

**PORT OF HOOD RIVER
RESOLUTION NO. 2005-06-1**

Adopting Public Contracting Rules and Rules Of Procedure For Public Contracting

WHEREAS, the Port of Hood River ("Port") is an Oregon special district which is subject to Oregon's public contracting rules; and

WHEREAS, in 2003 the Oregon Legislature substantially revised the Oregon Public Contracting Code ("Public Contracting Code"), and most of these revisions took effect March 1, 2005; and

WHEREAS, after March 1, 2005, the Port's prior public contracting rules became void, and the Port may adopt new public contracting rules consistent with the revised Public Contracting Code; and

WHEREAS, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracts that:


(A) Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and

(B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

NOW, THEREFORE, BE IT RESOLVED:

1. That, except as otherwise provided herein, the Port hereby adopts the provisions of ORS 279A, 279B, and 279C (Public Contracting Code), and the Oregon Attorney General's Model Public Contracting Rules ("Model Rules") as the contracting rules for the Port, as such Model Rules and Public Contracting Code now exist or are later modified.
2. That the Port affirmatively adopts the public contracting rules described in Exhibit A, and the findings described in Exhibit B, which are attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in the Model Rules unless a provision violates the Public Contracting Code.
3. That the Port shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Rules adopted in Exhibit A are consistent with current law.

ADOPTED BY THE BOARD OF COMMISSIONERS this 19 th day of July, 2005.



Sherry Bohn



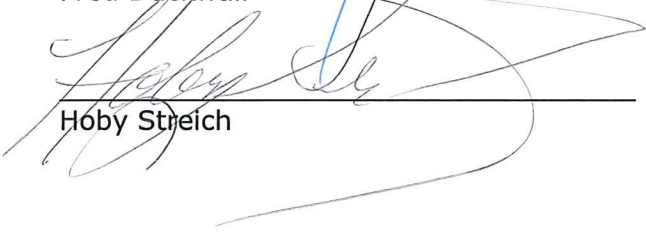
Don Hosford



Fred Duckwall



Kathy Watson



Hoby Streich

Exhibit A
(Public Contracting Rules Adopted As Part Of Resolution No. 2005-06-1)

Section 1. Public Contracting Rules for the Port of Hood River ("Port")

1.1 General Provisions. Except as otherwise provided by these Rules, the powers and duties of the Port Commission as Contract Review Board ("Board" or "Commission") will be exercised by the Board and the powers and duties given or assigned to contracting agencies by Oregon statute or the Attorney General's Model Rules will be exercised by the Port Executive Director acting as the Port's agent, or the Executive Director's designee. In some cases the Executive Director may refer a decision on a particular contract to the Commission for approval, in the Executive Director's discretion. For the purpose of these rules, the Executive Director shall mean the Port Executive Director, or the Executive Director's designee.

1.2 Small Procurements.

- 1) As provided by ORS 279B.065, any procurement of goods or services not exceeding \$5,000 may be awarded by the Executive Director in any manner the Executive Director finds practical or convenient, including direct selection or award.
- 2) A small procurement contract may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than \$6,000.
- 3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.3 Sole-Source Procurements.

- 1) Pursuant to ORS 279B.075(1), the Executive Director is authorized to declare in writing certain goods and services to be available from only one source.
- 2) 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.

1.4 Contracts Subject to Award at General Manager's Discretion. The following classes of contracts may be awarded by the Executive Director in any manner which the Executive Director deems appropriate to the Port's needs, including by direct appointment or purchase. Except where otherwise provided the Executive Director shall make a record of the method of award.

- 1) Advertising. Contracts for the placing of notice or advertisements in any medium.
- 2) Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with Port Public Contracting Rules, the Public Contracting Code or Model Rules.
- 3) Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright.
- 4) Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

- 5) Government Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- 6) Non-owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Port.
- 7) Sole Source Contracts. Contracts for goods or services which are available from a single source may be awarded without competition.
- 8) Specialty Goods for Resale. Contracts for the purchase of specialty goods by Port for resale to consumers.
- 9) Sponsor Agreements. Sponsoring agreements, under which the Port receives a gift or donation in exchange for recognition of the donor.
- 10) Structures. Contracts for the disposal of structures located on Port-owned property.
- 11) Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
- 12) Used Property. The Port, for procurements up to \$10,000, upon receiving prior Commission approval, may contract for the purchase of used property by negotiation if such property is suitable for the Port's needs and can be purchased for a lower cost than substantially similar new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the Port. The Executive Director shall record the findings that support the purchase.
- 13) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
- 14) Insurance Contracts. Contract with insurance brokers or directly with insurance companies.

1.5 Contracts Required By Emergency Circumstances.

- 1) In General. When the Executive Director determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the Executive Director may execute the contract without competitive selection and award or Commission prior approval, but, where time permits, the Executive Director shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
- 2) Reporting. If the Executive Director enters into an emergency contract the Executive Director shall, as soon as possible, in light of the emergency circumstances, (1) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the Port and the public, and (2) notify the Commission of the facts and circumstances surrounding the emergency execution of the contract.

- 3) Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the Commission has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the Commission grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Port Commission may waive the requirement for all or a portion of required performance bonds.

1.6 Surplus Property.

- 1) General Methods. Surplus property may be disposed of by the Executive Director 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 Port. Factors that may be considered by the Executive Director include costs of sale, administrative costs, and public benefits to the Port. 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. Methods of disposal of surplus property shall include:
 - a) Governments. Without competition, by transfer or sale to another public agency.
 - b) Auction. By publicly advertised auction to the highest bidder.
 - c) Bids. By public advertised invitation to bid.
 - d) Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts or using Port staff.
 - e) 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.
 - f) 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.
 - g) Donation. By donation to any organization operating within or providing a service to residents of the Port 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.
 - h) 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 official making the disposal shall make a record of the estimated value of the item and the manner of disposal.
 - i) Restriction on Sale to Port Employees. Port employees shall not be restricted

from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

- j) Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the Port shall make, execute and deliver, a bill of sale signed on behalf of the Port, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

The foregoing notwithstanding, if the Executive Director or Port Commission negotiates with one or more private or public entities to arrange for the use, operation, maintenance or ultimate lawful disposition of personal property owned or controlled by the Port, before approving a contract, agreement or cooperative arrangement, the Port Commission shall make a finding that the contract, agreement or arrangement will promote the economic development of the Port, the Port District or another public body that performs functions similar to Port functions, as provided in ORS 279A.185(2).

1.7 Concession Agreements.

- 1) Concession agreements may be awarded by the Executive Director by any method deemed appropriate by the Executive Director, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

Exhibit B
(Findings In Support Of Contracting Rules Adopted As Part Of
Resolution No. 2005-06-1)

ORS 279B.085 authorizes the Port of Hood River, upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts.

Pursuant to that authority the Port of Hood River has adopted Resolution No. 2005-06-01, which establishes classes of contracts and solicitation methods for their award, stated in Exhibit A attached to the Resolution, together with the following specific findings in support thereof, or a determination that no findings are required.

No Findings Required:

The Port of Hood River is not required to adopt findings with respect to the solicitation methods and awards of the classes of contracts set forth in the following provisions in Exhibit A because these provisions are a restatement of the law:

- 1.1 General Provisions
- 1.2 Small Procurements
- 1.3 Sole-Source Procurements
- 1.5 Contract Required by Emergency Circumstances

Specific Findings for Special Classes and Methods of Award for Contracts.

The Port of Hood River approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and the methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
2. The awarding of public contracts under each exemption will result in substantial cost savings to the Port of Hood River.

The paragraph numbers below correspond to the same paragraph numbers in Exhibit A attached to the Resolution.

1.4 **Contracts Subject to Award at the Executive Director's Discretion.**

Alternate Award Process. The following classes of contracts may be awarded by the Executive Director in any manner which the Executive Director deems appropriate to the Port of Hood River's needs, including by direct appointment or purchase. Except where otherwise provided the Executive Director shall make a record of the method of award.

a. Advertising: Contracts for the placing of notice or advertisements in any medium.

Cost Savings: Size of and frequency of average advertisement (including all notices required to be published by Port) does not justify the cost of solicitation. Period of time from recognizing the need to advertise until advertising date is too short to issue solicitation.

Effect on Competition: The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by unique characteristics such as location, type and size of circulation compared to Port's target audience.

No Favoritism: Not applicable due to the lack of competitors and specialized contracting needs.

b. Amendments: Exemption for contract amendments to existing contracts for goods, services and improvements where the initial contract was obtained in compliance with Port policy and administrative regulations.

Cost Savings: Allows the Port to respond to unanticipated circumstances within a contract without repeating the entire contract awarding process. This practice ensures that the substantial cost savings achieved by the Port in the initial award will be carried forward in the contract amendment.

Effect on Competition: Little effect given that the initial contract was obtained in compliance with public contracting laws.

No Favoritism: Not applicable due to the lack of competitors and specialized contracting needs.

Other Factors: It is impossible to know or plan for all contingencies and unforeseen circumstances.

c. Copyrighted Materials.

Cost Savings: Necessary to allow Port to acquire special needs products that are unique.

Effect on Competition: None. There is no competitive market for a unique product.

No Favoritism: Not applicable due to the lack of competitors and specialized contracting needs.

d. Equipment Repair.

Cost Savings and Other Benefits:

1. Pre-contract pricing is impossible.
2. Solicitation agent has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair specific equipment.
3. Delay required for solicitation would impair Port's ability to respond to equipment breakdown and be injurious to the public interest.
4. Experience with contractor is crucial because reliability over the course of several projects is important.

Effect on Competition: Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

No Favoritism: Favoritism will be no greater than if statutory request for proposals process is used.

e. Governmental Regulated Items.

Cost Savings and Other Benefits: Expense of solicitation would be wasted.

Effect on Competition: No competitive market exists.

No Favoritism: None. Choice is limited by governmental authority.

f. Non-owned property.

Cost Savings: Solicitation would be unnecessary expense.

Effect on Competition: None

No Favoritism: Other state laws govern disposal process in most cases.

g. Specialty Goods for Resale.

Cost Savings and Other Benefits: Allows unique goods to be purchased for Port-operated specialty concessions or events. Generates revenues that would not be available using standard competitive processes that are successful when goods are fungible. This procedure also allows Port to act on unique resale item proposals.

Effect on Competition: Enhances competition by stimulating the development of unique goods.

No Favoritism: Too much variation in selection to allow favoritism.

Other Factors: Purchases of items for resale are highly subjective decisions. Product innovation, fashion trends, and spot market availability is crucial to the success of a retail operation.

h. Sponsorship Agreements.

Cost Savings and Other Benefits: This exemption allows the Port to respond to unsolicited proposals for revenue opportunities that would otherwise be unknown or unavailable.

Effect on Competition:

1. Mandatory open competition likely to discourage creative proposals from sponsors.
2. Sponsorship often results from the match between a unique attribute of a Port event or asset and unique characteristics of the sponsor for which no competitive market exists.

No Favoritism: Minimal.

i. Disposal/Removal of Structures

Cost Savings or Other Benefits:

1. Cost of demolition of structure often exceeds value of structure.
2. Destruction is often least costly method of disposal.

3. Fast removal of structure is often required to prepare site for a project. Time required to conduct solicitation could result in costly delays in the project.
4. Most efficient method of disposal may be incorporation of demolition into public improvement project.
5. Allowing solicitation agent discretion to solicit sale or removal necessary to avoid unnecessary solicitation expenditures and project delays.

Effect on Competition: Competitive market may not exist.

No Favoritism: Unique, non-repetitive nature of transaction does not provide framework for favoritism.

j. Temporary Extensions or Renewals.

Cost Savings: Gives staff time to prepare for competitive solicitation when existing contracts expire without notice by staff. Deals with administrative errors. Protects public interest against employee error.

Effect on Competition: Delays competition by not more than one year.

No Favoritism: No impact. At expiration of temporary period, standard competitive procedure will apply.

k. Used Property.

Cost Savings: Allows Port to take advantage of unique opportunity to acquire needed goods and services for discounted prices.

Effect on Competition: No impact. Responds to unique opportunities.

No Favoritism: No impact. Responds to unique opportunities.

l. Utilities.

Cost Savings: Avoids unnecessary solicitation costs.

Effect on Competition: No impact. Very narrow market. Subject to governmental and price regulation.

No Favoritism: No impact. Very narrow market.

m. Insurance Contracts.

Cost Savings and Other Benefits: Avoids unnecessary solicitation expenditure.

Effect on Competition: Limited. Port in many cases has unique insurance needs which may only be provided by one provider or a limited number of providers.

No Favoritism: Responds to available market for unique or limited available coverages. In case of a broker being used, the broker can identify available insurance options, analyze the insurance, and recommend coverage and alternatives.

Other Factors: There is a lack of uniformity of policy provisions and coverages as well as limited markets for some types of insurance making it impractical to obtain

competitive bids for all coverages needed. Brokers' contracts are in the nature of a personal services contract.

1.6 Surplus Property.

Alternate Award Process:

Cost Savings and Other Benefits:

1. Avoids unnecessary solicitation expense by allowing Executive Director to determine whether the cost of solicitation is justified by value of surplus property
2. Allows Executive Director to establish programs for donation to charitable organizations.

Effect on Competition: No impact. Responds to unique opportunities

No Favoritism: No impact. Responds to unique opportunities.

Other Factors: Variation in the type, quantity, quality and opportunities for disposing of surplus property are too large to have this class of contracts governed by a single solicitation method.

1.7 Concession Agreements.

Cost Savings and Other Benefits: Allows Port to take advantage of unique revenue opportunities.

Effect on Competition: Responds to unique opportunities for which the number of competitors may range from none to many.

No Favoritism: No Impact. Responds to unique opportunities.

Other Factors: Not a contract for the acquisition or disposal of goods, services or public improvements. The quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation. In the nature of a personal services contract.