

METRO
PERSONAL SERVICES CONTRACTING RULES
Procurement Administrative Procedures

SUBJECT: Requirements and Procedures for the Procurement of
Personal Services Contracts

PURPOSE: To establish a uniform process for the acquisition of
personal services and rules related to the screening and
selection of persons to perform personal services

DEPARTMENT RESPONSIBLE: Finance Department
PROCUREMENT

**DEPARTMENTS
AFFECTED:** All Metro Departments

**LEGAL CITATION/
REFERENCE:** ORS 279A.055, 279A.065 and 279A.070

DATE: July 14, 2022

I. POLICY STATEMENT

It is the policy of both the State of Oregon and Metro to provide a screening and selection process for the acquisition of personal services that ensures fair and equal opportunity for all contractors interested and qualified to contract with Metro. Full and open competition shall be used to the maximum extent practicable when procuring Personal Service contractors. As required under Metro Code 2.04, Metro Departments are required to adhere to the policies and procedures established in these Administrative Rules.

II. GENERAL GUIDELINES

These Rules identify various contractor screening and selection methods to be used and steps to be followed when procuring personal services.

- A. For procurements over the small purchase threshold and up to \$150,000 in value, an Intermediate procurement method shall be conducted. For procurements over \$150,000 in value, a formal procurement method shall be conducted.
- B. These Rules do not apply to the selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services. See Division 48 of Metro's Local Contract Review Board (LCRB) Rules.
- C. Certain LCRB Rules may pertain to personal services procurements (e.g. Division 46 Rules regarding Solicitation Document Templates; Contract Forms and Contract Templates; Contract Administrator Accountability, Unauthorized Purchases, Discrimination; Disqualification, and Cooperative Procurements).
- D. The maximum contract term of a personal services contract is five (5) years unless otherwise approved by the Procurement Officer or limited by these Rules.
- E. Exceptions to these Rules shall only be allowed as authorized and specified in Section XI, Exemptions from Competitive Procurement Requirements.
- F. There may be more than one method to procure desired personal services, so Metro employees are encouraged to work with Procurement Services, and to the extent necessary the Office of the Metro Attorney, to determine the best method for selecting personal services. The Procurement Officer has the authority to waive minor irregularities and discrepancies, or make situational exceptions that will not affect the overall competitiveness or fairness of the solicitation and selection process, and that will provide significant benefit to Metro.

III. DEFINITIONS AND CONCEPTS

- A. **Competitive Range** – A specified number of proposers, as stated in the solicitation document, with whom Metro will conduct discussions and/or negotiations. This number may be decreased if the number of proposers that submit proposals is less than the specified number, or may be increased by Metro in accordance with LCRB Rule 47-0261.

- B. **Contract** – An agreement between Metro and a contractor describing the work to be performed, the obligations of both parties, etc.
- C. **Department** – A Metro Department, or any unit therein, that has responsibilities for procuring personal services.
- D. **Emergency** – Circumstances that could not have been reasonably foreseen which create a substantial risk of interruption of services or threat to the public health or safety and which require prompt execution of a contract to remedy the situation.
- E. **Exemption** – The process used to allow personal services contract formation outside the formal RFP or Intermediate solicitation procedures.
- F. **Formal** – The procurement process for purchases greater than \$150,000. These Administrative Rules establish three levels of procurement activity defined by increased funding limitations and required oversight. Other levels are “small” and “intermediate”.
- G. **Intermediate** – The procurement process for purchases greater than the small purchase threshold of \$10,000 and less than or equal to \$150,000. These Administrative Rules establish three levels of procurement activity defined by increased funding limitations and required oversight. Other levels are “small” and “formal”.
- H. **Intermediate RFP** – A written solicitation for an intermediate procurement. The intermediate RFP is patterned after the formal RFP process, but with fewer requirements.
- I. **Local Contract Review Board (LCRB)** – The Metro Council acting as the local contract review board pursuant to ORS 279A.060, also known as the Board.
- J. **Multistep RFP** – A formal RFP process that is staged in phases, soliciting technical proposals as a first step, providing the option to conduct interim steps such as Clarification/Discussion phase, followed by a final competitive step.
- K. **Notice** – Announcement and distribution of information regarding a current procurement process by mail, email, or posting to an electronic procurement system.
- L. **Oral Procurement Method** – An alternative Intermediate procurement method for purchases valued at \$150,000 or less that may be conducted orally. The oral procurement method may only be utilized as an exception to the standard, written intermediate process with prior approval of Procurement Services.
- M. **Personal Services** – Services which require specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, services of an accountant, physician, educator, counselors in investment, insurance, advertising, graphics, training, public relations, communications, real estate and property management, information technology or other consultant or artist (including a photographer, filmmaker, painter, weaver, or sculptor) and contracts for human services. Types of services not listed in this definition may also be classified as “personal services.” The Procurement Officer has the final determination on what constitutes “personal services” on a case by case basis.
- N. **Procurement Officer** – The Metro Director of Finances and Regulatory Services, or the Procurement Manager as his/her delegate.

- O. **Procurement Services** – Refers to the Procurement section of the Finance and Regulatory Services Department of Metro.
- P. **Proposal** – An offer, binding on the proposer and submitted in response to formal solicitations.
- Q. **Proposer** – A person or entity who submits a response to a solicitation.
- R. **Request for Information (RFI)** – A non-competitive process used to gather information, possible approaches, solutions, and technical capabilities from industry experts and organizations. The RFI is designed to gather information that would be used in a subsequent procurement process. No contract award will result from an RFI.
- S. **Request for Proposals (RFP)** – A formal, competitive procurement process used to solicit offers from contractors. The RFP method involves the evaluation and selection of a contractor based upon various factors including, but not limited to the proposer’s expertise, experience, social equity contracting/corporate responsibility, licenses or certifications, work history, understanding of the scope of work and ability to resolve the issue or problem identified within the RFP document while providing a quantified cost for completing the work. RFPs are expected to result in selection of the contractor whose proposal offers the best value.
- T. **Request for Qualifications (RFQ)** – A procurement method that consists of two phases, which is intended to limit respondents for complex projects to only the most qualified; and/or to lessen the cost impact to respondents. Contract award is dependent on both phases being completed. The issuance of an RFQ is the first phase of the process and is used to short list the most qualified (highest scored) respondents. The first phase does not include cost as an evaluation criterion. The second phase is the issuance of a modified RFP to the short listed respondents and generally results in a contract award.
- U. **Small** – The procurement process for purchases less than or equal to \$10,000. These Administrative Rules establish three levels of procurement activity defined by increased funding limitations and required oversight. Other levels are “intermediate” and “formal”.
- V. **Solicitation Document** – A document issued by Metro to invite offers from prospective contractors.
- W. **Statement of Work** – Written detailed description of agreed upon work, typically including performance measures, deliverables and pricing, found in a contract and derived from the solicitation documents to generally describe the desired work objectives.

IV. AUTHORIZATION FOR PROCUREMENT/UNAUTHORIZED PURCHASES

- A. **Prior Authorization to Conduct Procurement Required**
Procurement authorization is required prior to conducting a procurement. Authorization represents Department management approval to expend funds for the project under the Department’s adopted or proposed (in the case of a pending program offer) budget.
- B. **Unauthorized Purchases**
Unauthorized Purchases are the purchases of goods or services, including personal services, made without following Metro Procurement requirements or without delegated authority.

Processing of payments for Unauthorized Purchases shall be in accordance with LCRB Rule 46-0200.

V. SMALL PROCUREMENT PROCESS FOR PERSONAL SERVICES CONTRACTS

Personal services purchases less than or equal to the small purchase threshold of \$10,000 may be made without soliciting competitive offers. Purchases may not be artificially divided or fragmented in order to reduce the transaction value below the threshold requiring competition.

VI. INTERMEDIATE PROCUREMENT PROCESS FOR PERSONAL SERVICES CONTRACTS

A. General Information

1. Metro may utilize an Intermediate procurement process for the selection and award of Personal Service contracts over \$10,000 and up to and including \$150,000 in value.
2. Metro must solicit from a minimum of three vendors (when available) who can reasonably be expected to provide the services. Solicitation shall be through issuance of a written, intermediate RFP, although in some cases an oral procurement method may be approved. See Section VI(C) below for more information regarding the oral procurement method.
3. Metro is required to directly solicit at least one minority-owned business, one woman-owned business, one business that a service-disabled veteran owns and one emerging small business. See the Metro Equity in Contracting Administrative Rules for more information regarding compliance.
4. Intermediate proposals should be solicited from entities that can reasonably be expected to perform the required services. Metro uses an electronic procurement system as a primary tool for contacting proposers. In the event a potential contractor is not registered on Metro's electronic procurement system, Metro may email or otherwise directly distribute the intermediate RFP to such potential contractor.
5. An intermediate RFP solicitation may be canceled at any point in time prior to contract execution if it is determined to be in the best interest of Metro.
6. There is no protest process for Intermediate procurements.
7. Metro shall retain Intermediate procurement information in accordance with State and Metro record retention requirements, including:
 - a. The date advertised and/or a record of all proposers contacted;
 - b. The original written solicitation document and any addenda. If the Department received prior approval from the Procurement Officer to do an oral procurement method, a summary of the oral information provided by Metro; and
 - c. Scoring summaries, documentation and notice letters.
8. Metro may award contracts to more than one vendor with a single Intermediate procurement process. The total value of all contracts issued under an Intermediate solicitation may not exceed \$150,000.

B. Written Solicitations Required for Intermediate Personal Services Procurements

1. The intermediate RFP is a written solicitation process. The Intermediate solicitation process can be conducted simply or can be structured with multiple steps to address complex requirements.
2. Intermediate RFPs shall be procured using template solicitation documents provided by Procurement Services. The content shall include:
 - a. A clear and concise scope of work identifying deliverables, including what, when, where, and potentially how the personal services will be provided.
 - b. Performance measures, if applicable, to assess receipt of satisfactory services.
 - c. Notice of whether multiple contracts are expected to be awarded.
 - d. The period of time for contract performance.
 - e. A statement that the contract(s) will be awarded to the responsive, responsible proposer(s) with the highest scoring intermediate proposal(s).
 - f. All minimum requirements, such as required contractor licenses, insurance, etc.
 - g. The time and location of a pre-proposal meeting, if applicable.
 - h. The evaluation factors Metro will consider when making the award.
 - i. The questions to which proposers must respond and any additional information or documents that must be submitted.
3. Metro shall respond in writing to questions received, providing any clarifications or changes to all proposers who were sent the intermediate RFP.
4. Any changes or addenda to the intermediate RFP documents must be provided to all proposers who received the original solicitation. Those proposers must be notified in the same manner and method used for the notification of the original solicitation or as otherwise specified in the intermediate RFP.
5. Evaluation and Scoring Intermediate Proposals

Metro must describe the evaluation process that will be utilized to score intermediate proposals in the solicitation document. Metro may choose to establish an evaluation committee with various experts from within and outside Metro, but there is no required minimum number of evaluators for intermediate proposals. To maintain a fair and consistent process, all intermediate proposals should be evaluated by the same evaluators and in the same manner.

C. Process for Using Oral Procurement Method

1. In cases where the Department and Procurement Officer reasonably conclude that a written Intermediate solicitation process will not result in a robust, competitive procurement, an Intermediate procurement may be via an oral procurement method. A previous failed written intermediate RFP is an example of when an oral procurement method may be appropriate, although a previously failed procurement is not a prerequisite for applying the exception.
2. If preapproved by the Procurement Officer, the oral procurement method procurement must be documented in a form provided by Procurement Services. Use of

emails or other written correspondence is also allowable; when used this documentation should be retained in the Procurement File.

3. The Department shall develop a written description of vendor services to be performed and evaluation criteria that will be used to evaluate oral offers.
4. To ensure consistency and fairness, Metro shall present each vendor with the same information. The information provided to vendors may include:
 - a. Description of work
 - b. Estimated cost
 - c. Performance schedules
 - d. Deliverables/outcomes
 - e. Performance requirements
 - f. Minimum contractor qualifications
 - g. Performance measures
 - h. Sustainability considerations
 - i. Equity in contracting considerations

VII. FORMAL PROCUREMENT PROCESS FOR PERSONAL SERVICES CONTRACTS

A formal procurement process, such as an RFP, must be used to competitively acquire Personal Services contracts over \$150,000. A clear and concise RFP or other appropriate solicitation promotes full and open competition, enables proposers to offer innovative solutions, and allows Metro to determine which proposal offers the best value.

A. Formal Procurement Solicitation Types

The formal procurement methods include, but are not limited to the following types of competitive solicitations:

1. A basic RFP that provides for determination of contractor award(s) based solely on the ranking of proposals.
2. An RFP that results in serial negotiations beginning with the highest ranking proposer or competitive simultaneous negotiations with eligible proposers.
3. A multistep RFP designed to identify, at each level, a class of proposers determined to be within competitive range, or to otherwise eliminate from consideration a class of lower ranked proposers.
4. A multistep or two-step RFP that initially solicits unpriced technical proposals and subsequently invites proposers whose technical proposals are determined to be qualified under the criteria set forth in the RFP to submit price proposals.

B. Solicitation Document Content

The solicitation document must include the following:

1. A statement of work, including a clear description of the services to be provided, standards by which performance of the services will be measured, and conditions affecting delivery of the services.

2. Minimum standards and qualifications required to be met by the proposers to be eligible to provide the services such as licensing, experience, etc. Minimum requirements should be carefully established so that qualified vendors are not inadvertently precluded from proposing. It is not necessary in all cases to establish minimum requirements.
3. Information required to be submitted as part of the proposal to support proposer capability, such as references showing experience providing the same or similar services, copies of license(s), etc.
4. Notice of pre-proposal meeting, if any, including date, time, place and whether the meeting is mandatory or optional.
5. The evaluation process factors Metro will consider when making the award, including (without limitation): (i) a list of all criteria (e.g. cost) to be used to evaluate proposals; (ii) the points assigned to each criterion; and (iii) the minimum total score that must be achieved (if any) to be eligible for contract award.
6. Identification of oral interviews, demonstrations, or other additional procurement process that may be contemplated, along with a description of the purpose of the process, the criteria for selecting proposers to participate, and how the process will affect the scoring.
7. The proposal structure, such as page limitations, content organization, supplemental information, and limitations, etc.
8. A copy of Metro services contract (or other contract if approved by the Office of Metro Attorney) that will be applicable to the resultant contract(s).
9. A description of minimum insurance requirements and, if applicable, a statement that insurance requirements may be increased or decreased depending on the solution proposed.

C. Advertisement, Public Notice, and Solicitation Documentation

Public notice of a formal procurement must be made at the time a solicitation is issued. Metro will post notice of the procurement on its electronic procurement system, where potential proposers can download the solicitation documents. Metro may give additional notice using any method appropriate to foster and promote competition, including:

1. Advertise the procurement in a publication of general circulation and in as many other publications as may be appropriate.
2. Printing copies of the solicitation, upon request, available for pick-up at the Procurement Services office.
3. Mailing or emailing the solicitation document or notice of procurement to the mailing list provided by the Department.
4. Providing copies of the solicitation document to other interested parties, as requested.

D. Addenda

1. All changes to a solicitation must be formalized by the issuance of a written addenda. Except to the extent justified by a countervailing public interest, Metro may not issue addenda less than 72 hours before the closing unless the addenda also extends the closing.

2. Metro may notify prospective proposers of addenda in a manner intended to foster competition and to make prospective proposers aware of the addenda. The original solicitation document must specify how Metro will provide notice of addenda and how Metro will make the addenda available before closing
- E. Proposer Questions, Requests for Clarification/Change, and Protests of Specifications
- The solicitation document shall require proposers to submit in writing to Procurement Services all questions, protests of specifications or requests for clarification or change to the solicitation. Questions may also be presented verbally at a pre-proposal meeting. All questions, requests for change or protests of specifications must be received by Metro by the date and time, and in the manner stated in the solicitation. If a change or substantive clarification is necessary, Metro will issue a written addenda by the date required in the solicitation.
- F. Pre-Proposal Conference
1. A pre-proposal conference allows prospective proposers to meet with Metro after the solicitation is issued in order to discuss the procurement and obtain greater understanding of the requirements.
 2. If held, the pre-proposal conference may be mandatory or optional. If mandatory, only proposers who have a representative attend and sign the attendance roster at the pre-proposal conference may submit a proposal. Mandatory pre-proposal conferences should be required only where there is a compelling reason to have all those who plan to propose be present. Requiring a mandatory conference may result in a qualified proposer being unable to participate if the proposer failed to receive a copy of the solicitation document or inadvertently missed the conference. All information regarding time, location, and whether the pre-proposal conference is optional or mandatory must appear in the solicitation document and in all advertisements.
- G. Rules Governing Receipt of Proposals
1. Proposers are responsible for delivering sealed proposals to the Metro by the date and time specified in the solicitation.
 2. Metro is responsible for receiving, time-stamping, and enforcing the submittal deadline for each proposal.
 3. The Metro time-stamp shall be used to determine the timeliness of a proposal submission.
 4. Metro shall record and make available the identity of all proposers as part of Metro's public records after the proposals are opened. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.
 5. If, on the date proposals are due, Metro is officially closed for part or all of the day, preventing delivery of proposals, then the due date will automatically extend to the next business day that Metro is re-opened for business, at the same time as indicated in the solicitation. Closure may be due to inclement weather or other unplanned and unforeseen exigencies.

H. Evaluation Committee

1. Metro shall establish an evaluation committee comprised of at least three (3) members to evaluate proposals.
2. Committee members must not have a conflict of interest with any person or organization responding to the procurement.
3. The Procurement Officer must approve in advance the composition of any evaluation committee that does not comply with the above requirements.

I. Proposal Evaluation and Selection of Contractor(s) for Award

Purpose: A proposal evaluation process is conducted to determine which proposal offers the best overall value in accordance with criteria set forth in the solicitation. The following procedures outline the proposal evaluation process.

1. Evaluation of Proposals:

- a. Proposal evaluators shall evaluate and score proposals using only the evaluation method described in the solicitation. Evaluator comments and scores shall be documented on the evaluation score sheets and forms provided. Evaluators should be cautioned that information contained on the rating sheets will become public information and evaluators should be identified only by alpha designations and not by name or by signature.
- b. Metro may seek clarification of any proposal. Information obtained shall be shared with all evaluators and all such contacts with proposers seeking clarification shall be documented.
- c. The evaluation committee may consult with Metro employees who have technical expertise in a specific area of evaluation such as finance or budget.
- d. If the solicitation requires proposers to provide references and other supporting documentation (such as previous work history, projects that are similar to the one proposed) these references may be checked by the project manager, or a person(s) designated by the project manager and/or evaluation committee. Metro is not restricted to using only those references provided by the proposers, but may also check other references as they become available through the original reference check or as provided by the proposer during the interview phase. Comments and information provided by the reference checks will be documented, shared with the evaluation committee members, and become a part of the permanent procurement file.

2. Conducting Interviews

- a. After deliberation and discussion of the written proposals, the evaluation committee may not be able to determine a single apparent successful proposer and thus may elect to focus on only a limited number of the highest scored proposals by developing a "short list" based on the scores from the written proposals. The number of proposals on the "short list" will depend upon whether the committee believes such proposals have a reasonable chance of receiving the award.
- b. Interviews or presentations will be conducted as indicated in the solicitation document. Each proposer will be allowed an equal amount of time for their

interviews or presentations and will be treated fairly and equitably by Metro. The project manager and the Evaluation Committee will discuss each proposal on the short list and will (i) determine which areas of their proposal may need clarification, (ii) develop interview questions for each proposer, and (iii) provide the agenda and questions far enough in advance of the oral interviews to allow the proposers enough time to adequately prepare and to make reasonable travel arrangements.

- c. The evaluation committee will utilize the scoring method identified within the solicitation document as they proceed to score the interview; interview scores will either stand alone, or the scores for the written proposals will be adjusted according to the procedure stipulated in the solicitation document.

3. Completing the Evaluation

- a. If Metro determines after the scoring of proposals that two or more proposers are equally qualified, Metro may select a candidate through any process that Metro believes will result in the best value for Metro taking into account the scope, complexity, and nature of the personal services. The process shall instill public confidence through ethical and fair dealing, honesty, and good faith on the part of Metro and proposers, and shall protect the integrity of the public contracting process. Once a tie is broken, Metro and the selected proposer shall proceed with negotiations.
- b. If it is recommended that a proposer other than the highest scoring proposer(s) be awarded, the contract award must be approved by the Metro Chief Operating Officer. In such event, the following information shall be submitted to support the recommendation:
 - i. A detailed explanation of the reasons for award recommendation and justification for deviating from required procedures.
 - ii. Findings that the award procedure does not violate any applicable law or regulation.
 - iii. A statement that explains why the proposed award would be in the best interest of the public and Metro.

4. Contract Negotiation and Development

After determining the highest scoring proposer, Metro shall enter into and complete contract negotiations with the selected proposer(s) as provided for in the solicitation document:

5. Contractor Notification and Protest

- a. Following verification of contractor award selection, and only after contract negotiations have concluded, Metro shall provide proposers with notice of intent to award the contract(s). Such notice shall be via the method identified in the Solicitation documents. The notification date will establish the beginning of the protest period. In the event that contract negotiations are prolonged, Procurement Services may informally notify the proposers that a selection has been made before the formal notice of intent to award the contract is distributed.

- b. Protests of contract award shall be received by Procurement Services and reviewed with the Department and the Metro Attorney. The Procurement Officer shall respond in a timely manner to any valid protests received.

6. Special Circumstances

a. Proposal Modification or Withdrawal

A proposer may modify or withdraw its proposal as described herein. A record of withdrawal or modification of a proposal by the proposer shall be kept in the Procurement File.

i. Proposal Modification

- (1) A proposer may modify its proposal by submitting a proposal modification request to Procurement Services in writing prior to the date and time that proposals are due.
- (2) Any modification shall include the proposer's statement that the modification amends and supersedes the prior proposal and must be identified as such including the solicitation number.

ii. Proposal Withdrawal

A proposer may withdraw its proposal by written notice signed by an authorized representative of the proposer and delivered to Procurement Services prior to the date and time that proposals are due.

iii. Late Modification or Withdrawal of a Proposal

A proposer's request for modification of a proposal received after the due date and time stated in the solicitation document is late and may not be considered. A proposer's request for withdrawal of a proposal received after the due date and time stated in the solicitation document may not be considered.

b. Cancellation, Rejection, Delay, or Suspension of a Procurement

- i. Any procurement may be canceled or any or all proposals may be rejected in whole or in part, as determined by the Procurement Officer, when the cancellation or rejection is deemed to be in the best interest of Metro. The reason for the cancellation or rejection shall be made part of the Procurement File. Metro shall not be liable to any proposer or its subcontractor(s) for any loss or expense caused by or resulting from the cancellation or rejection of a procurement.
- ii. Any procurement may be delayed or suspended, as determined by the Procurement Officer, when the delay or suspension is in the best interest of Metro. Metro shall make the reasons for the delay or suspension part of the Procurement File. Metro shall not be held liable to any proposer or its subcontractor(s) for any loss or expense caused by or resulting from the delay or suspension of the procurement.
- iii. If a procurement is canceled prior to the proposal due date, Procurement Services shall provide written notice of cancellation in the same manner as

was used for the notice of the procurement except that advertisement of a cancellation is not required.

- iv. If a procurement is canceled prior to the proposal due date, all proposals that were received prior to the solicitation close will be returned unopened to the proposer(s).
- v. If a procurement is canceled after the proposal due date, proposals may either be returned to the proposer(s) or kept in the Procurement File.
- vi. If all proposals are rejected, all proposals shall be kept in the Procurement File.

VIII. REQUEST FOR INFORMATION

Metro may consider using a Request for Information (RFI) process to solicit preliminary information from the marketplace or to assess the availability of a desired service. An RFI is not a source selection method to procure services; however, information received in response to an RFI may be used to develop a statement of work for an RFP that may be subsequently issued. Responses to an RFI will be reviewed but not scored and no contract award(s) shall be made.

Interested parties will be asked to respond with some or all of the following information depending on the circumstances:

- A. Their interest in providing the service or solution to a problem.
- B. A brief description of past experience providing similar services or solutions.
- C. A description of services offered that will meet the needs of Metro.
- D. Any potential problems or risks Metro may encounter in utilizing the service or implementing the solution, along with suggestions to mitigate potential problems or reduce risk.
- E. An estimated price range to provide the proposed services.
- F. An estimated timeframe to complete the project, if applicable.

IX. NEGOTIATIONS

- A. One of the particular advantages of the RFP process is the ability of Metro to negotiate with the successful proposer to provide services at the price level that provides Metro with the best fair market value. The importance of negotiating with the selected proposer in order to obtain the best possible value for Metro and thereby assuring the best use of public funds cannot be overemphasized. During the negotiations, Metro will in good faith dedicate the necessary time and effort in order to reach a final agreement with the selected proposer. Negotiations typically occur prior to Metro issuing its notice of intent to award so that Metro may rely on the public record exemptions provided for under ORS 279B.060(6).
- B. Following principled negotiation efforts, if agreement with the highest scoring proposer cannot be reached within a reasonable period of time, Metro may, in its sole discretion, terminate negotiations and thereby reject the highest scored proposal. Metro may then attempt to reach a final agreement with the second highest scoring proposer and may

continue on, in the same manner, with remaining proposers until an agreement is reached. If negotiations with any proposer do not result in a contract within a reasonable period of time, as determined by Metro in its sole discretion, Metro may cancel the particular formal solicitation. Nothing in these Rules precludes Metro from proceeding with a new solicitation.

X. PROTESTS

- A. A proposer may protest a formal contract award, or notice of intent to award a contract over \$150,000, as follows:
 - 1. A proposer may protest the award of a contract, or the notice of intent to award a contract, whichever occurs first, if:
 - a. The proposer is adversely affected because the proposer would be eligible to be awarded the contract in the event that the protest were successful; and
 - b. The protest is based on at least one of the following reasons:
 - i. All higher scoring proposals are non-responsive.
 - ii. The proposal evaluation process was not conducted in accordance with the criteria or method described in the solicitation document.
 - iii. Metro has abused its discretion in rejecting the protestor's proposal as non-responsive.
 - iv. The proposal evaluation process is in violation of applicable rule or law.
 - 2. The evaluator's judgment applied in the scoring of proposals, including the use of outside expertise, is not a permitted basis for protest.
- B. A proposer may protest its exclusion from the competitive range or exclusion from a tier or step of formal competition if the proposer:
 - 1. Submitted a responsive offer.
 - 2. Is deemed responsible.
 - 3. Establishes that but for a substantial violation of a provision in the solicitation document or of an applicable procurement statute or administrative rule, the protesting proposer would have been included in the competitive range or in the next tier or step of competition.
- C. A proposer may appeal a decision that the proposer is not qualified under an RFQ process if the proposer can establish that it complied with all of the following conditions:
 - 1. Submitted a responsive offer.
 - 2. Is deemed responsible.
 - 3. Establishes that but for a substantial violation of a provision in the solicitation document or of an applicable procurement statute or administrative rule, the protesting proposer would have been included in the competitive range or in the next tier or step of competition.

- D. Unless otherwise specified in the solicitation document, a proposer shall deliver its written protest to the Procurement Officer by close of business within seven (7) calendar days after the date shown on the notice of the decision that is the subject of the protest.
- E. The protest must specifically state the reason for the protest, identify how its proposal or the winning proposal was mis-scored or show how the selection process deviated from that described in the solicitation document, and identify the remedy requested.
- F. Depending upon the substance of the protest, the Procurement Officer has a number of options available in resolving the protest. The Procurement Officer may: 1) waive any procedural irregularities that had no material effect on the selection of the proposed contractor; 2) invalidate the proposed award or amend the award decision; 3) request the evaluation committee re-evaluate any proposal; 4) develop an entirely new evaluation committee and re-evaluate the proposals; or 5) cancel the solicitation and begin again to solicit new proposals. In the event the matter is returned to the evaluation committee, the Procurement Officer shall issue a notice canceling the notice of intent to award.
- G. Decisions of the Procurement Officer are final and conclude the administrative appeals process. Any further redress sought by the proposer must be pursuant to state law.

XI. EXEMPTIONS FROM COMPETITIVE PROCUREMENT REQUIREMENTS

A. Exemptions by Rule

The services listed in paragraphs 1 through 11 below are designated as Personal Service and are exempt from competitive procurement requirements set forth in these Administrative Rules.

1. Contracts for the modification by the licensor of intellectual property licensed to Metro.
2. Contracts for legal services (e.g. expert witnesses, outside legal counsel, and bond counsel), if approved by the Metro Attorney.
3. Contracts with speakers, lecturers and performing artists (whether vocal, instrumental, or visual) to provide a paid speech, lecture, or performance for an audience determined by Metro.
4. Contracts in which the rates for the services being purchased are established by federal, state, county, or other local regulatory authority where an alternate selection process has been approved in advance by the Procurement Officer.
5. Contracts for which a non-Metro funding source (e.g. a grant or contract awarded by a government agency or private foundation) identifies the contractor in the funding award or makes a funding award conditioned upon the service being performed by a specific contractor.
6. Contracts for determining any prospective or current Metro employee's ability to work or return to work.
7. Contracts for processing any claim for workers' compensation benefits.
8. Contracts for determining any reasonable accommodation that may be made to any job classification at Metro.
9. Contracts for services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, laboratory

technicians and those with specific license or unique skill to administer treatments for the health and well-being of people or animals.

10. Contracts for services when the contractor is a not-for-profit organization and where both parties share in the decision making process work together to define a scope of work, contribute resources, share responsibilities, and accept risk and benefits.
11. Contracts for services otherwise described as Class Special Procurements and authorized by LCRB Rule 47-0288.

B. Specific Exemptions from the Competitive Procurement Requirements:

1. Sole Source Contractor Exemption

A sole source procurement is one that awards a contract without an open competitive environment. It is a declaration that the personal services being contracted for are of such a unique nature, or the contractor possesses such a singular capability to perform the work that proceeding without competition is likely to provide a significant benefit to Metro. Contracting by this method requires complete explanation and justification of: 1) the unique nature of the services; 2) the unique qualifications of the contractor; and 3) the basis upon which it was determined that there is only one known contractor able to meet the service needs.

The Procurement Officer is authorized to approve sole source requests. However, sole source procurements greater than \$150,000 will require a public notice be posted on its electronic procurement system for at least seven (7) calendar days prior to the award. Contractors who feel they are adversely affected by the award of the sole source procurement will have seven (7) calendar days from the issuance of the sole source notice to file a protest in accordance with Section X.D of these Administrative Rules. If a protest is received, the matter must be resolved before the Procurement Officer will review the Sole Source Request.

2. Emergency Exemption

Metro may award a contract as an emergency procurement without the use of competitive proposals if circumstances exist that (i) could not have been reasonably foreseen, (ii) create a substantial risk of loss, damage or interruption of services or a threat to property, public health, welfare or safety, and (iii) require prompt execution of a contract is required to remedy the situation.

The authority to declare an emergency and authorize an emergency procurement is as follows:

- a. The Procurement Officer may declare the existence of an emergency and authorize Metro or any of its Departments to enter into an emergency contract under \$150,000;
- b. The director of a Department may declare the existence of an emergency and authorize that Department to enter into an emergency contract under \$150,000 only if the Procurement Officer is not available when the contract needs to be executed.
- c. The Chief Operating Officer may declare the existence of an emergency and authorize emergency contracts that exceed \$150,000.

XII. AMENDMENTS TO PERSONAL SERVICES CONTRACTS

- A. A Department shall have authority to authorize an amendment to a contract for personal services in any amount to add additional services which are reasonably related to the scope of work under the original contract without competitive procurement, subject to the following conditions:
1. The original contract was let by formal procurement process and cost per unit of services was provided for in the original proposal that establishes the cost basis for additional services; or
 2. The original contract was let pursuant to a declaration of emergency; if the emergency justification for entering into the contract still exists and the amendment is necessary to address the continuing emergency; or
 3. The additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies that affect performance of the original contract; or
 4. The aggregate increase resulting from all amendments to such personal services contract does not exceed twenty-five percent (25%) of the original contract price. Escalation clauses agreed to in the original contract (e.g. COLA increases) are excluded from the 25% calculation.
- B. If the conditions in XII. A.1-A.4 do not apply, Metro may still amend a personal services contract upon finding that the amendment is advantageous to Metro. For contracts \$150,000 and under the Procurement Officer has the authority to approve the amendment. For contracts over \$150,000 the Metro Chief Operating Officer has the authority to approve the amendment.
- C. Notwithstanding the limit set forth in XII. A.4, (i) contracts awarded as small procurements may be amended to increase the contract price to \$10,000 or one hundred twenty-five percent (125%) of the original contract price, whichever is greater and (ii) contracts awarded as an intermediate procurement may be amended to increase the total contract price to \$150,000 or one hundred twenty-five percent (125%) of the original contract price, whichever is greater.
- D. Any amendment increasing the contract amount beyond the thresholds set forth in this section, or any amendment that has not received the required authorization, will be treated as an unauthorized purchase and will be subject to the provisions of LCRB Rule 46-0200.

XIII. IMPLEMENTATION AND INTERPRETATION

Any questions relative to the intent or application of these Administrative Rules should be directed to the Procurement Officer who is delegated the responsibility for interpreting and implementing these procedures.