

## FRSD School Board Meeting

Monday, July 15, 2024 Doors to Elmira Elementary will open at 6:15.  
Elmira Elementary School Library, 88960 Territorial Rd, Elmira, Oregon 97437

### 1. Call to Order: Public - 6:30 p.m.

We have a shared vision in the Fern Ridge School District: Provide excellence for every student so that each will reach their greatest potential. We are always happy to have parents and other community members at our meetings.

Thank you to the members of the public who have joined us. As a reminder, School Board meetings and work sessions are meetings of the Board held in public, providing an opportunity to observe the Board's discussions and actions.

In an effort to conduct official Board business, we ask that the audience be respectful and refrain from questions, comments and unnecessary noise while the Board conducts the meeting.

There is an opportunity for citizen comment tonight, and the Board looks forward to hearing from those who signed up. I will share some reminders when we get to that portion of the meeting.

Also, please note that all Board meetings are live streamed and posted on the School Board area of the district website.

### 2. Election of Board Chair and Vice Chair - Board Action Required

### 3. Flag Salute

### 4. Public Comment: The Fern Ridge School Board encourages public input. A person wanting to provide public comment will need to complete and submit an Intent to Speak form to the Board secretary by 1:00 pm on the day of the board meeting.

Public comment is limited to this place on the agenda not to exceed a total of 30 minutes for all commenters. A person giving public comment is limited to an established time limit of (3) three minutes. While speakers may, during public meetings, offer objective criticism of school operations and programs, the Board will not hear personal complaints concerning district personnel nor against any person connected with the school system.

Please state your name and if you are a resident of the district. If speaking for an

organization, state the name of the organization. The Board reserves the right to refer the matter to the administration.

**5. Monthly Items:**

5.A. Approval of Minutes - Board Action

**6. Reports:**

6.A. Orchid Health Update

**Presenter:** Heidi Dyson

6.B. Chartwell's 2023-2024 Report

**Presenter:** Bo Gottfried

6.C. Fern Ridge Education Association

**Presenter:** Jennifer Snider-Prutzman

6.D. Superintendent's Report

**7. Discussion Items**

7.A. Approval of Bond Management Plan (Board Action Required)

7.B. Oversight Committee Information

**Presenter:** Superintendent, Gary Carpenter

7.C. Declare Vacant Budget Committee Positions - Board Action Required

7.D. Board Self-evaluation and Superintendent Evaluation

7.E. Building Handbook Approval - Board Action Required

7.F. Equity Committee

**Presenter:** Superintendent, Gary Carpenter

7.G. State Testing Data

**Presenter:** Superintendent, Gary Carpenter

7.H. Board Retreat Date Change - Board Action Required

7.I. Annual Organization Appointments for the 2024-2025 School Year - Resolution #24-25/01 - Board Action Required

7.J. First Reading of Proposed Policy Updates

**8. Personnel**

8.A. Licensed Employees Resignations/New Hires/Transfers/Other

8.A.1. Hiring of Brooke Raph, 1.0 FTE Teacher at Elmira High School, effective August 21st, 2024.

8.A.2. Hiring of Brie Scriber, 1.0 FTE Administrative Assistant to the Superintendent, effective September 4th, 2024.

8.A.3. Hiring of Heather Pomada-Correa, 1.0 FTE Teacher at Elmira High School, effective August 21st, 2024.

8.A.4. Hiring of Kaylee Hiltz-Whitney, 1.0 FTE Teacher at Elmira Elementary School, effective

August 21st, 2024.

8.A.5. Hiring of Josh Metzger, 1.0 FTE Teacher at Fern Ridge Middle School, effective August 21st, 2024.

8.A.6. Hiring of John C. Doscher, 1.0 FTE Teacher at Elmira High School, effective August 21st, 2024.

8.A.7. Hiring of Katelyn Barry, 1.0 FTE Teacher at Fern Ridge Middle School, effective August 21st, 2024.

8.B. Non-Licensed Personnel Report

**9. Late Items/Closing Comments**

**10. Upcoming Events**

10.A. Summer School July 8-August 9, 2024,  
KITS June 18 - August 23, 2024

**11. Adjournment**



FERN RIDGE SCHOOL DISTRICT 28J  
School Board Meeting Minutes

**WORK SESSION of the FERN RIDGE SCHOOL BOARD**

**June 17, 2024**

**Zoom Webinar & In-Person Meeting**  
88834 Territorial Rd.  
Elmira, Or 97437

**CALL TO ORDER (Agenda Item 1):** The work session of the Fern Ridge School Board was called to order by Chair Boren at 5:30 pm.

In attendance were Directors Mark Boren, Andrea Larson, Barbara Graham-Adams, Kathleen Pizzola, Lisa McCann, Business Manager Quannah Bennett, and Superintendent Gary Carpenter.

**BOND MANAGEMENT PLAN TO REVIEW BOND PROGRAMS, BUDGETS, SCHEDULES, COMMUNICATIONS, AND AUTHORIZATION PROTOCOLS (Agenda Item 2):** Scott Rose and Adam Cormack from R and C Group reviewed the draft Bond Management Plan. Board members reviewed each section of the proposed bond plan and were asked any clarifying questions.

No changes to the plan were proposed by the board.

**LATE ITEMS/CLOSING COMMENTS (Agenda Item 3):** None at this time.

**ADJOURNMENT (Agenda Item 4):** Chair Boren adjourned the meeting at 6:26 pm.

Attest: \_\_\_\_\_  
School Board Representative

\_\_\_\_\_  
Gary E. Carpenter, Jr., Superintendent



**FERN RIDGE SCHOOL DISTRICT 28J**  
School Board Meeting Minutes

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**REGULAR MEETING of the FERN RIDGE SCHOOL BOARD**

**June 17, 2024**

**Zoom Webinar & In-Person Meeting**  
88960 Territorial Rd.  
Elmira, Or 97437

**CALL TO ORDER (Agenda Item 1):** The regular meeting was called to order at 6:30 pm.

We have a shared vision in the Fern Ridge School District: Provide excellence for every student so that each will reach their greatest potential.

Thank you to the members of the public who have joined us. As a reminder, School Board meetings and work sessions are meetings of the Board held in public, providing an opportunity to observe the Board's discussion and actions.

In an effort to conduct official Board business, we ask that the audience be respectful and refrain from questions, comments, and unnecessary noise while the Board conducts the meeting.

There is an opportunity for citizen comment tonight, and the Board looks forward to hearing from those who signed up. I will share some reminders when we get to that portion of the meeting.

Also, please note that all Board meetings are live streamed and posted on the School Board area of the website.

In attendance were Directors Mark Boren, Andrea Larson, Barbara Graham-Adams, Kathleen Pizzola, Lisa McCann, Student Representatives to the Board Gavin Snell, and Superintendent Gary Carpenter.

**CITIZENSHIP AWARD (Agenda Item 2):** The April Citizenship Award was given to Elmira High School Student Fern Valle-Arvizu. Ms. Nelson spoke to how kind, supportive, and involved Fern is within the school community. Fern will also be a student representative to the school board during the 2024-2025 year.

**FLAG SALUTE (Agenda Item 3):** Ms. Valle-Arvizu led in the flag salute.

**PUBLIC COMMENT (Agenda Item 4):** None at this time.

**MONTHLY ITEMS (Agenda Item 5):**

**5. A. Approval of Minutes:** The minutes from the regular meeting on May 20, 2024 were presented for approval.

Director Larson moved to approve the minutes from May 20<sup>th</sup> as written; seconded by Director Pizzola. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**BUSINESS OFFICE (Agenda Item 6):**

**6. A. Enrollment Report:** Business Manager Quanah Bennett reviewed the enrollment report as of June 1, 2024. District enrollment is 1286 which is 60 students below what was projected during budgeting. There are 9 additional out of district placements that were not projected during budgeting.

Director McCann asked for a report on the beginning of the school year versus the end of the school year. The district started the school year with 1,314 total students with a 2% decrease in enrollment at the end of the school year.

**6. B. General Fund Revenue and Expenditure Report:** Business Manager Quanah Bennett reviewed the general fund revenue and expenditure report as of May 31, 2024. The district has received 101% of budgeted revenue and spent 77% of operating expenditures.

Director Pizzola asked how the revenue received exceeds 100%. Business Manager Bennett explained that this is based on projections made during the budget cycle and the income received exceeded the projection.

Director Pizzola moved to approve the budget and expenditure report; seconded by Director Graham-Adams. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**6.C. Free Student Meals in 2024-2025:** There were recent changes at the state level who will be matching federal guidelines for the Community Eligibility Provision. This means that Fern Ridge School District is now eligible to have free meals for all students beginning with the 2024-2025 school year. In the coming months

Director McCann asked for clarification on the funding source. Business Manager Bennett explained that the district would have qualified through the federal program but the state requirements were not aligned with the federal requirements which meant the district would have had to make up the difference. This year, the state has matched federal requirements meaning the district now qualified for this program for our students.

**TINY HOUSE DENTAL CLINIC PRESENTATION (Agenda Item 7):** Jamie, a hygienist at the Tiny House Dental Clinic located in the parking lot of Elmira High School gave an update to the board on their current staffing levels, services, and number of patients they are able to see in our local community.

**OREGON SHOOOL BOARD ASSOCIATION PRESENTATION: SUPERINTENDENT EVALUTION AND SCHOOL BOARD SELF-EVALUATION (Agenda Item 8):**

Kristen Miles from OSBA presented the process and timeline for the superintendent evaluation and school board self-evaluation services that OSBA provides for school districts.

The board clarified that this process can be started during the summer. Superintendent Carpenter will confirm the costs for both the superintendent and board self-evaluation.

**REPORTS (Agenda Item 9):**

**9. A. Fern Ridge Education Association:** FREA President, Jennifer Snider-Prutzman shared information on the end of the year activities that took place in all of the buildings. She thanked board secretary, Michelle Smith for her work in the district these past seven years.

**9.B. Superintendent's Report: Superintendent Carpenter reported on the following:**

Superintendent Carpenter thanked the members of the Bond Political Action Committee (PAC) who worked hard to get accurate information out to voters. The bond has officially passed by 59 votes.

**PUBLIC HEARING FOR THE 2024-2024 BUDGET (Agenda Item 10):**

**10. A. Open Public Hearing on the 2024-2025 Budget:** Chair Boren opened the public hearing.

**10. B. Public Comment:** None at this time.

**10. C. Close Public Hearing on the 2024-2025 Budget:** Chair Boren closed the public hearing.

**10. D. Resolution #23-24/14 Adopt the 24-25 Budget and Impose the Tax Levies:**

Director Larson moved to approve resolution #23-24/14 to adopt the budget for fiscal year 2024-2025 in the amount of 61,746,409.00 and approved the rate of \$4.8240 per \$1,000 of assessed value in the amount of \$2,636,081.00; seconded by Director McCann.

Director McCann clarified that the tax levy rates in the resolution are remaining the same. Superintendent Carpenter noted this is separate from the bond that was just passed and these rates are the same across the state for each school district.

The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**BOND MANAGEMENT (Agenda Item 11):**

**11. A. Resolution #23-24/15 Authorization to Sell General Obligation Bonds:**

Director Larson moved to approve resolution #23-24/15 a resolution of Fern Ridge School District 28J, Lane and Douglas counties, Oregon authorizing the sale of general obligation bonds;

seconded by Director Graham-Adams. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**11. B. Resolution #23-24/16 Authorization to sign the Oregon School Capital Improvement Matching Grant Agreement:**

Director Graham-Adams moved to approve resolution #23-24/16 authorization to sign the Oregon School Capital Improvement matching grant agreement; seconded by Director Pizzola. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**11. C. Authorization to extend R&C Management Group's service contract for post-bond activity:**

Director Larson moved to extend the service contract with R&C management group; seconded by Director Graham-Adams.

Director McCann clarified that this motion will hire R & C management for all post-bond management.

The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**11. D. Approval of Bond Management Plan:** This plan was reviewed in the work session held prior to the regular session.

Director Larson moved to approve the bond management plan for 30 days so all can review the materials and ensure we're comfortable; seconded by Director McCann.

Superintendent Carpenter asked that if any board member has questions they email or reach out as soon as possible prior to the July board meeting.

The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**DISCUSSION ITEMS (Agenda Item 12):**

**12. A. English Language Proficiency Curriculum Adoption:** Director of K12 Programs, Michelle Marshall has sent information on the recommended curriculum out to the community and samples have been available in the board room for several weeks. This is required stand alone curriculum for the English Language Proficiency students in the district.

Director Larson moved to approve the English Language Proficiency Curriculum as presented; seconded by Director McCann. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**12. B. Update on Longitudinal Performance Growth Targets and School Board Goals:**

Director of K12 Programs, Michelle Marshall presented the update on these goals. It was noted that the timelines on these presentations could be adjusted so that the most current official data can be included. The district will receive final attendance numbers, third grade reading scores, 9<sup>th</sup> grade on track and graduation number over the summer/early fall.

**12. C. Second Reading of Proposed Policy Updates:** The following policies and administrative rules were presented to the board for a second reading: BBF – Board Members Standard of Conduct, BC BCA – Student Representative(s) on the School Board (Delete & Replace), BCBA – Student Representative(s) on the School Board.

Director McCann moved to approve code BBF Board Members Standard of Conduct and code BC BCA Student Representative(s) on the School Board, and BCBA Student Representative(s) on the School Board; seconded by Director Pizzola. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**PERSONNEL (Agenda Item 13):**

**13. A. Licensed Employees Resignations/New hires/Transfers/Other:**

**13. A.1**

- Hiring of John Christopher Doscher, 1.0 FTE Teacher at Elmira High School, effective August 21, 2024.
- Hiring of Joshua Metzger, 1.0 FTE Teacher at Fern Ridge Middle School, effective August 21, 2024.
- Hiring of Teri Moen, 1.0 FTE One-Year Temporary/Retiree Contract at Elmira High School, effective August 26, 2024.
- Hiring of Mari Jones, .50 FTE One-Year Temporary/Retiree Contract, effective August 26, 2024.
- Hiring of Jon Guldager, 1.0 FTE One-Year Temporary/Retiree Contract at Elmira High School, effective August 26, 2024.
- Hiring of Forrest Cooper, 0.4 FTE One-Year Temporary/Retiree Contract at Elmira High School, effective August 26, 2024.
- Resignation of Allyson Goertzyn, 1.0 FTE Counselor at Fern Ridge Middle School, effective May 23, 2024.
- Resignation of Michelle Smith, 1.0 FTE Administrative Assistant to the Superintendent, effective August 30, 2024.

Director Graham-Adams moved to approve the licensed employee resignations, new hires, transfers, and others; seconded by Director Larson. There was no discussion. The motion carried with Directors Boren, Larson, Graham-Adams, Pizzola, and McCann voting yes. 5-0.

**13. B Non-Licensed Personnel Report:** The non-licensed personnel report was presented for review:

- Resignation of Emilee Brink, ASPIRE Coordinator at Elmira High School, effective June 14, 2024.
- Resignation of Cierra Mosher, 6.50 Instructional Assistant at Veneta Elementary, effective June 14, 2024.
- Resignation of Marlene Goland, 3.50 Instructional Assistant at Veneta Elementary effective June 14, 2024.
- Resignation of Mark Esquivel, 1.0 FTE Custodian, effective June 6, 2024.
- Transfer of Ryan Chambers from 6.50 Instructional Assistant at Fern Ridge Middle School to 8.00 Media Assistant at Elmira High School, effective August 26, 2024.
- Transfer of Ashley Perryman-Haag from 7.50 Instructional Assistant at Elmira High School to 7.50 Instructional Assistant at Veneta Elementary School, effective August 26, 2024.

**LATE ITEMS/CLOSING COMMENTS (Agenda Item 14):** None at this time.

**UPCOMING EVENTS (Agenda Item 15):** there are some upcoming sport camps at the high school this summer.

**ADJOURNMENT (Agenda Item 15):** Chair Boren adjourned the meeting at 7:42 pm.

Attest: \_\_\_\_\_  
School Board Representative

\_\_\_\_\_  
Gary E. Carpenter, Jr., Superintendent

# FRSD SBAC RESULTS—STUDENT ACADEMIC ACHIEVEMENT

## MATH

	% Against State Average					
	23-24	22-23	21-22	18-19	17-18	16-17
VES 3 <sup>rd</sup> grade	+16	+18	+7	-	-11	+13
EES 3 <sup>rd</sup> grade	+3	+5	+1	+8	+13	+12
VES 4 <sup>th</sup> grade	+27	+21	-5	+8	+8	-1
EES 4 <sup>th</sup> grade	-5	+9	-8	-5	-11	-24
VES 5 <sup>th</sup> grade	+9	-1	+1	-	-10	-18
EES 5 <sup>th</sup> grade	-2	-23	-11	-3	-6	-11
FRMS 6 <sup>th</sup> grade	-4	-7	+2	-12	-19	-12
FRMS 7 <sup>th</sup> grade	-3	-3	-9	-13	-12	-27
FRMS 8 <sup>th</sup> grade	+4	-4	-5	-9	-18	-16
EHS 11 <sup>th</sup> grade	+15	-3	+9	+14	+16	+13
Levels above state avg	6	5	5	5	3	3
Net	+60	+12	-18	-12	-50	-71

## ELA

	% Against State Average					
	23-24	22-23	21-22	18-19	17-18	16-17
VES 3 <sup>rd</sup> grade	-2	+8	+8	+5	+23	+5
EES 3 <sup>rd</sup> grade	+6	-10	+2	+10	-7	+2
VES 4 <sup>th</sup> grade	+11	+6	-11	-10	+6	+2
EES 4 <sup>th</sup> grade	-15	-11	+2	+4	-6	-5
VES 5 <sup>th</sup> grade	+6	-11	-10	--	-8	-18
EES 5 <sup>th</sup> grade	+2	+3	-6	-10	-9	-11
FRMS 6 <sup>th</sup> grade	-5	-7	+6	-9	-17	-12
FRMS 7 <sup>th</sup> grade	-8	-9	-7	-8	-5	-9
FRMS 8 <sup>th</sup> grade	-3	+1	-14	-9	-13	-18
EHS 11 <sup>th</sup> grade	+18	+4	+2	+17	+13	+14
Levels above state avg	5	5	5	5	3	4
Net	+10	-26	-28	-10	-23	-50

**2020: No state testing, 2021: Participation rates were in the 20-30% range, and required subjects were reduced and not all grades were required to take tests.**





July 15, 2024 – Resolution #24-25/01

**FERN RIDGE SCHOOL DISTRICT 28J**  
**88834 Territorial Road**  
**Elmira, OR 97437**

**RESOLUTION NO. #24-25/01**

**BE IT RESOLVED**, That the Board of Directors, School District No. 28J, make the following annual organizational appointments for the school year 2024-2025:

- Clerk (ORS 332.515) Gary Carpenter
- Business Manager/Deputy Clerk (ORS 332.515) Quanah Bennett
- Budget Officer (ORS 294.331) Gary Carpenter
- Custodian of Funds and authorizes the facsimile signature of the custodians of funds, if one is to be used. No other signatures are authorized for district checks. (ORS 328.441, 328.445) Gary Carpenter, Quanah Bennett
- Authorize Salary Payments according to district policy and state laws Gary Carpenter, Quanah Bennett
- Official Legal Advisors The Hungerford Law Firm, LLP  
Oregon School Boards Association  
Legal Division  
Garrett, Hemann, Robertson, P.C.  
Luvaas, Cobb, P.C.  
Register Guard
- Official Newspapers for Publication Pauly, Rogers and Co., P.C.
- District Auditors (ORS 328.465, 327.137, 297.405) WHA Insurance
- Insurance Agents of Record Banner Bank, LGIP
- Depository of School Funds (ORS 328.441, 294.805-294.895) Gary Carpenter, Quanah Bennett
- Directs the Superintendent and Business Manager to utilize any other banking facilities which are to the financial advantage of the District. Gary Carpenter
- Authorizes the Superintendent to accept resignations and employ personnel as budgeted for and appropriated for the school year upon approval of the school board.
- Managers of Grant Funds Gary Carpenter, Quanah Bennett
- Local Public Contract Review Board (ORS 279A.060) Board
- Bond Counsel Hawkins Delafield & Wood LLP

**ADOPTED** by the Board this 15th day of July 2024, Lane County School District 28J.

\_\_\_\_\_  
Board of Directors, Chair

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Date

# Fern Ridge School District 28J

Code: DJC  
Adopted: 9/14/98  
Revised/Readopted: 5/23/05; 5/17/10; 3/17/14;  
3/14/22  
Orig. Code: 6243

## Bidding Requirements

The Board is the Local Contract Review Board (LCRB) for the district. All public contracts shall be invited in accordance with applicable competitive procurement provisions of the Oregon Revised Statutes and the adopted public contracting rules.

The Board, acting as its own LCRB, adopts the *Oregon Attorney General's Model Public Contract Rules*, Oregon Administrative Rule (OAR) Chapter 137, Divisions 046 through 049 in effect at the time this policy is adopted.

The district shall procure the construction manager/general contractor services in accordance with model rules the Attorney General adopts under Oregon Revised Statute (ORS) 279A.065(3).

Additionally, the Board may include as part of its rules portions of the Oregon Department of Administrative Services rules governing Public Contract Exemptions, OAR Chapter 125, Divisions 246-249 in effect at the time this policy is adopted.

The Board may make the written findings required by law for exemptions from competitive bidding. Such findings shall be maintained by the district and made available on request.

The district shall review its rules each time the Attorney General adopts a modification of the model rules, as required by ORS 279A.065(6)(b), to determine whether any modifications need to be made to district rules to ensure compliance with statutory changes. New rules, as necessary, shall be adopted by the Board. In the event it is unnecessary to adopt new rules, Board minutes will reflect that the review process was completed as required.

The Board, acting as the LCRB, may enact a resolution that authorizes the district to designate a public improvement as a community benefit contract per the requirements included in ORS 279C.300 to 279C.470.

Procurements for services estimated to be in excess of \$250,000 shall go through the cost analysis and feasibility process described in ORS 279B.

END OF POLICY

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**Legal Reference(s):**

ORS Chapters 279, 279A, 279B and 279C and OAR Chapter 125, Divisions 246-249

OR. DEP'T OF JUSTICE, OR. ATT'Y GENERAL'S MODEL PUBLIC CONTRACT RULES MANUAL.

**Cross Reference(s):**

DJ - District Purchasing  
DJG - Vendor Relations  
EH - Data Management  
FEF/FEFB - Construction Contracts, Bidding and Awards

DELETED

# OSBA Model Sample Policy

Code: DJC  
Adopted:

## Bidding Requirements

{Highly recommended policy. The Board serves as the Local Contract Review Board (LCRB) and has the ability to adopt its own procurement rules. Many districts choose to use the *Oregon Attorney General's Model Public Contracting Rules* in OAR Chapter 137, Divisions 045 - 049. If the LCRB does not adopt rules, the Attorney General's Model Public Contracting Rules apply. This policy is based on those rules. The LCRB may also include as part of its rules portions of the Oregon Department of Administrative Services administrative rules in OAR Chapter 125, Divisions 269 - 249. If the LCRB adopts its own rules, delete portions of this policy that are inconsistent with those rules.}

The Board is the Local Contract Review Board (LCRB) for the district. The LCRB has not adopted its own rules of procurement. Consequently, the *Oregon Attorney General's Model Public Contracting Rules*<sup>1</sup> shall apply to the district.<sup>2</sup>

Additionally, the district may include as part of its procedures portions of the Oregon Department of Administrative Services administrative rules governing Public Contract Exemptions, OAR Chapter 125, Divisions 246 - 249.

The LCRB may make the written findings required by law for exemptions from competitive bidding. Such findings shall be maintained by the district and made available on request.

The district may not artificially divide or fragment a procurement to reduce the procurement requirements.

The superintendent may develop administrative regulations or procedures to assist with the implementation of this policy and applicable procurement rules.

## Goods and Services

The district will purchase goods and services through the following procedures, unless an exception applies:

1. **Small Procurement.** For purchases of goods and services with a contract price not exceeding \$25,000, the district can use any manner deemed practical or convenient, including direct selection or award. Amendments to a contract awarded through small procurement must be in accordance with OAR 137-047-0800.
2. **Intermediate Procurement.** For purchases of goods and services with a contract price exceeding \$25,000, but not exceeding \$250,000, the district shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The district will keep record of the request and quotes. If three quotes are not reasonably available, fewer will suffice, but the district will make a written record of the effort made. The district may negotiate with a

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<sup>1</sup> Oregon Administrative Rules (OAR) 137-045 - 049

<sup>2</sup> See ORS 279A.065(5). {The LCRB can formally adopt the AG rules. If the LCRB formally adopts the rules, the district is required to review the AG rules each time there is a modification.}

prospective contractor to clarify the quote or offer, or to effect modifications. Amendments to a contract awarded through intermediate procurement must be in accordance with OAR 137-047-0800.

3. Regular Procurement. For purchases exceeding \$250,000, the district will use competitive sealed bids (OAR 137-047-0255) or competitive sealed proposals (OAR 137-047-0260). Amendments to contracts awarded through regular procurement must be in accordance with OAR 137-047-0800.
4. Emergency Procurements. In situations of emergency<sup>3</sup>, the LCRB or designee may authorize an emergency procurement. In an emergency procurement, the district is not required to follow general procurement requirements. The district must ensure competition for the contract that is reasonable and appropriate under the circumstances. The district must document the nature of the emergency and the method used for the selection of the contractor.
5. Sole-source Procurements. If the LCRB or designee determines that the goods or services are available from only one source, the district may award a contract without competition. To the extent reasonably practicable, the district shall negotiate with the sole source to obtain contract terms that are advantageous to the district. The determination of sole source must be based on written findings and may include:
  - a. That the efficient utilization of existing goods requires acquiring compatible goods or services;
  - b. That the goods or services required to exchange software or data with other public or private agencies are available from only one source;
  - c. That the goods or services are for use in a pilot or experimental project; or
  - d. Other findings that support the conclusion that the goods or services are available from only one source.<sup>4</sup>
6. Special Procurements. “Special procurement” means a contract or class of contracts that use a contracting procedure other than competitive sealed proposals, competitive sealed bidding, small procurement or intermediate procurement. Special procurements require LCRB approval and will be conducted in accordance with ORS 279B.085, OAR 137-047-028, and this policy.
7. Personal Services Contracts. “Personal services contract,” as used in this policy, means a contract 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.<sup>5</sup> Unless otherwise designated by the LCRB, personal services contracts will be procured in accordance with applicable procurement laws. The LCRB may designate certain service contracts or classes of service contracts as personal services contracts and exempt them from competitive

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<sup>3</sup> “Emergency” means circumstances that:

1. Could not have been foreseen;
2. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
3. Require prompt execution of a contract to remedy the condition.

<sup>4</sup> If the contract does not exceed \$250,000, using intermediate procurement is likely less burdensome than sole source.

<sup>5</sup> This includes, but is not limited to, contracts for the services of an accountant, physician or dentist, educator, consultant (including a provider under an Architectural and Engineering Service Contract), broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor (OAR 137-045-0010(19))). Also includes architectural, engineering, photogrammetric mapping, transportation planning or land surveying services procured under ORS 279C.105 (ORS 279C.100) and related services procured under ORS 279C.120 (ORS 279C.100(5)).

bidding.<sup>6</sup> All personal services contracts shall be based on demonstrated qualifications and competence to perform the required services, encourage competition, discourage favoritism and obtain services at a fair and reasonable price. Personal service contractors may be required to qualify as independent contractors in accordance with applicable laws.<sup>7</sup>

Procurements for services estimated to be in excess of \$250,000 shall go through the cost analysis and feasibility process in accordance with ORS 279B.030.

## Public Improvements

“Public improvement” means a project for construction, reconstruction or major renovation on real property by or for the district.<sup>8</sup> The district will contract for public improvements using the following procedures, unless an exception applies.

1. Public improvements contracts with a value of less than \$25,000 are exempt from competitive bidding.
2. Intermediate Procurements. For public improvement contracts not exceeding \$100,000, the district may utilize three quotes<sup>9</sup>:
  - a. The request for the quotes shall be in writing (unless not reasonably practicable)<sup>10</sup>;
  - b. The request for quotes shall include the selection criteria and if the criteria are not of equal value, their relative value or ranking.

The district shall award the contract to the prospective contractor whose quote will best serve the interest of the district, based on the selection criteria. If the award is not made to the offeror and quote with the lowest price, the district will make a written record of the basis for the award. Amendments to a contract awarded via intermediate procurement may be increased in accordance with OAR 137-049-0160(6)-(7).

3. Regular Procurements. For purchases exceeding \$100,000, the district will use invitation to bid or request for proposals except as otherwise allowed by law. See OAR 137-049-0130 and OAR 137-049-0640. Amendments to contracts awarded through regular procurement must be in accordance with OAR 137-049-0910.

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<sup>6</sup> {If the LCRB has designated contracts or classes of contracts as personal services contracts, include this information along with reference to the LCRB action.}

<sup>7</sup> See ORS 670.600 and OAR 459-005-0020.

<sup>8</sup> Public improvement does not include:

1. Projects for which no funds of the district are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
2. Emergency work, minor alternation, ordinary repair or maintenance necessary to preserve a public improvement.

<sup>9</sup> If three quotes are not reasonably available, the district shall make a written record of the effort made to obtain these quotes.

<sup>10</sup> For Public Works Contracts, oral quotations may only be utilized in the event that written copies of prevailing wage rates are not required by the Bureau of Labor and Industries.

4. Emergency Procurements. Emergency contracts for construction services are not considered public improvement contracts and will be procured in accordance with OAR 137-049-0140 and OAR 137-049-0150.
5. Community Benefit Contracts. “Community benefit contract” means a public improvement contract that includes, but is not limited to, terms and conditions that require the contractor to:
  - a. Qualify as a training agent, as defined in ORS 660.010, or provide apprenticeship training that meets applicable federal and state standards for apprenticeship training;
  - b. Employ apprentices to perform a specified percentage of work hours that workers in apprenticeable occupations perform on the community benefit project;
  - c. Provide employer -paid family health insurance; and
  - d. Meet any other requirements that the LCRB sets forth.

Community benefits contracts may be procured in accordance with ORS 279C.308.

6. Construction Manager/General Contractor (CM/GC) Procurement. The district shall procure CM/GC services in accordance with model rules the Attorney General adopts under Oregon Revised Statute (ORS) 279A.065(3) and OAR 137-049-0690, which requires “the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants or both staff and consultants who have demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management.”

**END OF POLICY**

**Legal Reference(s):**

[ORS Chapter 279](#)  
[ORS Chapter 279A](#)  
[ORS Chapter 279B](#)  
[ORS Chapter 279C](#)

[ORS 670.600](#)  
[OAR Chapter 125, Divisions 246 - 249](#)

[OAR Chapter 137, Divisions 045 - 049](#)  
[OAR 459-005-0020](#)

[OREGON PROCUREMENT MANUAL](#), Oregon Department of Administrative Services.

## **Special Procurements and Exemptions from Competitive Bidding**

### ***SPECIAL PROCUREMENTS***

The district shall submit a written request to the Board, acting as the Local Contract Review Board (LCRB), that describes the contracting procedure, the goods and services or class of goods and services that are the subject of the special procurement and circumstances that justify the use of a special procurement under the standards as follows: the special procurement is unlikely to encourage favoritism in the awarding of a public contract or to substantially diminish competition for public contracts and, (A) is reasonably expected to result in substantial cost savings to the district or to the public, or (B) otherwise substantially promote the public interest in a matter that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, 279B.070 or under any related rules. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055(4). If the district intends to award a contract through special procurements that calls for competition among prospective contractors, the district shall award the contract to the contractor it determines to be most advantageous to the district. When the LCRB approves a class special procurement the district may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for a special procurement.

#### **1. Brand Names or Products, “Or Equal,” Single Seller and Sole Source**

- a. The district may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule.
- b. Solicitation specifications for public contracts of the district shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections c. and d. of this rule.
- c. The district may specify a particular brand name or equal specification when the use of a brand name or equal specification is advantageous to the district, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the district.
  - (1) The district is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final;
  - (2) The district is not prohibited from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the district;
  - (3) A brand name specification may be prepared and used only if the district determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the district based on one or more of the following written determinations:
    - (a) The use of a brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; or

- (b) Specification of the brand name, mark or product would result in cost savings to the district; or
  - (c) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
  - (d) The efficient utilization of existing goods requires the acquisition of compatible goods and services.
- d. The district may award a contract for goods or services without competition when the LCRB determines in writing that the goods or services, or the class of goods or services, are available from only one source. The determination of the source must be based upon written findings that shall include:
  - (1) A brief description of the contract or contracts to be covered, including contemplated future purchases;
  - (2) Description of the product or service to be purchased; and
  - (3) The reasons the district is seeking this procurement method, which shall include any of the following:
    - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services; or
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; or
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.
- e. The district may specify a product or service available from only one manufacturer but available through multiple sellers after complying with subsection c. above documenting the procurement file with the following information:
  - (1) If the total purchase is over \$10,000 but does not exceed \$150,000, and a comparable product or service is not available under an existing Mandatory Use Contract, the district must obtain informal competitive quotes, bids or proposals and document this process in the procurement file;
  - (2) If the purchase does not exceed \$150,000, and the supplies or services are not available under an existing price agreement for information technology with competing products or Mandatory Use Contract, the district must first request and obtain prior written authorization from the LCRB to proceed with the acquisition.
- f. If the district intends to make several purchases of brand name-specific supplies and services from a particular manufacturer or seller for a period not to exceed five years, the district must so state this in the procurement file and in the solicitation document, if any, or a public notice of a solicitation. If the total purchase amount is estimated to exceed \$150,000, this shall be stated in the advertisement for bids or proposals.

#### **Findings of Fact/Conclusion of Compliance with Law (OAR 125-247-0275)**

The district shall submit a written request to the local contract review board that describes the contracting procedure, goods and services subject of the special procurement and the circumstances that justify the use of the special procurement.

- a. It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts and is reasonably expected to result in substantial cost savings to the district which could not be realized under ORS 279B.055, 279B.060, 279B.065 or 279B.070 as required by ORS 279B.085(4).
- b. Public notice of the approval must be given in the same manner as provided in ORS 279B.055(4).
- c. This rule requires the districts to make a good faith effort to determine that no other sources are available for the specified products.
- d. The district maintains open lists from which vendors are contacted for quotations and utilizes electronic means of determining new vendors on an ongoing basis.
- e. The awarding of a contract as described in this special procurement should result in substantial cost savings by virtue of the ability to reduce solicitation costs when it is known that comparable products are not available, or when specifying another product solely to meet a competition requirement might lead to lower initial cost but longer lifetime cost.
- f. When the local review board approves a class special procurement the district may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for procurement.

## **2. Advertising Contracts, Purchase of**

- a. The district may purchase advertising in any media, regardless of a dollar amount, without competitive bidding.
- b. The Board acting as the LCRB of the district must use competitive methods whenever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed impractical and the resulting contract must be in writing.
- c. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the district must post notice on the Oregon Procurement Information Network (ORPIN).

### **Findings of Fact**

The district traditionally purchases advertising in newspapers. The following findings relate primarily to newspapers and written publications; however, the district may also purchase advertising for student activities or educational programs in other media, such as radio or television, where these findings apply:

- a. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves;
- b. Competition to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the district is limited;
- c. Cost savings are difficult to quantify where the sources are unique and not interchangeable;
- d. Advertisements may be placed to satisfy legal notice or Board policy requirements;
- e. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area and other publications, as appropriate;
- f. The communities served by the district rely upon its use of the local daily newspaper as a central source of news and information regarding district activities;
- g. It is unknown whether contracts for advertisements placed with radio, television or other broadcast media are going to result in cost savings if not placed for competitive bid or request for proposal (RFP). If possible savings could be obtained through competitive means, the district would attempt to obtain competitive quotes or bids, as appropriate.

## **Conclusion of Compliance with Law**

Due to limited competition and unique nature of sources, it is unlikely that this class special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Further, any contracts awarded under this class special procurement would result in a cost savings available to the district where the district can achieve volume savings through contracts for advertising with a particular media source, or otherwise substantially promote the public interest.

### **3. Advertising Contracts, Sale of**

The district may sell advertising for district publications and activities, regardless of a dollar amount, without competitive bidding, including school newspapers, yearbooks, athletic programs, drama or music programs and the like.

#### **Findings of Fact**

Sales of advertising for student activities are generally other fund revenues, where student groups solicit advertisements from local businesses to help with the cost of the activity itself. A common example is the sale of advertising in school newspapers and yearbooks. The circulation of the newspaper and yearbook is limited to the students, teachers, parents and interested members of the community associated with the activities of that particular school. Due to the limited circulation and audience, the businesses that participate by purchasing advertising do so partly in the spirit of good will. Any business is welcome to place an advertisement in the school newspaper or yearbook; all it needs to do is to contact any district school department which publishes one. The district itself would not achieve any increased revenue to the General Fund by seeking competitive bids or proposals for such advertising. This holds true for other student activities, such as athletics, drama or music events and the like.

#### **Conclusion of Compliance with Law**

These findings indicate that it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Any business or individual who wishes to advertise in this manner may do so by simply contacting the student group responsible for the activity.

The sale of advertising for student activities such as school newspapers, yearbooks, athletic, drama or music programs would not benefit from competitive procurement. Such a requirement would place an unnecessary burden on the student group's activity and there is no financial advantage to the district in doing so. Consequently, the cost savings test is not an issue.

### **4. Equipment Repair and Overhaul**

- a. The district may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:
  - (1) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
  - (2) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

- (3) The purchase is made within the limits and pursuant to the methods in subsection b. of this rule.
- b. The following limitations apply to this rule:
- (1) If the contract is less than or equal to \$150,000, the school or department shall submit in writing to the superintendent or designee the reasons why competitive bids or quotes are deemed to be impractical. The superintendent or designee will accordingly document in its procurement file and may enter directly into the contract;
  - (2) If the school or department official thinks the contract may exceed \$150,000, he/she shall submit in writing to the superintendent or designee the reasons why competitive bidding is deemed to be impractical and a description of the cost savings to be obtained by a special procurement. The superintendent or designee may prepare a specific request for the anticipated contract to be obtained through special procurement procedures to submit to the LCRB for approval.

### **Findings of Fact**

- a. The need for equipment repair or overhaul cannot be anticipated by district staff. If a piece of equipment is broken or not working properly, the district incurs cost of downtime, possible replacement equipment rental fees, staff time and other inconveniences or liabilities to its programs.
- b. Generally, there are a limited number of vendors who are able to perform repair or overhaul on a particular piece of equipment because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a partial warranty in place which will guarantee some savings to the district in the parts and/or labor needed to do the repair or overhaul. This warranty savings may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
- c. The dollar limits on the use of this special procurement procedure ensure that when the cost of the equipment repair or overhaul is expected to exceed \$150,000, the district will either seek formal competitive bids or, if that is not practical or cost effective, obtain a specific special procurement procedure from the LCRB to proceed with the purchase of the needed repair or overhaul.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement procedure will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts because the dollar limits incorporated into this special procurement when the anticipated costs exceed \$150,000, insure the district will seek formal competitive bids and proposals. If the formal process is not practical, the district will obtain a specific exemption from the LCRB to proceed with the purchase of the needed repair or overhaul.

The awarding of public contracts under this special procurement will result in a cost savings to the district, as required by ORS 279B.085, because the district incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This special procurement only applies to equipment already owned by the district and does not provide for the purchase of new equipment. The district must be able to purchase necessary services and parts as quickly as possible in order to minimize equipment downtime and potential costs during that downtime.

## 5. **Copyrighted Materials**

The district may, without competitive bidding and regardless of a dollar amount, purchase copyrighted materials where there is only one known supplier available for such goods. Examples of copyrighted materials covered by this special procurement procedure may include, but are not necessarily limited to, newly adopted textbooks/instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or their designated distributor.

### **Findings of Fact**

- a. By their nature, copyrighted materials are protected for the use of a single owner. Copyrighted materials may not be duplicated by others without the copyright owner's permission or license. Copyrights are established and regulated under federal law.
- b. Often, copyrighted materials are produced by only one supplier who may be the owner of the copyright or his/her licensee. Textbooks/Instructional materials are examples of copyrighted materials that the district purchases through a sole source. Textbooks/Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education. A textbook/instructional material adoption defines the various materials which the district will purchase for use in its educational programs.

The district purchases its textbooks/instructional materials through the Northwest Textbook Depository. This practice enables the regional textbook depository to purchase and warehouse textbooks/instructional materials in conformance with adoptions made in the states of their region. The result is that savings are achieved through the depository's combined purchases on behalf of member districts. Freight costs for individual districts are reduced by the bulk purchases of the depository and the depository takes on the cost of stocking and warehousing enough to meet each member district's needs.

The system of textbook/instructional materials distribution enables the district to participate in the largest possible bulk purchasing activity of adopted textbooks/instructional materials in the region. This ensures a cost savings to the district. A savings that would be jeopardized if the district was to act as an individual purchaser.

### **Conclusion of Compliance with Law**

This special procurement will not encourage favoritism or substantially diminish competition in the awarding of public contracts. The production and distribution of copyrighted materials is controlled by the owner of the copyright and may only be permitted through a sole source. The district has no control over this.

The awarding of contracts pursuant to this special procurement will result in a cost savings to the district when it needs to purchase copyrighted materials and there is only one known supplier for such goods, or otherwise substantially promote the public interest.

## 6. **Product Prequalification**

- a. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the district may specify a list of approved or qualified products by reference to the prequalified product(s) of

particular manufacturers or vendors in accordance with the following product prequalification procedure:

- (1) The district will make reasonable efforts to notify all known manufacturers and vendors of competing products of the district's intent to compile a list of prequalified products. The notice will explain the opportunity manufacturers and vendors of competing products will have to apply to have their product(s) included on the district's list of prequalified products. At its discretion, the district may provide notice by advertisement in a trade paper of general statewide circulation or other appropriate trade publication; or instead of advertising, the district may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the district; and
  - (2) The district will accept manufacturer and vendor applications to include products in the district's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the district's written notice.
- b. If the district denies an application for including a product on a list of prequalified products, the district shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within 7 calendar days to the district business manager to request review and reconsideration of the denial.

### **Findings of Fact**

- a. There are occasions when the district needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The district may have a specific performance or design need, but it is impractical for the district to create a specification for the type of products to be purchased. An example is audiovisual equipment. There is a tremendous variety of audiovisual products offered in the market. The equipment technology is complex and constantly changing. It would be very burdensome and time consuming for the district to generate nonbrand name, generic performance specifications for such equipment every time it wants to make a purchase.

Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the district's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and district programs, because staff are not able to order the equipment they need until the contract is awarded.

In this case, it might be more cost effective and efficient for the district to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract. Once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.

- b. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the district must have time to carefully consider what is offered in the market that may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.

- c. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification. The district maintains vendor mailing lists which are open to all interested vendors. The district uses these lists routinely to notify vendors of its intentions to prequalify products or to invite bids on products.
- d. This includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
- e. Subsection b., of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.

### **Conclusion of Compliance with Law**

Where prequalification of products is appropriate, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or diminish competition for such contracts. There are several safeguards in the rule to prevent this, including notice, advertising, time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.

The prequalification of products process is a time-consuming effort for the district. It is not a shortcut procurement method. The district would use this method only after balancing cost-saving considerations, such as the ability of the district to create or generate nonbrand name generic specifications for types of products or the need for lengthy product evaluation prior to a contract award. If the prequalification method is chosen, it will result in a cost savings to the district because the normal method of product selection is too cumbersome and costly to pursue, or otherwise substantially promote the public interest.

## **7. Requirements Contracts (Blanket Purchase Orders, Price Agreements)<sup>1</sup>**

- a. The business manager, on behalf of the district, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining district requirements for volume discounts, standardization among school and departments and reducing lead time for ordering.
- b. The district may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is led by a competitive procurement process pursuant to the requirements of the public contracting code and these rules.
- c. Once a requirements contract is established, schools and departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.
- d. School and departments shall use requirements contracts established by the district, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the superintendent or designee.

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<sup>1</sup>The Oregon Procurement Information Network (ORPIN) allows authorized members to utilize the state's price agreement/contracts to purchase goods and services. Authorized ORCPP members can legally attach to a state price agreement and forego the competitive bid process. Access to hundreds of competitive price contracts for a wide variety of goods and services: vehicles, computers, furniture, copiers, fax machines, travel, pharmaceuticals, office products, etc., is available. Counties, cities, schools, municipalities or their public corporate entities having local governing authority, a United States governmental agency or American Indian tribe or agency are eligible to participate.

- e. Under the authority of ORS 279A.025 and 279B.085, the district may use the requirements contracts entered into by another Oregon public agency when:
  - (1) The original contract met the requirements of public contracting code; and
  - (2) The original contract allows other public agency usage of the contract; and
  - (3) Original public contracting agency concurs and this is documented by a written interagency agreement between the district and the agency.
- f. The term of any district requirements contract, including renewals, shall not exceed five years unless otherwise permitted under the public contracting code.

### **Findings of Fact**

- a. This rule permits the district to enter into a requirements contract, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, school, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.
- b. Requirements contracts are a common method of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, obtaining volume discounts, standardizing usage among schools and departments and reducing lead time for ordering.
- c. The district establishes a requirements contract as a result of open competitive bidding or RFP processes, unless otherwise permitted under the public contracting code.
- d. The district limits the term of a requirements contract, including all renewal options, to a maximum of five years before competitive rebidding must be done, unless otherwise permitted under the public contracting code.
- e. The district may use the requirements contracts established by other public agencies, subject to certain conditions of state law, Board policy and administrative regulation.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will result in favoritism in the awarding of public contracts or diminish competition for such contracts. The district will only enter into requirements contracts which result from open competitive bidding processes. This condition applies also to the use of requirements contracts established by other public contracting agencies.

The awarding of district requirements contracts will result in a cost savings to the district, or otherwise substantially promote the public interest. It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the district to get better prices from bidders.

## **8. Used Personal Property or Equipment, Purchase<sup>2</sup>**

- a. Subject to the provisions of this rule, the district may purchase used property or equipment without obtaining competitive bids or quotes, if the district has determined that the purchase will result in cost savings to the district and will not diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the

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<sup>2</sup>When contracting with another governmental entity, a district has a statutory exception under ORS 279A.025. The district may purchase state/federal surplus property through the Department of Administrative Services, State Services Division for Surplus Property. For more information on this program, contact DAS at 503-378-4714.

relevant trade or industry as qualifying the personal property or equipment as “used” at the time of district purchase. Used personal property or equipment generally does not include property or equipment if the district was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.

- b. For purchases of used personal property or equipment costing less than or equal to \$150,000, the district shall, where feasible, obtain three competitive quotes unless the district has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the district and will not diminish competition or encourage favoritism.
- c. For purchases of used personal property or equipment totaling \$150,000 or more, the district shall attempt to obtain three competitive quotes. The district will keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

### **Findings of Fact**

- a. The district is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the procurement of used property and equipment. The district purchases used property and equipment when it meets the district’s needs and is cost effective. Considerations include type, quality, quantity and estimated useful life of the used item.
- b. Used equipment and property becomes available sporadically and without notice. Used equipment and property is generally sold on a first-come, first-served basis. When used property or equipment does become available, the district must be able to respond immediately in order to obtain the property or equipment.
- c. Some types of property or equipment may not be readily available in the new goods market. The district may have to look for used items to fill the need.
- d. Competition to provide used property and equipment may be very limited and inconsistent, depending on the type of product.
- e. The district maintains vendor lists which include information on whether a vendor provides used property or equipment. These lists are open to all vendors.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts. The purchase of used property or equipment depends on an inconsistent, sporadic market. When a used item is available, there is often little competition available. Sources for used items of the type, quality and quantity required by the district are inconsistent. This rule requires the district to attempt to obtain and document quotes as appropriate to the dollar amount of the purchase. If the anticipated purchase is over \$150,000, the district will advertise its need.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. The cost of used equipment or property is generally substantially less than that of new. Savings of 20 percent to 50 percent are not uncommon. Used equipment can provide good value to the district and help ensure the continuation of district services and programs.

## **9. Information Technology Contracts**

The district may enter into a contract to acquire information technology hardware and software without competitive bidding subject to the following conditions:

- a. If the contract amount does not exceed \$150,000, the district shall attempt to obtain three competitive quotes pursuant to the rules governing Intermediate Procurements. The district shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the district shall make a written record of the effort made to obtain the quotes or proposals.
- b. If the contract amount exceeds \$150,000, the district shall determine and use the best procurement method, pursuant to the public contracting code and these rules, and shall solicit written proposals in accordance with the requirements of the Attorney General's Model Public Contract Rules. The district shall document the evaluation and award process, which will be part of the public record justifying the award;
- c. If the amount of the contract is estimated to exceed \$150,000, the district shall provide proposers an opportunity to review the evaluation of their proposals before final selection is made.

### **Findings of Fact**

- a. Rapid changes in technology make it necessary for the district to be able to purchase needed computer equipment quickly.
- b. Pricing for high-technology equipment also changes rapidly. It is frequently possible to take advantage of frequent price changes in the marketplace in the purchase of computer equipment.
- c. There is generally sufficient competition among vendors of information technology hardware and software for district business.
- d. The district will follow rules governing special procurements and obtain at least three informally solicited quotes for purchases less than or equal to \$150,000.
- e. If the district requires a brand name or sole source product, the district will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to procure it.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the award of district contracts or substantially diminish competition for district contracts. The purchase of information technology hardware and software will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$150,000, the district will advertise its need.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of information technology hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.

## **10. Telecommunications Systems - Hardware and Software Contracts**

- a. The district may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:
  - (1) If the contract amount does not exceed \$150,000, the district shall attempt to obtain three competitive quotes pursuant to the rules governing Intermediate Procurements. The district shall keep a written record of the sources of the quotes or proposals received. If

three quotes or proposals are not reasonably available, fewer will suffice, but the district shall make a written record of the effort made to obtain the quotes or proposals.

- (2) If the contract amount exceeds \$150,000, the district shall determine and use the best procurement method, pursuant to the public contracting code and these rules and shall solicit written proposals in accordance with the requirements of Chapter 137, Divisions 047 and 049 of the Attorney General's Model Public Contract Rules. The district shall document the evaluation and award process, which will be part of the public record justifying the award.
- b. The telecommunications solicitation authorized in subsection 10.a.(1) of these rules shall:
- (1) State the contractual requirements in the solicitation document;
  - (2) State the evaluation criteria to be applied in awarding the contract and the role of any evaluation committee. Criteria that would be used to identify the proposal that best meets the district's needs may include, but are not limited to, cost, quality, service and support, compatibility, product or system reliability, vendor viability and financial stability, operating efficiency and expansion potential;
  - (3) State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition.

### **Findings of Fact**

- a. Rapid changes in technology make it necessary for the district to be able to purchase needed telecommunications hardware and software quickly.
- b. Since deregulation, there is generally adequate competition among vendors of telecommunication hardware and software to allow the district to make competitive purchases.
- c. Pricing for telecommunications hardware and software also changes frequently. It is important for the district to take advantage of price competition in the marketplace.
- d. The district will follow procedures governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases over \$10,000 but less than or equal to \$150,000.
- e. If a purchase of telecommunications hardware or software is expected to cost more than \$150,000, the district will use a formal competitive bidding or proposal process in accordance with these rules and the Attorney General's Model Public Contract Rules.
- f. There are also times when the district needs to purchase specific items that are compatible with current equipment. On these occasions, the district will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to make the purchase.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. The purchase of telecommunications hardware and software will be made in accordance with other competitive bidding rules herein. If the anticipated purchase is over \$150,000, the district will advertise its need.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.

## 11. Telecommunications Services

- a. The district shall secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service performance requirements while minimizing administrative and service delivery costs. The district will use routine purchasing procedures whenever possible, but if necessary, the district can consider alternative procurement methods in accordance with this rule.

The district will generally follow the normal competitive procurement processes in obtaining telecommunications services. This process will only be used if necessary where there is a lack of sufficient competition to furnish needed services.

- b. In determining the appropriate procurement method for telecommunications services, the district shall comply with the requirements of ORS 291.038 and determine whether competition exists. In determining whether competition exists, the district may consider the following factors:
  - (1) The extent to which alternative providers exist in the relevant geographic and service market; the greater area of Lane County;
  - (2) The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance. For example, if the district requires digital services, analog services are not comparable or substitutable. If the district requires fiber optic technology, then copper, microwave or satellite transmission technology may not be comparable or substitutable;
  - (3) The extent to which alternative providers can respond to the district's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting district liability. For example, to be considered as the district's long-distance service provider, any long-distance service vendor must be able to meet, support and interface with the district's centralized automated billing requirements. The district must document for the record, its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the district may solicit the information either through informal telephone or written contacts or through a formal solicitation such as a RFP.
- c. If the district determines that competition does not exist in the area for the relevant service, the district may proceed to secure the service on a sole source basis, as described in the district's rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements.

### Findings of Fact

- a. Since deregulation, there is generally adequate competition among vendors of telecommunication services to allow the district to make competitive procurements.
- b. Since there is competition, price competition exists in the marketplace. It is important for the district to take advantage of existing competition.
- c. The district will follow its rules governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than or equal to \$150,000. The district shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the district shall make a written record of the effort made to obtain the quotes or proposals.

- d. If a purchase of service is expected to cost more than \$150,000, the district will use a formal competitive bidding or proposal process in accordance with these rules and the Attorney General's Model Public Contract Rules.
- e. There may be occasions where there is limited competition that can furnish telecommunications services of the quality and extent required by district operations. In such instances, the district will follow this rule and also its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to procure needed services from the sole source.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Routinely, the purchase of telecommunications services will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$150,000, the district will advertise its need, issue a written solicitation document and invite written bids or proposals to be furnished in response.

There may be circumstances, however, where sufficient competition does not exist in the relevant geographic and service market area. In such cases, the district will follow this rule in determining whether sufficient competition exists to make a competitive procurement.

The use of this special procurement will result in a cost savings to the district, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the district some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur. The rule also states the steps to be taken to document situations where sufficient competition may not exist and a sole source purchase needs to be made.

## **12. Hazardous Material Removal; Oil Cleanup**

- a. The district may enter into public contracts without competitive bidding, regardless of a dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted to the Oregon Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this exemption, the district shall:
  - (1) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods and services;
  - (2) Make written findings describing the circumstances that require the cleanup or maintain a copy of the DEQ order for the cleanup;
  - (3) Record the measures taken under a. (1) of this rule to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor to whom award is made.
- b. The district shall not contract pursuant to this special procurement in the absence of an order from the DEQ to clean up a site which includes a time limit that would not allow the district to hire a contractor under normal competitive bidding procedures. Goods and services to perform other hazardous material removal or cleanup will be purchased in accordance with normal

competitive bidding procedures as described in Board policy with this administrative regulation.

### **Findings of Fact**

- a. When the DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. The district would be liable for any delay in responding to DEQ orders to perform hazardous material removal or cleanup.
- b. This exemption will not be used in those situations where there is no DEQ order to remedy the situation. Routine competitive procurement methods will be used where there is no DEQ order to act immediately. The district maintains open lists of vendors who are interested in providing hazardous material removal and cleanup services. Whenever it needs hazardous material removal or disposal, the district makes use of these lists to solicit quotes, bids or proposals as needed, in addition to advertising the procurement as required.
- c. Cost savings are achieved through this exemption because the district can be liable for DEQ penalties and fines if it does not timely remove hazardous materials or oil as ordered. There is also serious risk in these situations, that property damage or personal injury could result if the district is slow to act.

### **Conclusions of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279B.085 (3)(a). If it is under DEQ order to act immediately, the district will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the district is faced with the quasi-emergency situation of a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services. The award of public contracts pursuant to this special procurement will result in a cost savings to the district in these situations, as required by ORS 279B.085 (3)(b), because the district must comply with the law and avoid and minimize risk to persons and property. Where possible, it will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible bidder.

## **13. Renegotiation of Existing Contracts with Incumbent Contractors**

- a. The district may amend or renegotiate contracts with existing vendors, service providers or other parties subject to the limitations of this rule.
- b. The district has determined that value engineering, specialized expertise required, public safety and technical complexity, generally do not apply to this special procurement procedure.
- c. The renegotiated contract falls within a current special procurement procedure, but if not the LCRB must approve a separate special procurement.
- d. The district may renegotiate certain terms, but they must not unreasonably alter the scope of the original contract.

### **Findings of Fact**

- a. The LCRB may amend contracts when it is in the best interest of the district. The superintendent and/or other designee, acting on behalf of the LCRB, may renegotiate certain provisions, including:

- (1) Price;
- (2) Term;
- (3) Delivery and shipping;
- (4) Order size;
- (5) Substitution;
- (6) Warranties;
- (7) Online ordering systems;
- (8) Price adjustments;
- (9) Product availability;
- (10) Product quality;
- (11) Reporting requirements; or
- (12) Discounts.

Any contract amendment will be supported by legal consideration when necessary to validate the amended provision.

- b. The amended terms must be within a reasonable scope of the original contract, but not fundamentally alter the agreement or nature of goods or services. Districts may, however, request functionally equivalent substitutes for goods or services in the original contract.
- c. The contract as a whole must be more favorable to the individual needs of the district to justify renegotiation. Cost may be a factor in determining what is a favorable change to the original contract, but the district may use factors other than cost that demonstrate that the amended contract is more favorable to the unique needs of the district.

### **Conclusion of Compliance with Law**

This special procurement will not encourage favoritism or substantially diminish competition in awarding public contracts because it already exists as a contract awarded in compliance with the district's special procurement and public contracting code.

The awarding of contracts under this special procurement will result in cost savings to the district when it needs to renew its original contract with vendors, service providers or other parties, or otherwise substantially promote the public interest.

### ***EXEMPTIONS FROM COMPETITIVE BIDDING***

All public contracts shall be based upon competitive bids or proposals, except the following:

1. Contracts which have been specifically exempted under ORS 279A.025 and 279C.335; and
2. Contracts covered by the class exemptions in the following set of rules developed pursuant to
3. ORS 279C.335 (2) and (5) and based on Oregon Administrative Rules, Chapter 137, Divisions 46 through 49.

The Board, acting as the Local Contract Review Board (LCRB) for the district, has made the findings required by ORS 279C.330, ORS 279C.335 and ORS 279C.345, and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition for the public contract and will likely result in a substantial cost savings and other substantial benefits to the district.

In approving a finding under this section, the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed public improvements;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the public improvement;
5. The cost and availability of specialized expertise that is necessary for the public improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the district or the public that are related to the public improvement;
8. Whether granting the exemption will affect the sources of funding for the public improvement;
9. Whether granting the exemption will better enable the district to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
10. Whether granting the exemption will better enable the district to address the size and technical complexity of the public improvement;
11. Whether the public improvements involves new construction or renovates or remodels an existing structure;
12. Whether the public improvement will be occupied or unoccupied during construction;
13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the district has or has retained under contract, and will use district personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the district will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

Only these findings are required for each class or individual contract exemption, unless the LCRB specifically excludes a finding or includes an additional finding.

Promulgation of these exemptions can only occur after public notification and a public hearing to receive testimony pertaining to the draft exemptions and findings, pursuant to ORS 279C.335.

**1. Brand Names or Products, “Or Equal,” Single Seller and Sole Source**

- a. The district may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule.

- b. The district has determined that value engineering, specialized expertise required, public safety and technical complexity, generally do not apply to this exemption.
- c. Solicitation specifications for public contracts of the district shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections d. and e. of this rule.
- d. The district may specify a particular brand name, make or product suffixed by “or equal,” “or approved equal,” “or equivalent,” “or approved equivalent” or similar language if there is no other practical method of specification after documenting the procurement file with the following:
  - (1) A brief description of the solicitation(s) to be covered, including contemplated future purchases;
  - (2) Description of the brand name, mark or product to be specified; and
  - (3) A brand name specification may be prepared and used only if the district determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the district based on one or more of the following written determinations:
    - (a) The use of the brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; or
    - (b) Specification of the brand name, mark or product would result in substantial cost savings to the district; or
    - (c) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
    - (d) The efficient utilization of existing goods requires the acquisition of compatible goods and services.
  - (4) The district shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals.
- e. The district may purchase a particular product or service available from only one source, after documenting the procurement file with the district’s findings of current market research to support the determination that the product is available from only one seller or source. The district’s findings shall include:
  - (1) A brief description of the contract or contracts to be covered, including contemplated future purchases;
  - (2) Description of the product or service to be purchased; and
  - (3) The reasons the district is seeking this procurement method, which shall include any of the following:
    - (a) That the efficient utilization of existing equipment, supplies or services requires the acquisition of compatible equipment, supplies or services; or
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available for only one source; or
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) Other findings that support the conclusion that the goods or services are available from only one source.

- (4) To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.
- f. The district may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the following information:
  - (1) If the total purchase is over \$10,000 but does not exceed \$100,000, and a comparable product or service is not available under an existing state cooperative purchasing contract, competitive quotes shall be obtained by the district and retained in the procurement file; or
  - (2) If the amount of the purchase exceeds \$100,000, the product or service shall be obtained through competitive bidding unless a specific exemption is granted by the LCRB.
- g. If the district intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, the district will so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$100,000, this shall be stated in the advertisement for bids or proposals.

### **Findings of Fact/Conclusion of Compliance with Law**

It is unlikely that this process will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts, as required by ORS 279C.335 (2)(a).

This class exemption applies only to contracts under a limited dollar amount, and then, only after efforts to obtain competitive quotes are made, or other methods have been employed to ensure that competitive means are used if available. The district maintains open lists from which vendors are contracted for quotations. In addition, as required by ORS 279C.335 (2)(b) award of a public contract subject to the above described exemption should likely result in substantial cost savings or other substantial benefits to the district by virtue of the ability to reduce solicitation costs when it is known that comparable products are not available, or when specifying another product solely to meet a competition requirement might lead to lower initial cost but longer lifetime cost.

## **2. Product Prequalification**

- a. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the district may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following product prequalification procedure:
  - (1) The district will make reasonable efforts to notify all known manufacturers and vendors of competing products of the district's intent to compile a list of prequalified products. The notice will explain the opportunity manufacturers and vendors of competing products will have to apply to have their product(s) included on the district's list of prequalified products. At its discretion, the district may provide notice by advertisement in a trade paper of general statewide circulation or other appropriate trade publication; or instead of advertising, the district may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the district; and

- (2) The district will accept manufacturer and vendor applications to include products in the district's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the district's written notice.
- b. The district has determined that special expertise required, generally, does not apply to this rule.
- c. If the district denies an application for inclusion of a product on its list of prequalified products, the district shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within 7 calendar days to the district business manager to request review and reconsideration of the denial.

### **Findings of Fact**

- a. There are occasions when the district needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The district may have a specific performance or design need, but it is impractical for the district to create a specification for the type of products to be purchased. An example is audiovisual equipment. There is a tremendous variety of audiovisual products offered in the market. The equipment technology is complex and constantly changing. It would be very burdensome and time consuming for the district to generate nonbrand name, generic performance specifications for such equipment every time it wants to make a purchase.

Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the district's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and district programs, because staff are not able to order the equipment they need until the contract is awarded.

In this case, it might be more cost effective and efficient for the district to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract. Once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.

- b. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the district must have time to carefully consider what is offered in the market that may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.
- c. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification. The district maintains vendor mailing lists which are open to all interested vendors. The district uses these lists routinely to notify vendors of its intentions to prequalify products or to invite bids on products.
- d. This includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
- e. Subsection c. of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.

## Conclusion of Compliance with Law

Where prequalification of products is appropriate, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or diminish competition for such contracts as required by ORS 279C.335 (2)(a). There are several safeguards in the rule to prevent this, including notice, advertising, time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.

The prequalification of products process is a time-consuming effort for the district. It is not a shortcut procurement method. The district would use this method only after balancing cost-saving considerations, such as the ability of the district to create or generate nonbrand name generic specifications for types of products or the need for lengthy product evaluation prior to a contract award. If the prequalification method is chosen, it will likely result in a substantial cost savings and other substantial benefits to the district as required by ORS 279C.335 (2)(b) because the normal method of product selection is too cumbersome and costly to pursue.

### 3. Requirements Contracts (Blanket Purchase Orders, Price)<sup>3</sup>

- a. The business manager, on behalf of the district, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining district requirements for volume discounts, standardization among schools and departments and reducing lead time for ordering.
- b. The district has determined that value engineering, specialized expertise required and technical complexity, generally, do not apply to this rule.
- c. The district may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is let by a competitive procurement process pursuant to the requirements of the public contracting code and these rules.
- d. Once a requirements contract is established, schools and departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.
- e. Schools and departments shall use requirements contracts established by the district, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the superintendent or designee.
- f. Under the authority of ORS 279A.025 and 279C.335, the district may use the requirements contracts entered into by another Oregon public agency when:
  - (1) The original contract met the requirements of the public contracting code; and
  - (2) The original contract allows other public agency usage of the contract; and
  - (3) The original public contracting agency concurs and this is documented by a written interagency agreement between the district and the agency.
- g. The term of any district requirements contract, including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS 279C.335.

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<sup>3</sup>The Oregon Procurement Information Network (ORPIN) allows authorized members to utilize the state's price agreement/contracts to purchase goods and services. Authorized ORCPP members can legally attach to a state price agreement and forego the competitive bid process. Access to hundreds of competitive price contracts for a wide variety of goods and services: vehicles, computers, furniture, copiers, fax machines, travel, pharmaceuticals, office products, etc., is available.

## **Findings of Fact**

- a. This rule permits the district to enter into requirements contracts, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, school, building, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.
- b. Requirements contracts are a common method of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, obtaining volume discounts, standardizing usage among schools, buildings and departments and reducing lead time for ordering.
- c. The district establishes requirements contracts as a result of open competitive bidding or RFP processes, unless otherwise exempted.
- d. The district limits the term of a requirements contract, including all renewal options, to a maximum of five years before competitive rebidding must be done, unless otherwise exempted.
- e. The district may use the requirements contracts established by other public agencies, subject to certain conditions of state law, Board policy and administrative regulation.

## **Conclusion of Compliance with Law**

It is unlikely that this exemption will result in favoritism in the awarding of public contracts or diminish competition for such contracts, as required by ORS 279C.335 (2)(a). The district will only enter into requirements contracts which result from open competitive bidding processes. This condition applies also to the use of requirements contracts established by other public contracting agencies.

The awarding of district requirements contracts will likely result in a substantial cost savings and other substantial benefits to the district, as required by ORS 279C.335 (2)(b). It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the district to get better prices from bidders.

## **4. Waiver of Bid Security Requirements (Public Improvement Contracts under \$100,000)**

The LCRB may, at its discretion, waive the bid security requirements of ORS 279C.390, if the amount of the contract for the public improvement is less than \$100,000. Although the bid security requirements of ORS 279C.390 are waived for public improvement contracts under \$100,000, the district may impose a bid or quote security requirements for projects under \$100,000, when deemed to be in the best interest of the district.

## **Findings of Fact/Conclusion of Compliance with Law**

This rule allows the LCRB to waive bid security requirements for certain public improvement contracts. Waiver of the bid security is provided for by statute without a requirement for findings.

## **5. Waiver of Performance and Payment Security Requirements (Public Improvement Contracts under \$100,000)**

The LCRB may, at its discretion, waive the performance/payment security requirements of ORS 279C.390 if the amount of the contract for the public improvement is less than \$100,000. Although the performance/payment security requirements of ORS 279C.390 are waived for public improvement contracts less than \$100,000, the district may impose a performance/payment security requirement for projects less than \$100,000 when deemed to be in the best interest of the district.

### **Findings of Fact/Conclusion of Compliance with Law**

This rule allows the LCRB to waive performance/payment security requirements for certain public improvement contracts. Waiver of the performance/payment security is provided for by statute without a requirement for findings.

## **6. Projects with Complex Systems or Components**

- a. For contracts for public improvements with significant components that are inherently complex and are also complex to procure through competitive bid, the district may, at its discretion, use RFP competitive procurement methods subject to the conditions described in ORS 279C.400 and conditions enumerated in this exemption.
- b. Definitions. For purposes of this exemption only: “Complex Systems” are defined as those systems which incorporate the procurement of materials or other components which are difficult, if not impossible, to create in an “equal” specifications basis for competitive bid. Examples of such systems include but are not limited to, contracts for supplying and installing computerized controls for building heating, venting, air conditioning systems; and contracts for artificial surface outdoor multipurpose athletic fields. “Significant” is intended to mean something more than de minimus, but not necessarily the majority of the project as determined by cost.

### **Finding of Fact/Conclusion of Compliance with the Law**

It is unlikely that this exemption will encourage favoritism in the awarding of the public contracts or substantially diminish competition for such contracts as required by ORS 279C.335 (2)(a).

Contracts for public improvements occasionally incorporate the procurement of systems, materials, or other components (complex systems) for which it is extremely difficult to design bid specifications. In these situations, utilization of a RFP process where each of the systems can be evaluated utilizing a number of factors, in addition to price, will likely result in substantial cost savings and other substantial benefits to the district as required by ORS 279C.335 (2)(b).

ORS 279C.400 enumerates how RFP’s are to be used if authorized by the LCRB. This criteria, ensures that competitive means will be used and selection will be fair and impartial. As a result, it is unlikely that this process will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279C.335 (2)(a). The awarding of contracts pursuant to this process will result in optimal value to the district based on selection by the district of the best competitive proposal that meets the stated evaluative criteria.

This class exemption is intended to be used for the types of procurements describe in the findings, where the specific system, materials or components represent a significant portion of the project. This class exemption is not intended to be used for construction manager/general contractor (CM/GC) projects or other methods of alternative procurement unless these projects meet the

requirements of this class exemption. The CM/GC and others, not meeting the requirements of this class exemption, may still be procured by RFP, provided that a project or contract specific exemption is promulgated by the LCRB.

DELETED

# OSBA Model Sample Administrative Regulation

Code: DJC-AR  
Revised/Reviewed:

## Exemptions from Competitive Bidding and Special Procurements

{This optional administrative regulation is intended to provide guidance for the district in preparing a request for special procurement to the Local Contract Review Board (LCRB). This administrative regulation is not intended as procurement rules in place of the *Attorney General's Model Public Contracting Rules* or rules adopted by the LCRB.}

All public contracts shall be based upon competitive bids or proposals, except the following:

1. Contracts below threshold levels in accordance with ORS 279B.065 (small procurements for goods and services), 279B.070 (intermediate procurements for goods and services) and 279C.412 (intermediate procurements for public improvements);
2. Special procurements for goods and services in accordance with ORS 279B.085 and OAR 137-047-0285;<sup>1</sup>
3. Contracts which have been exempted under ORS 279A.025 and 279C.335; and
4. Any other contract exempted by law.

### SPECIAL PROCUREMENTS FOR GOODS AND SERVICES

To proceed with a special procurement, the district shall submit a written request to the Board, acting as the Local Contract Review Board (LCRB). This request shall describe the contracting procedure, the goods and services or class of goods and services that are the subject of the special procurement, and circumstances that justify the use of a special procurement.

The special procurement must be unlikely to encourage favoritism in the awarding of a public contract or to substantially diminish competition for public contracts; and (A) must be reasonably expected to result in substantial cost savings to the district or to the public; or (B) must substantially promote the public interest in a matter that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, 279B.070 or any related rules.

After LCRB approval, the district may proceed with a special procurement. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055(4). If the district intends to award a contract through special procurements that calls for competition among prospective contractors, the district shall award the contract to the contractor it determines to be most advantageous to the district.

When the LCRB approves a class special procurement the district may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for a special procurement.

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<sup>1</sup> Procurement law for goods and services uses the term “special procurement.” Procurement law for public improvement contracts does not use the term “special procurement,” but a comparable exemption is allowed under ORS 279C.335.

The following are additional considerations and requirements for specific types of special procurements. The request submitted to the LCRB should address these provisions and satisfy any requirements.

### **Brand Names or Equal<sup>2</sup>**

1. “Brand name or equal specification” means a specification that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics needed to meet the district’s requirements and that authorizes bidders or proposers to offer goods or services that are equivalent or superior to those named or described in the specification.
2. “Brand name specification” means a specification limited to one or more products, brand names, makes, manufacturer’s names, catalog numbers or similar identifying characteristics.”
3. “Specification” means any description of the physical or functional characteristics of, or of the nature of, goods or services to be procured by a contracting agency.<sup>3</sup>

A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to the district because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the district. The district is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final. Nothing in the law or this administrative regulation may be construed as prohibiting the district from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the contracting agency.

A brand name specification may be prepared and used only if the district determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the district based on one or more of the following written determinations:

1. That use of the brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;
2. That use of a brand name specification would result in substantial cost savings to the contracting agency;
3. That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or
4. That efficient utilization of existing goods requires the acquisition of compatible goods or services.

### **Advertising Contracts, Purchase of<sup>4</sup>**

The district traditionally purchases advertising in newspapers, however, the district may also purchase advertising in other media, such as radio, television or the internet. Advertising contracts may be procured without competitive procurement based on findings of:

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<sup>2</sup> For additional guidance, see OAR 125-247-0691.

<sup>3</sup> Specification may include a description of any requirement for inspecting, testing or preparing goods or services for delivery.

<sup>4</sup> See OAR 125-247-0288(5) for additional guidance.

1. Advertisements are placed in a particular source because of the specific audience that source serves;
2. Competition to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the district is limited;
3. Cost savings are difficult to quantify where the sources are unique and not interchangeable;
4. Advertisements may be placed to satisfy legal notice or Board policy requirements;
5. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area and other publications, as appropriate;
6. The communities served by the district rely upon its use of the local daily newspaper as a central source of news and information regarding district activities; or
7. It is unknown whether contracts for advertisements placed with radio, television, the internet or other media are going to result in cost savings if not placed for competitive bid or request for proposal (RFP). If possible, savings could be obtained through competitive means, the district would attempt to obtain competitive quotes or bids, as appropriate.

### **Advertising Contracts, Sale of**

The district may sell advertising for district publications and activities, regardless of a dollar amount, without competitive bidding, including school newspapers, yearbooks, athletic programs, drama or music programs and the like.

Sales of advertising for student activities are generally other fund revenues, where student groups solicit advertisements from local businesses to help with the cost of the activity itself. A common example is the sale of advertising in school newspapers and yearbooks. The district itself would not achieve any increased revenue to the General Fund by seeking competitive bids or proposals for such advertising. This holds true for other student activities, such as athletics, drama or music events and the like.

### **Equipment Repair and Overhaul<sup>5</sup>**

The district may enter into a public contract for equipment repair or overhaul without competitive bidding when competitive procurement is not practical. This may include when service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing, or service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source. The district will use a competitive procedure to the extent practicable.

If the repair or overhaul qualifies as an emergency, the district may use emergency procurement procedures.

### **Copyrighted Materials**

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<sup>5</sup> For additional guidance, see OAR 127-247-0288(6).

Contracts for the procurement or distribution of textbooks are exempt from public procurement requirements. Purchase of copyrighted materials available from only one source may be procured through the sole source procedures. Requests for special procurement approval for the purchase of other copyrighted materials may be submitted to the LCRB with supporting information.

### **Used Personal Property or Equipment, Purchase<sup>6</sup>**

The district may purchase used property or equipment without obtaining competitive bids or quotes, if at the time of purchase, the LCRB has determined that the purchase will result in substantial cost savings to the district or promote the public interest and will unlikely diminish competition or encourage favoritism. “Used personal property or equipment” is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used,” at the time of district purchase.

### **Information Technology and Telecommunication Contracts<sup>7</sup>**

The district may enter into a contract to acquire information technology hardware and software and services (including telecommunications) without competitive bidding if, the LCRB has determined that the purchase will result in substantial cost savings to the district or promote the public interest and will unlikely diminish competition or encourage favoritism.

### **Renegotiation of Existing Contracts with Incumbent Contractors**

The district may amend or renegotiate contracts with existing vendors, service providers or other parties in accordance with OAR 137-047-0800.

### **EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS**

Oregon law<sup>8</sup> allows for exceptions to competitive bidding for public improvement contracts or classes of contracts when the LCRB approves findings that:

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the district.

In approving a finding, the LCRB shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

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<sup>6</sup> For additional guidance, see OAR 125-247-0288(10). When contracting with another governmental entity, a district has a statutory exception under ORS 279A.025. The district may purchase state/federal surplus property through the Department of Administrative Services, State Services Division for Surplus Property. For more information on this program, contact DAS at 503-378-4714.

<sup>7</sup> For additional guidance, see OAR 127-247-0185.

<sup>8</sup> See ORS 279C.335.

1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed public improvement;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the public improvement;
5. The cost and availability of specialized expertise that is necessary for the public improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
8. Whether granting the exemption will affect the sources of funding for the public improvement;
9. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
11. Whether the public improvement involves new construction or renovates or remodels an existing structure;
12. Whether the public improvement will be occupied or unoccupied during construction;
13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

In granting this exemption, the LCRB shall:

1. If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;
2. Require and approve or disapprove written findings by the district that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirements. The findings must show that the exemption complies with the requirements outlined in this administrative regulation; and
3. If the procurement involves construction manager/general contractor services, require the district conduct the procurement in accordance with OAR 137-049-0690.

Notification of a proposed exemption under this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the LCRB intends to take action to approve or disapprove the exemption. The notice must state that in response to a written request, the district will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.<sup>9</sup> If a hearing is held, the district shall offer an opportunity for any interested party to appear and comments. If the district must act promptly because of circumstances beyond the district's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the district's solicitation of contractors, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

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<sup>9</sup> The district may hold a hearing even if there is no written request.



## Fern Ridge School District 28J

Gary E. Carpenter Jr.  
Superintendent

88834 Territorial Road, Elmira, OR 97437  
Phone: (541) 935-2253  
Fax: (541) 935-8222

### **Classified/Confidential/Manager/Coach Employees Resignations/New Hires/Transfers/Other Report**

July 15, 2024

#### Resignations/Retirements

1. None at this time.

#### New Hires/Transfers

1. Hiring of Brody Bothel, temporary summer grounds/maintenance, effective June 17, 2024 to August 28, 2024.
2. Hiring of Robin Younger, temporary summer grounds/maintenance, effective July 1, 2024 to August 23, 2024.
3. Hiring of Jennifer Parsons-Licht, 7.00 Instructional Behavior Assistant at Elmira Elementary School, effective August 26, 2024.
4. Hiring of Kiffany Oxnam, 3.00 Instructional Assistant at Veneta Elementary School, effective August 26, 2024.
5. Hiring of Brittaney Webb, 1.0 FTE Custodian, effective July 1, 2024.
6. Hiring of Owen Lounsbury, 1.0 FTE Custodian, effective August 7, 2024.

#### Other

1. None at this time.

#### Coaches

1. Resignation of Kobe Bechtel, JV Boys Basketball Coach at Elmira High School, effective April 17, 2024.
2. Transfer of Jamal Wilson from JV Boys Basketball Coach to JV II Boys Basketball Coach at Elmira High School, effective the 2024-2025 season.
3. Hiring of James Duty, JV Boys Basketball Coach at Elmira High School, effective the 2024-2025 season.
4. Resignation of David Cadaret, JV Girls Basketball Coach at Elmira High School, effective April 17, 2024.

*The Fern Ridge School District is an equal opportunity educator and employer.*

5. Hiring of Nick Anderson, JV Girls Basketball Coach at Elmira High School, effective the 2024-2025 season.