



Agenda Item Number 5. Public Contracting Rules

Date: June 25, 2020

Presenter: Brenda Wilson

Action Recommended: Adopt Rules

Background:

In 2014, the Board decided to continue to use the Local Government Law Group's Revised Model Rules. Their Revised Model Rules are not substantially different than the Attorney General's Model Rules, but provide LCOG with necessary flexibility. As discussed, using the Local Government Law Group's Revised Model Rules makes it easier to update the rules and for counsel to provide advice in using the rules. In addition, having a uniform set of Model Rules that are commonly used provides consistency for contractors and vendors.

Last year, the Oregon State Legislature amended parts of the Public Contracting Code and the Attorney General updated the Model Rules. Accordingly, LCOG should update our rules to match the changes where necessary. The 2020 Model Rules address legislative amendments adopted through the 2019 legislative session, reflecting the following amendments:

1. The 2019 legislature modified its Qualification Based Solicitation (QBS) requirements for Division 48 consultants (primarily architects and engineers) to allow price to be used as award criteria, subject to certain requirements and limitations.
2. For contracts over \$500,000, 2019 legislation now requires contracting agencies to place amounts deducted as retainage into interest bearing escrow accounts unless the contractor requests an alternate, non-cash retainage method.

3. Construction Manager/General Contractor (CM/GC) Contracts are permitted only pursuant to the Attorney General's CM/GC Model Rules, even for entities which have adopted their own.
4. The legislature increased the small procurement threshold for goods and services from \$5,000 to \$10,000.
5. The legislature added photogrammetric mapping and transportation planning service providers to Division 48. The only transportation planners subject to these new requirements are those which will perform services on projects subject to the National Environmental Policy Act (NEPA). In other words, Division 48 should only apply to transportation planning services provided on federally funded projects.

The final section of the attached Rules includes a set of exemptions addressing standard purchasing needs not otherwise covered by the Code or Model Rules. LCOG has adopted these exemptions before and they need to be re-adopted with the amended Rules.

A public hearing will be held at the June Board meeting. The Executive Committee, as LCOG's Contract Review Board, and the Board will be asked to take action on the updated Rules.

Attachments: A - Public Contracting Rules; B – Findings; C - Resolution