

LAKE OSWEGO PUBLIC CONTRACT RULES 2018
(Advertised or Solicited after 2/7/18)
Division 46 (LO)

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

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RELATED Model Public Contracting Code Chapter: [OAR 137-046](#)

DIVISION 46

MODEL RULES

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

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Contract Preferences

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- 137-046-0330** Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

Cooperative Procurement

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- 137-046-0420** Joint Cooperative Procurements
- 137-046-0430** Permissive Cooperative Procurements
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- 137-046-0450** Interstate Cooperative Procurements
- 137-046-0460** Advertisements of Interstate Cooperative Procurements
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- 137-046-0480** Contract Amendments

Repealed Rules

- 137-046-0500** Repealed Rules

DIVISION 46 (LO)
General Provisions Relating to Public Contracting

46-099(LO) Lake Oswego Public Contract Rules

[This LOPCR is in addition to the Model Rules; it does not revise a Model Rule.]

- (1). The Lake Oswego Public Contract Rules consist of the divisions of the Oregon Administrative Rules (OAR) Chapter 137 listed in subsection (2) below (“Model Rules”), except as amended or supplemented by LOPCR Rules. The Model Rules and LOPCR Rules set forth the rules of procedure for public contracting of the City of Lake Oswego and the Lake Oswego Redevelopment Agency.
- (2). The Model Rules consist of the following divisions of the Oregon Administrative Rules (OAR) Chapter 137 (“Model Rules”) then current at the time of the act:
 - a. Division 46 – General Provisions Relating to Public Contracting
 - b. Division 47 – Public Procurement for Goods or Services
 - c. Division 48 – Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services (including Transportation Planning and Photogrammetric Mapping)
 - d. Division 49 – General Provisions Related to Public Contracts for Construction Services,
- (3). The amendment or supplement of a Model Rule is shown by “redline” revisions to the text of the rule; new text is shown by double underline, and deleted text is shown by ~~striketrough~~.
- (4). The Model Rules shall prevail, except when a LOPCR amends or supplements a Model Rule.
- (5). References in the Model Rules applicable to “State Contracting Agency,” are not applicable to either the City of Lake Oswego or to the Lake Oswego Redevelopment Agency.
- (6). Identification of Model Rules Amended or Supplemented.
 - a. Sections of the Model Rules that are amended or supplemented are identified by reference to its Division and Section number. Example: “LOPCR 46-110 Definitions” amends and supplements OAR Ch. 137, Division 46, Section 0110 [OAR 137-46-0110].
 - b. A Lake Oswego Public Contract Rule that is not amending or supplementing a Model Rule, but is in addition to the Model Rules, is identified by “(LO)” following the Section number. Example: LOPCR 46-0125 (LO) Public Contracting Officer’s Policies and Guidelines.
- (7). Citation to Rules.
 - a. Citation to a Model Rule may be referred to by its Oregon Administrative Rule reference number. Example: OAR 137-46-0110.
 - b. Citation to an amendment or supplement to the Model Rule may be referred to by its Lake Oswego Public Contract Rule (“LOPCR”) reference number. Example: LOPCR 46-110.

c. When a Rule cites to a Model Rule, and the cited Model Rule has been amended or supplemented by these rules, the citation to the Model Rule shall be deemed to include any amendments or supplements to it under these Rules.

(8). Disposition of Surplus Personal Property. LOPCR Division 50 describes procedures for sale of surplus personal property owned by City.

(9). The City Recorder shall make the Lake Oswego Public Contract Rules publicly available by compiling the LOPCR rules and Model Rules in such manner as the City Recorder deems to be informative to the public.

(10) These Rules become effective and apply to Public Contracts first advertised, but if not advertised then entered into, on or after August 1, 2016.

46-0109 (LO) Definitions for the Rules

[This LOPCR is in addition to the Model Rules; it does not revise a Model Rule.]

The definitions in OAR 137-046-0110 apply to the Model Rules and to these LOPCR Rules, unless (a) the context of a specifically applicable definition in these rules, the Model Rules, or the Public Contracting Code requires otherwise, or (b) the definition of the term is modified below. These definitions superseded the same word's definition in the Model Rules.

(1) **“Board”** or **“Local Contract Review Board”** means the Lake Oswego City Council, acting as the Lake Oswego Public Contract Review Board or the Lake Oswego Redevelopment Agency Public Contract Review Board, as applicable.

(2) **“Contracting Agency”** or **“Local Contracting Agency”** ~~shall~~ means, as applicable:

1. The City of Lake Oswego, in regards to any contract solicited or awarded by the City of Lake Oswego; or

2. The Lake Oswego Redevelopment Agency (“LORA”), in regards to any contract solicited or awarded by LORA.

When a rule requires an act is to be performed by the Contracting Agency, i.e., issue Solicitation Documents, evaluate bids and proposals, award Contracts that are within the authority of the City Manager or LORA Executive Director, or designee, per LOPCR 46-0140, make written findings, issue forms, the act shall be performed by the PCO of the Contracting Agency.

(3) **“Contract Review Authority”**, means the Board.

(4) **“Emergency”** means circumstances that:

a. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

b. Require prompt execution of a contract to remedy the condition.

(5). “Model Rules” are the Oregon Administrative Rules (OAR) Chapter 137, Divisions - 046 - -049. (See LOPCR 46-099(2)).

(6). **“Personal Services Contract”** or **“Contract for Personal Services”** means:

a. A Contract or member of a class of Contracts that the Board has designated as a personal services contract pursuant to ORS 279A.055; or

b. A contract or member of a class of contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor, or Provider of Related Services (as

defined in ORS 279C.100), whose primary purpose is to acquire 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, a contract for the services of:

- i. accountant; attorney; educator, land use planner; appraiser or surveyor, physician or dentist; commercial pilot; aerial photographer; information technology consultant, or other consultant, or
- ii. broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

The PCO shall have discretion to determine whether a particular type of contract or service falls within the foregoing definitions.

(7) “**Public Contracting Officer**” or “**PCO**” means the City Manager of the City or the Executive Director of LORA, as applicable, and such additional persons who have been delegated contracting authority by the City Manager or Executive Director, respectively, in regards to the proposed or awarded Contract.

46-0125 (LO) Public Contracting Officer’s Policies and Guidelines

[This LOPCR is in addition to the Model Rules; it does not revise a Model Rule.]

(1) Unless specifically exempted, no purchases and contracts for goods and services, public improvements, or public works shall be authorized unless conducted pursuant to the formal competitive bidding requirements.

(2) All notifications required under these procedures shall be made to publicize anticipated purchases or Contracts to potential bidders.

(3) No purchase shall be contracted for or made unless sufficient funds have been budgeted in the year and for which funds have been appropriated.

(4) When it is advantageous to the City, annual contracts for personal property and services regularly purchased should be initiated.

(5) All purchases and contracts must be approved by the PCO.

(6) No payment or partial payment for goods and services, public improvements, public works shall be made without approval of the operating department and the PCO.

(7) All contracts for personal property, public improvements, services, or personal services shall be approved as to form by the Attorney for the Contracting Agency.

(8) The City may jointly bid with other governmental agencies, provided procedures used substantially comply with the purpose of these regulations and the intent of the Oregon public contracting laws. The PCO shall determine compliance with these laws and regulations.

(9) It shall be the responsibility of the PCO to:

- (a). Ensure that all purchases and contracts for service comply with these regulations;
- (b). Review and approve all purchases;
- (c). Make recommendations to the Board concerning purchase regulations and amendments to rules set forth herein;

- (d). Maintain accurate and sufficient records concerning all purchases and contracts for services;
 - (e). Provide the Board adequate staff assistance in the performance of its duties; and maintain a list of contractors for public improvements and personal services who have made themselves known to the Contracting Agency and are interested in responding to Solicitations.
- (10). Solicitation Methods.
- (a). Policy. It is the policy of the Contracting Agency to encourage open and impartial competition in public contracting. Competition exists not only in prices, but in a Contractor's ability to perform, technical competence, ability to provide timely deliveries, and quality and performance of products and services. While an Invitation to Bid pursuant to Competitive Bidding is a common method of procurement, it is not always the most advantageous or practical solicitation method. However pursuant to policy, the PCO must make every effort to construct public improvements at the least cost.
 - (b). Types of Solicitation Methods.
 - (i). The PCO may encourage meaningful competition through a variety of solicitation methods. The PCO shall choose the solicitation method that is most likely to encourage bids representing optimal value.
 - (ii). The PCO may use an Invitation to Bid if the PCO believes optimal value will be received by selecting the lowest priced offer that meets the technical requirements of the Specifications.
 - (iii). The PCO may use a Request for Proposal if the PCO believes optimal value will be received:
 - 1. By selecting a Proposal using both price and non-price related factors; or
 - 2. By selecting a Proposal using both price and non-price related factors and permitting negotiations.
 - (iv). The PCO may permit negotiations under a Request for Proposal when:
 - 1. The PCO is willing to consider alternative terms and conditions to reduce PCO cost or enhance the value of the product or service requested; or
 - 2. The PCO finds negotiation is required to effect a successful procurement (e.g. the specifications are complex and the PCO expects numerous queries as to the proper interpretation of the specification; the work requires a high level of technical or managerial competence that cannot be defined adequately in the specifications; or the PCO believes discussions are necessary to gauge the Proposer's understanding of complex specifications).
 - (c). If using an Invitation to Bid for Competitive Bidding, the PCO shall set forth objective evaluation criteria in the Invitation to Bid. Examples of such criteria include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation

allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation criteria need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be reasonable estimates based upon information the PCO has available concerning future use;

- (d). If using a Request For Proposal, the PCO shall set forth selection criteria in the Request for Proposal. The criteria shall be as objective as possible. Evaluation factors need not be precise predictors of actual future costs and performance; but to the extent possible, such evaluation factors shall be reasonable estimates based on information available to the PCO. The Request for Proposal shall also describe the following:
- (i). If the PCO is willing to negotiate terms and conditions of the Contract, the PCO must identify the specific terms and conditions that are subject to negotiation and authorize Proposers to propose certain alternative terms and conditions in lieu of the terms and conditions the PCO has identified as authorized for negotiation; and
 - (ii). Evaluation criteria and relative importance of the criteria. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment and/or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

46-0131 (LO) Class Special Procurement Exemptions

[This LOPCR is in addition to the Model Rules; it does not revise a Model Rule.]

The following classes of contracts, in addition to other classes of contract authorized in these rules, i.e., small procurement, intermediate procurement, emergency procurement, in OAR 137-47 and 137-49, are exempt from the competitive bidding procurement requirements of these Rules to the extent provided:

(1) **GOODS AND SERVICES**

(a) **Equipment Repair and Overhaul.** A Contract may be awarded for equipment repair or overhaul if service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing. The selection of the Contractor shall be based upon the Contractor's knowledge and experience of working with the specific equipment, including type or brand, reliability, warranties, basic hourly rates for service, estimated parts cost (to the extent it is know what parts will need to be replaced), anticipated service time and availability, ability to provide replacement vehicle during service period, and such other factors as convenient to expedite the repair or overhaul. If the contract exceeds \$75,000, the PCO shall document in the procurement file the reasons why

competitive bids were deemed to be impractical. (Note: if service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source, see Section 47-0275 (Sole-Source Procurements)).

(b) **Cooperative Agreements.** Cooperative Agreements entered into pursuant to ORS 279A.200 et seq. and OAR 137-46-400 of this Rule.

(c). **Donated Goods and Services.** A Contract may be awarded to a person to perform services, or provide goods, or a combination of good and services, regardless of dollar amount, if:

- (i) The person has agreed to donate all or a significant portion of the goods, or has agreed to donate all or a significant portion of the services; and
- (ii) The person enters into a Contract whereby the person agrees to comply with the public contract requirements applicable to the particular project and any requirements that the PCO deems necessary or beneficial to protect the Contracting Agency.

(d). **Concession and Franchise Contracts.** A concession or franchise contract may be awarded without competitive procurement pursuant to these Rules regardless of dollar amount. For the purposes of this subsection a "concession contract" or "franchise" means that the Contracting Agency authorizes the use of its property or facilities for a private commercial purpose in return for a fee or a percentage of revenue from the operation.

(e). **Advertising.** Contracts for the placing of notice or advertisements in any medium.

(f). **Animals.** Contracts for the purchase of animals.

(g). **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, purchased for use as library lending materials.

(h). **Government Regulated Items / Utilities.** Contracts for the purchase of items or utilities for which prices or selection of suppliers are regulated by governmental authority.

(i). **Insurance.** Insurance and service contracts as provided in ORS 414.115, 144.125, 414.135, and 414.145.

(j). **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Contracting Agency.

(k). **Sponsorship Agreements.** Sponsorship agreements, under which a gift or donation is received in exchange for recognition of the donor, which may also include additional benefits to the donor related to the event as a part of the sponsorship.

(l). **Temporary Use of Contracting Agency-Owned Property.** The PCO may negotiate and enter into a license, permit or other contract for the temporary

use of Contracting Agency-owned property without using a competitive selection process if:

- (i). The contract results from an unsolicited proposal based on the unique attributes of the property or the unique needs of the proposer;
- (ii). The proposed use of the property is consistent with the Contracting Agency's use of the property and the public interest; and
- (iii). The right is reserved to terminate the contract without penalty, in the event that the PCO determines that the contract is no longer consistent with the present or planned use of the property or the public interest.

(m). **Federal Purchasing Programs.** (ORS 279A.180). Goods and services may be purchased without competitive bidding procedures under the local government purchasing program administered by the United States General Services Administration (GSA) as provided in this subsection:

- (i). The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the PCO.
- (ii). The price of goods or services must be established under price agreements between the federally approved vendor and GSA.
- (iii). The price of goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the Contracting Agency.
- (iv). If a single purchase of goods or services exceeds \$150,000, the PCO must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

(n). **Personal Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the PCO.

(2) PUBLIC IMPROVEMENT

(a) **Donated Public Improvement.** The PCO may authorize a person to construct a public improvement without competitive bidding or other competitive process and regardless of dollar amount, if:

- (i) The person has agreed to donate all or a significant portion of the materials or services necessary to construct the public improvement or perform the service; and
- (ii) The person enters into a Contract whereby the person agrees to comply with the public contract requirements applicable to the particular project and any requirements that the PCO deems necessary or beneficial to protect the Contracting Agency.

(b) Public Improvement Contract Concurrent with Privately-Funded Improvements to Public Right-of-Way or Public Utility. Public Improvement Contracts for a street, roadway, alley, other public right-of-way, or public utility, and related streetscape projects made with a Contractor that is simultaneously undertaking the construction, reconstruction, or substantial modification of the same public right-of-way or public utility for development or improvement of adjacent or nearby real property, or that is adjacent to and in the construction area of the street, roadway, alley, other public right-of-way, or public utility.

(3) GOODS AND SERVICES and/or PUBLIC IMPROVEMENT

(a). **Additional Capacity or Shared Purchase Contracts.** The Contracting Agency may contract with an Owner or Developer to construct or improve a public improvement or public work, or acquire and/or install goods without competitive bidding in the following circumstances:

- (i). An Owner or Developer:
 - 1. Elects to construct or improve a public improvement or public work, or acquire and/or install goods to improve or enhance private property,
 - 2. Has been required to construct or improve a public improvement, or public work, or acquire and/or install goods as a condition of development, or
 - 3. Is otherwise modifying or effecting a public improvement, public work, or goods as a result of development; and
- (ii). The PCO makes written findings that it would be likely to result in a cost savings and is in the best interests of the Contracting Agency to enter into an agreement with the Owner or Developer to add to, extend, expand or increase the capacity of the improvement beyond what is otherwise required to serve the purposes of the Owner or Developer, or to contribute a portion of the cost of construction, improvement, or acquisition and/or installation, and the findings are retained in the PCO's project file; and
- (iii). The contract shall require the Owner's or Developer's contract with the contractor or vendor for the construction, improvement, or acquisition and/or installation comply with any applicable mandatory public contract provisions, including payment of prevailing wage.

46-0140(LO) Awarding Authority for Contracts, Amendments and Intergovernmental Agreements

[This LOPCR is in addition to the Model Rules; it does not revise a Model Rule.]

(1). When a rule states that the Contracting Agency is authorized to award a contract, the council, board, or person authorized to award the Contract on behalf of the Contracting Agency shall be as provided in this section.

(2). The Lake Oswego City Council shall award all public contracts for the City of Lake Oswego unless otherwise provided by this section, or by resolution of the Council.

(3). The Board of the Lake Oswego Redevelopment Agency shall award all public contracts for the Lake Oswego Redevelopment Agency unless otherwise provided by this section, or by resolution of the Board.

(4). The Lake Oswego City Council, as the governing body of the City and LORA, hereby delegates authority to the PCO to Award Contracts and Amendments to Contracts, and to enter into Intergovernmental Agreements and Amendments to Intergovernmental Agreement as follows, and the PCO is hereby designated as the Awarding Authority and Change Order Authority, for the following classes of Contracts:

Contract Awardable By PCO	Special Limitations	Maximum Amount / Scope
Goods, Services, Personal Service contracts (including Architect, Engineer, Land Surveyor, or Provider of "Related Services" contracts for Public Improvements)	Generally	\$250,000
	Amendments <ul style="list-style-type: none"> • Contract Amount • Alter scope of work or time for performance 	<ul style="list-style-type: none"> • \$250,000 • None
	Contract expense fully offset by fees, charges, donations, or funds raised for services or programs offered through City	\$250,000
	Concession and Franchise	Annual Gross Sales expected to exceed \$250,000.
	Donated Goods and Services	None
Public Improvements, Public Works	Generally	\$250,000
	Amendments: <ul style="list-style-type: none"> • Contract Amount • Alter scope of work or time for performance 	<ul style="list-style-type: none"> • \$250,000 • None
	Donated Public Improvement	None
Intergovernmental Agreements Authorized to be Executed by PCO		
Purchase of Goods and Services (materials, supplies, equipment, vehicles, services), Personal Services	Generally	\$250,000
	Donated Public Improvement	None
	Contract expense fully offset by fees, charges, donations, or funds raised for services or programs offered through City	\$250,000
	Donated Goods and Services	None
	Amendments <ul style="list-style-type: none"> • Contract Amount • Alter scope of work or time for performance 	<ul style="list-style-type: none"> • \$250,000 • None

Contract Awardable By PCO	Special Limitations	Maximum Amount / Scope
Public Improvements and Public Works; Personal Services related to Public Improvements and Public Works	Generally	\$250,000
	Amendments: <ul style="list-style-type: none"> • Contract Amount • Alter scope of work or time for performance 	<ul style="list-style-type: none"> • \$250,000 • None
Allocation of existing equipment and personnel, such as mutual aid agreements or involvement in dedicated task forces.	Agreement does not significantly affect the City's ability to provide services within its own boundaries.	None

(5) Contracts, Amendments to Contracts, and Intergovernmental Agreements exceeding the above amounts shall be awarded or rejected by the City Council, following an evaluation and recommendation by the PCO, and the City Council is hereby designated as the Awarding Authority and Change Order Authority for such classes of contracts.

Amended: Res. 18-03, 2018; 2013.