

# LOCAL CONTRACT REVIEW BOARD PUBLIC CONTRACTING REGULATIONS


## SAMPLE OF DRAFT ENABLING ORDINANCE OR RESOLUTION FOR USE OF OREGON PUBLIC CONTRACTING RULES

Oregon's New Public Contracting  
Code From A to Z

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The other partner is you



# Outline of Sample Local Rules

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- 1. Policy
- 2. Contracts Exempt from Code ORS 2891.025
- 3. Regulation by Governing Body
- 4. Use of Model Rules (or not)
- 5. Recognition or Delegation of Executive and Administrative Authority
- 6. Definitions
- 7. Hearings for Special Classes and Exemptions



# Outline of Sample Local Rules

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- 8. Classes of Contracts and Methods for Award
- 9. Informal Solicitation Procedures
- 10. Use of Brand Names
- 11. Bid, Performance and Payment Bonds
- 12. Electronic Advertisement
- 13. Appeals of Pre-Qualification and Debarment



# Minimum Necessary Rules

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- 3. What will Governing Body Do?
- 5. Contracting Powers Delegated to Employees?
- 6. Definitions
  - Personal Services
  - Concession Agreements, if relevant to agency?
- 8. Solicitation Methods
  - Rules for award of Contracts Up To \$5,000
  - Rules for award of Personal Services Contracts
  - Rules for Purchasing from GSA
  - Surplus Property Disposal
  - Concession Agreements, if relevant to agency\*

# Application of Public Contracting Regulations

- Based on ORS 279A.025(2): “The Public Contracting Code Does not Apply to:”
- Exemption not limited to competitive bidding - all parts of Code, including Prevailing Wage, 40-hour work week, prompt payment
- EXCEPT FOR:
  - (b) Insurance contract ... “for purposes of source selection”
  - (f) Sole source ... “for purposes of source selection”
  - (p) ESPCs – Will be revoked by HB 2214



## Correction Section 2

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- 2.H Employee Benefit
- Correct Code Sections
- Change 243.105A to 243.105(1)
- Change 243.125D to 243.125(4)



## Grant – Sample Ordinance

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- A grant contract is an agreement under which the [GOVERNMENT] is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.



## **Grant – Sample Ordinance**

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- **The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by [GOVERNMENT] for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.**

# Financial Transactions Exempt from Code – Hurray!

- Contracts, .. entered into, .. or established in connection with:
  - (1) The incurring of debt by the [GOVERNMENT], including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
  - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by the [GOVERNMENT] to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements; [LOAN GRANT]

# Financial Transactions Exempt from Code



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- (3) The investment of funds by the [GOVERNMENT] as authorized by law, or
- (4) Banking, money management OR other predominantly financial transactions of the [GOVERNMENT] that, by their character, cannot practically be established under the competitive contractor selection procedures, *based upon the findings of the Purchasing Manager.\** [\*The Code gives no guidance as to how this determination is made.]



# Regulation by Governing Body

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- Public Contracting Code Describes the following as powers of a contract review board:
  - A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
  - B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;

# Public Contracting Code Describes the powers of a contract review board:



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- **C. Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- **D. Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation; and

# Public Contracting Code Describes the powers of a contract review board:



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- **E. Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the Purchasing Manager's determination of debarment, or concerning prequalification.
- Also assigned but not within this Section: Designation of Sole Source – (Should be Delegated)

# What other Authorities must be Assigned – Sample Section 4

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- 1. Make Rules – Model Rules Cover MOST topics
- 2. Make Determinations when the Code OR Model Rules says “Contracting Agency”
- 3. Create Contracts, form, certificates
- 4. Decide on appropriate method of solicitation for particular contracts – Determine Sole Source
- 5. Write solicitation documents and criteria for award
- 6. Advertise, issue and conduct solicitation
- 7. Decide who is the most advantageous Offeror (make or recommend award)

# What other Authorities must be Assigned – sample section 4

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- 8. Hear protests during solicitation and after award
- 9. Execute Contract
- 10. Administer Contract
- 11. Make solicitation records and reports of public improvements built under RFPs
- 12. Respond to Emergencies and make Declarations of Emergencies
- 13. Review local rules whenever the Code is amended



## Model Rules

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- No action is necessary to be governed by Model Rules
- Model Rules may be adopted in whole or in part



## Correction: Section 4

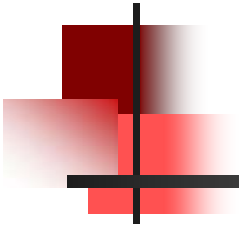
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- *OPTION TWO: WHEN THE OFFICIAL WHO ISSUES A SOLICITATION DOES NOT HAVE RULEMAKING AUTHORITY.*
- The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the [GOVERNMENT], to the extent that the Model Rules do not conflict with the provisions of this [ORDINANCE, RESOLUTION, CHAPTER] including any amendments to this [ORDINANCE, RESOLUTION, CHAPTER], and further provided that, despite the provisions of the Model Rules concerning the selection of architects, engineers, land surveyors and related consultants, the [GOVERNMENT]'s evaluation of architects, engineers, land surveyors and related consultants may include price as a dominant criterion for selection.
- Underlined provision not necessary in light of OAR 137-048-0130(2) - Allows consideration of pricing.

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Questions?



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