and services with a contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements. Intermediate procurements shall be by informal written solicitation. The Executive Director may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the MWVCOG. If a contract is awarded, the award shall be made to the offeror whose competitive quote or proposal or informal written solicitation will best serve the interests of the MWVCOG, taking into account price as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and contractor responsibility. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent of the original contract price.

Public notice is required for intermediate procurements with a contract price equal to or exceeding \$50,000.

- C. Sole-Source Procurements – Pursuant to ORS 279B.075(1), the Executive Director is authorized to declare in writing that certain goods and services are available from only one source. The determination of a sole-source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275.

5. Source Selection Methods for Personal Services Contracts.

- A. Personal Service Contract – A personal services contract is a contract for personal or professional services performed by an independent contractor, 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 the service depends on attributes that are unique to the service provider. Such services include, but are not limited to attorney services, accounting and auditing services, information technology services, planning and development services, artists, designers, performers, property managers, specialized, creative or research-oriented services, and consultants. For the purposes of this section, personal services contracts do not include such contracts for architectural, engineering and land surveying services. The procedures for those contracts are found in the Model Rules, OAR 137. Division 48.
- B. Executive Director Authority - The Executive Director has discretion to determine whether a particular contract or service falls within the definition of “personal services.” The Executive Director may classify additional specific types of service as personal services when taking into consideration:
 - Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
 - Whether the MWVCOG intends to rely on the contractor’s specialized skills, knowledge and expertise to accomplish the work; and
 - Whether selecting a contractor primarily based on qualifications rather than price would likely meet the MWVCOG’s needs and result in obtaining satisfactory contract performance and optimal value.

A service shall not be classified as personal services for the purpose of this rule if the work has traditionally been performed by contractors selected primarily on the basis of price, or the services do not require specialized skills, knowledge or resources in

the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

- C. Request for Qualifications – At the Executive Director’s discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations or requests for proposals.

A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.

A request for qualifications may require information including, but not limited to, the contractor’s particular capability to perform the required personal services; the number of experienced personnel available to perform the required personal services; the specific qualifications and experience of the personnel; a list of similar personal services the contractor has completed; references concerning past performance; and any other information necessary to evaluate the contractor’s qualifications.

Unless the responses to a request for qualifications establish that either (1) competition does not exist, (2) the request for qualifications is canceled, or (3) all responses to the request for qualifications are rejected, all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response.

- D. Direct Negotiations Exception - The Executive Director may procure personal services through direct negotiations if the nature of the personal services is not project driven, but requires an ongoing, long-term relationship of knowledge and trust such as, but not limited to, general counsel, special counsel, or professional or expert witnesses or consultants.

Personal services contracts procured by direct negotiation pursuant to this rule may be amended provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty percent over the original contract price, or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frame needed to complete the work.

No public notice of personal services contracts procured by direct negotiations is required.

- E. Formal Selection - A formal selection procedure will be used when the estimated payment to the contractor exceeds \$50,000. The formal selection procedure will include:
1. Announcement – MWVCOG will give notice of its intent to procure personal services through a newspaper of general circulation, and any other means MWVCOG deems appropriate, including, but not limited to, contacting prospective contractors directly, mailing notice to persons that have requested notice in writing, or placing notice on the MWVCOG website. The Executive Director is authorized to develop and use an “electronic procurement system” in accordance with OAR 137-047-0300(2)(b) to post electronic advertisements through the internet. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. Announcements will include:
 - A description of the proposed project;
 - The scope of the services required;
 - The project completion dates;
 - A description of special requirements;
 - When and where the application may be obtained and to whom it must be returned;
 - The closing date, and;
 - Other necessary information.
 2. Application – Applications will include a statement that describes the prospective contractor’s credentials, performance data, examples of previous work product or other information enough to establish contractor’s qualifications for the project, references, and other information identified by the MWVCOG as necessary to make its selection.
 3. Initial Screening – The Executive Director will evaluate the qualifications of all applicants and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is best qualified to meet MWVCOG’s needs.
 4. Final selection – The Executive Director will interview the finalists selected from the initial screening. At the Executive Director’s discretion, the interviews may be conducted before the Board if the Executive Director decides to delegate the selection decision to the Board. After the interview process concludes, the

Executive Director will make the final selection, unless the interviews are conducted before the Board, in which case the Board will make the final selection. The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by MWVCOG as necessary for it to select a contractor.

- F. Informal Selection - An informal selection procedure may be used when the estimated payment to the contractor is under \$50,000 or when the Executive Director determines that the informal procedures will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs. The Executive Director will contact a minimum of three prospective contractors qualified to offer the services sought. The Executive Director will request an estimated fee and make the selection consistent with MWVCOG's best interests. If three quotes are not received, the Executive Director will make a written record of efforts made to obtain the quotes.
 - G. Alternative Procedures – The Executive Director may enter personal services contracts not exceeding an estimated \$10,000 without utilizing the procedures under subsections d, e, or f. However, the Executive Director must make reasonable efforts to choose the most qualified contractor to meet MWVCOG's needs. The Executive Director may negotiate with a single source for personal services if the services are available from only one contractor or the prospective contractor has special skills uniquely required for the performance of the services. The Executive Director must make written findings to demonstrate why the proposed contractor is the only contractor suitable to perform the services desired.
 - H. Emergency Selection Procedures - The Executive Director may select a contractor and execute contracts without following any procedures when conditions require immediate action to prevent substantial damage or injury to persons or property. In such emergency instances, the Executive Director must make written declarations of the circumstances that justify the emergency appointments including (1) the nature of the emergency, and (2) the method used for selection of the particular contractor and why the selection method was deemed in the best interest of the MWVCOG. The Executive Director shall, as soon as possible, notify the Board of Directors of the facts and circumstances surrounding the emergency execution of the contract(s).
6. Cooperative Procurement Contracts - Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

7. Notice of Intent to Award Certain Contracts – The MWVCOG will follow procedures to provide notice of intent to award certain contracts as follows:

- A. At least seven (7) days before the award of a public contract solicited under a traditional invitation to bid or request for proposals, MWVCOG will post or provide to each bidder or proposer notice of MWVCOG’s intent to award a contract.
- B. If stated in the solicitation document, MWVCOG may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of MWVCOG’s intent.
- C. As an alternative, MWVCOG may provide written notice to each bidder or proposer of MWVCOG’s intent to award a contract. This written notice may be provided electronically or through non-electronic means.
- D. MWVCOG may give less than seven days’ notice of its intent to award a contract if the Executive Director determines that seven days is impractical as allowed under ORS 279B.135.
- E. This section does not apply to goods and services contracts awarded under small procurements under these 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 MWVCOG’s intent to award a contract may only be filed in accordance with OAR 137-047-0740 or OAR 137-049-0450, as applicable.

8. Surplus Property - Provisions

- A. General Disposal - Surplus property may be disposed of by any of the following methods upon a determination by the Executive Director that the method of disposal is in the best interest of the MWVCOG. Factors that may be considered by the Executive Director include costs of sale, administrative costs, and public benefits to the MWVCOG. The Executive Director shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

1. Governments - Without competition, by transfer or sale to another member Government of the MWVCOG.
 2. Auction - By publicly advertised auction to the highest bidder.
 3. Bids - By public advertised invitation to bid.
 4. Liquidation Sale - By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
 5. Fixed Price Sale - The Executive Director may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 6. Trade-In - By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 7. Donation - By donation to any organization operating within or providing a service to residents of the Mid-Willamette Valley, which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. Disposal of Property with Minimal Value - Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The Executive Director shall make a record of the value of the item and the manner of disposal.
- C. Restriction on Sale to Employees – MWVCOG employees shall not compete, as members of the public, for the purchase of publicly sold surplus property.
- D. Conveyance to Purchaser - Upon the consummation of a sale of surplus personal property, the MWVCOG shall make, execute and deliver, a bill of sale or similar instrument signed on behalf of the MWVCOG, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.