



PUBLIC PROCUREMENT

**Purchasing and Contracting Basics
for Public Entities**

Topics

- **Applicable Statutes and Administrative Rules**
- **Competition Requirements**
- **Formal Solicitations**
- **Cooperative Procurement**
- **Business Equity/ Socially Responsible Procurement**
- **Public Contracting - Essential Terms, Risks**

Applicable Law - State and Local

- **Oregon State Statutes (ORS Chapters 279A, 279B, and 279C)**
- **Oregon Attorney General's Model Rules (OAR Chapter 137, Divisions 46 through 49)**
- **Local Agency Rules (e.g., PPS Public Contracting Rules)**

Applicable Law - Federal

- **Code of Federal Regulations Procurement Standards (2 CFR Part 200 Subpart D)**
 - Applies to procurements using federal funds
 - Less flexible than Oregon procurement law
 - Very few competition exceptions
 - Lower competition dollar thresholds

Why So Many Rules?

Purpose of Public Procurement Law:

- Competition
- Transparency/Integrity
- Quality/Value/Effectiveness
- Price
- Accountability
- Public Trust
- Prevention of Fraud and Waste
- Leverage government purchasing to promote social goals

Not Covered by Public Procurement Rules

- Intergovernmental Agreements**
- Purchase or Sale of Real Property**
- Grants and Other Revenue Agreements**
- \$0 Contract Types**
 - e.g., Memorandum of Understanding, Nondisclosure Agreement

Competition Thresholds

- **Formal vs. Informal vs. Direct Award**
- **Oregon law: Depends on Price and Type of Good or Service**
 - **Construction**
 - **Architecture/Engineering/Related Services**
 - **Goods and Services**
 - **Personal Services**

Competition Thresholds - Oregon

Type of Good or Services	Informal - Quotes or Informal Proposals	Formal - Requests for Proposals or Invitations to Bid
Construction	>\$25,000	>\$100,000
Architecture and Engineering	>\$100,000	>\$250,000
Goods and Services	>\$25,000	>\$250,000
Personal Services	It depends	
Federally Funded (All types)	>\$10,000 (maybe)	>\$250,000

Competition Exceptions

- **Emergency**
- **Sole Source**
- **Agency-Adopted Special Class Procurements**
 - Examples:
 - Advertising
 - Insurance and Employee Benefits
 - Copyrighted Materials Available from Only One Source
 - Artwork
 - Software Available from Only One Source
 - Space Rentals

Competition Exceptions

- **Agency-Adopted Personal Services Direct Negotiation Rules**
 - Examples:
 - Specialized service area requiring unique knowledge or expertise
 - Interim or temporary staffing contract
 - Medical services
 - Legal services

Formal Solicitations - All Types

- **Publicly Advertised**
- **Open to Any Qualified Bidder/Proposer**
- **Strictly Enforced Due Date and Time**
- **Disqualify Bid or Proposal for Failure to Meet all Mandatory Requirements**
 - e.g., Lead Based Paint Remediation License or Asbestos Abatement License, Failure to Submit Signed Certifications, Exceeding Mandatory Page Limits
- **Ability to Protest Award and Seek Judicial Review**

Formal Solicitations - Invitations to Bid (Low Bid)

- **Must have detailed specifications**
- **Required in Oregon for construction/public improvements (unless CM/GC or Board adopts exception)**
- **Award is to the lowest bidder who is responsive and responsible**

Formal Solicitations - Requests for Proposals

- **Evaluation categories and points**
- **May include both written and interview evaluation**
- **Evaluation committee scores proposals**
- **Award is to the highest scoring or highest ranked proposer**
- **Can award to multiple proposers**

Cooperative Contracting

- **Contract formally solicited and negotiated by another public entity or cooperative procurement group**
- **Contract explicitly allows other public entities to purchase off of the contract under same terms**
- **Original solicitation must comply with Oregon Public Procurement Law**
 - e.g., publicly advertised solicitation, award to highest scored proposal or lowest bid

Cooperative Contracting

- Frequently used for goods (e.g., food products, school and office supplies, park equipment) and simple services (e.g., snow removal, lawn maintenance)
- **Benefits:**
 - **Efficiency**
 - **Nationwide Reach**
 - **Economies of Scale**

Business Equity

- **Goal: Provide public contracting opportunities to minority-owned businesses (MBE), women-owned businesses (WBE), veteran-owned businesses (SDVBE), and emerging small businesses (ESB)**
- **Certification as an MBE, WBE, SDVBE, and/or ESB (“Certified Businesses”) is through the Oregon Certification Office for Business Inclusion and Diversity (COBID)**

Business Equity

Methods to Increase Business Diversity:

- **Direct Award:** Where no competition is required, encourage direct award to Certified Businesses
- **Informal Procurements:** Require one or more quotes or proposals be sought from Certified Businesses
- **Formal Procurements:**
 - **RFPs:** Include evaluation criteria around efforts to solicit and utilize Certified subcontractors and partners
 - **ITBs:** Require “good faith efforts” to reach out to Certified subcontractors before bidding on construction projects
- **Overall:** Emphasize Business Equity Goal in solicitations and contracts; outreach and education

Socially Responsible Procurement - Other Examples

- **Construction Workforce Training and Diversity:**
 - **Require apprentice usage** (e.g., 20% of all trade hours)
 - **Include minority and women diversity goals** (e.g., 14% female hours, 25% minority hours)
- **Sustainability:**
 - **Include sustainability criteria in evaluation criteria in RFPs**
 - **Include sustainable methods or green products in specifications in quotes or bids**

Contracting - Essential Terms

- Insurance - types and amounts
- Indemnity
- Termination
 - for cause (breach) or no cause
 - effect of termination
- Remedies possibly including liquidated damages

Contracting - Essential Terms

- Mandatory Statutory Terms
- Prevailing Wages - BOLI or Davis Bacon
- Federally Funded Contracts - Federal Terms
- Specific terms relevant to public entity's scope (e.g., protection of student data, building security, confidentiality, criminal background checks, required training)

Contractor vs. Employee

Independent Contractor	Employee
Does work that is project-based, temporary, or sporadic	Does work that is part of the ongoing, regular business of the entity
Operates their own business and offers services to other entities	May work only for entity, and entity determines work hours
Provides their own liability insurance and benefits; pays their own expenses	Entity provides benefits, mileage, and expense reimbursement
Can subcontract or assign work to others	Cannot subcontract or assign work to others

Contractor vs. Employee

Independent Contractor	Employee
Provides their own equipment and tools for the job	Entity provides dedicated workspace, email, phone, and other equipment for job
Controls the details of the work and decides how the work will be performed	Entity controls, supervises, and directs the work

Risks of improper classification:

- Wage law violations
- Unpaid employment taxes
- Unpaid unemployment insurance and worker's comp
- Protected leave violations (FMLA, OFLA) and other improperly denied benefits

Contracting - Authorized Signers

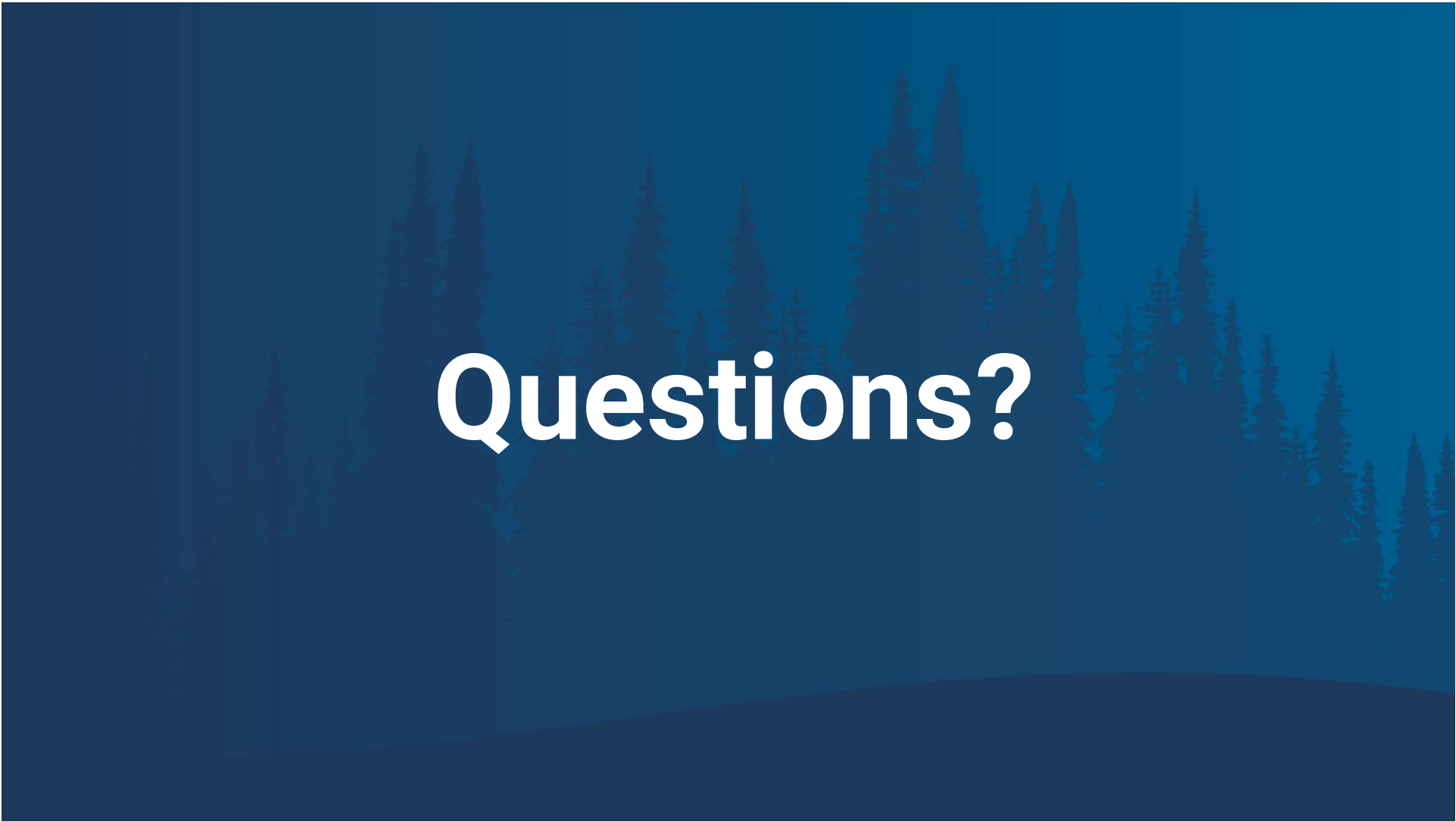
- Should be clearly defined in rules or policy
- Should be limited to those who understand public procurement rules
- May require elected Board approval
- Risks:
 - Signing for entity by employee who is not familiar with competition requirements or essential contract terms
 - Using vendors' forms
 - Need central repository for all authorized contracts

Contracting - Additional Risks

- Inadequately defined scope, deliverables, or payment structure
- Work starting before contract in place (or work extending beyond contract expiration)
- Amendments or change orders crossing competitive procurement threshold
- Limitations of liability

Contracting - Other Considerations

- Other purchasing methods:
 - Purchase Order
 - PCard
- Designated Contract Manager with clearly defined responsibilities
- Written evaluation of contract outcomes, contractor timeliness and effectiveness



Questions?