

ORDINANCE NO. 677

AN ORDINANCE ADOPTING RULES TO BE KNOWN AS THE CITY OF AUMSVILLE PUBLIC CONTRACTING REGULATIONS AND REPEALING ORDINANCE NO. 559.

The City of Aumsville ordains as follows:

Section 1. Short Title. The provisions of this ordinance and all rules adopted under this ordinance may be cited as the city of Aumsville's "Public Contracting Regulations."

Section 2. Policy.

- (A) Purpose of Public Contracting Regulations. These regulations are publicized by Council as the local contract review board ("Board"), as the governing body and local contract review board of the City of Aumsville; for the purpose of establishing the rules and procedures for contracts entered into by the City. It is the policy of the City in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - 1. promoting impartial and open competition;
 - 2. using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - 3. taking full advantage of evolving procurement methods that suit the contracting needs of the City as they emerge within various industries.
- (B) Interpretation of Public Contracting Regulations. In furtherance of the purpose of the objectives set forth in subsection A, it is the City's intent that the City of Aumsville's Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B, and 279C.

Section 3. Application of Public Contracting Regulations.

- (A) In accordance with ORS 279A.025 the City's Public Contracting Regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.
 - 1. Between Governments. Contracts between the City and another contracting agency or between the City and another governmental body, including the federal government.
 - 2. Grants. A grant contract is an agreement under which the City is either a grantee or a grantor of monies, property, or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions. The making or receiving of a grant is not a Public Contract subject to the Oregon Public Contracting Code; however, the expenditure of any grant received by the City is subject

to these regulations and the expenditure of grants made by the City to construct a public improvement or public works project is subject to these Public Contracting Regulations.

3. Legal Witnesses and Consultants. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested.
4. Real Property. Acquisitions or disposals of real property or interests in real property. This exemption includes the City granting or receiving an interest in real property that may be less than fee title to property, including a lease, an easement, or a license.
5. Textbooks. Contracts for the procurement or distribution of textbooks.
6. Oregon Corrections Enterprises. Procurements from an Oregon corrections enterprises program.
7. Finance. Contracts, agreements, or other documents entered into, issued, or established in connection with:
 - a) The incurring of debt by the City, including any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special, or limited;
 - b) The making of program loans and similar extensions or advances of funds, aid, or assistance by the City to a public or private person for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - c) The investment of funds by the City as authorized by law, or
 - d) Other predominantly financial transactions of the City that, by their character, cannot practically be established under the competitive contractor selection procedures, as determined by the city administrator.
8. Employee Benefits. Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303, and 243.565.
9. Exempt Under State Laws. Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of state law.
10. Federal Law. Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

Section 4. Authority of City Council. Except as expressly delegated under these regulations, Council reserves to itself the exercise of all of the duties and authority of a contract review board under state law, including, but not limited to, the power and authority to:

- (A) Solicitation Methods Applicable to Contracts. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

- (B) Brand Name Specifications. Exempt the use of brand name specifications for public improvement contracts;
- (C) Waiver of Performance and Payment Bonds. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- (D) Electronic Advertisement of Public Contracts.
- (E) Appeals of Debarment/Disqualification and Prequalification Decisions. Hear properly filed appeals of the city administrator's determination of debarment, or concerning prequalification;
- (F) Rulemaking. Adopt additional contracting rules pursuant to ORS 279A.055, 279A.065, and 279A.070, including, without limitation, rules for the procurement, management, disposal, and control of goods, services, personal services, and public improvements; and
- (G) Award. Award all contracts that exceed the authority of the city administrator.

Section 5. Model Rules. The Model Rules adopted by the Attorney General under ORS 279A.065 do not apply to the contracting procedures of the City, except as otherwise provided by the Public Contracting Code or if the city administrator determines they are necessary to supplement this ordinance, and then they will apply only to the extent that they do not conflict with these Public Contracting Regulations or other contracting rules adopted by the Board.

Section 6. Definitions. For the purposes of these regulations, the following definitions apply:

Addendum or Addenda: Additions or deletions to, material changes in, or general interest explanations of the City's Solicitation Documents.

Affected Person: A person whose ability to participate in a procurement is adversely affected by the City.

Authorized Representative: The owner of a sole proprietorship, a partner in a firm or partnership, or, a person authorized to bind by a corporation's board of directors.

Award: The selection of a person to provide goods, services, or public improvements under a public contract. The award of a contract is not binding on the City until the contract is executed and delivered by the City.

Bid: A binding, sealed, written offer to purchase surplus property, or provide goods, services, or public improvements for a specified price or prices.

Bid or Proposal Bond/Bid or Proposal Security: A means of securing execution of an awarded contract.

Bidder: An Offeror who submits a bid in response to the City's Invitation to Bid.

Board: The local contract review board, which is the Aumsville City Council.

Closing: The closing of a solicitation is the end of the period in which bids or proposals may be submitted. The closing date and time must be specified in the solicitation documents.

City: City of Aumsville, Oregon

Cooperative Procurement: A procurement conducted by or on behalf of one or more contracting agencies.

Conduct Disqualification: A disqualification pursuant to ORS 279C.440.

Concession Agreement: A contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, goods or services, specified by the city administrator, from real property owned or managed by the City, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license, lease, or permit for the use of the premises.

Contract: See definition for "Public Contract."

Contract Price: The total amount paid or to be paid under a contract, including bonuses, incentives, contingency amounts, approved alternatives, and any fully executed change orders or amendments; if the contractor fully performs under the contract; or the maximum not-to-exceed amount of payments specified in the contract; or the unit price for goods or services or personal services set forth in the contract.

Contractor: The person with whom the City executes a Public Contract.

Debarment: A declaration by the Board or city administrator under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City's public contracts for a prescribed period of time. The term used in ORS Chapter 279C is "disqualification" and it is synonymous with "debarment."

Disposal: Any arrangement for the transfer of property by the City under which the City relinquishes ownership.

Emergency: Circumstances that create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety; and requires prompt execution of a contract to remedy the condition.

Energy Savings Performance Contract: A contract with a qualified energy service company for the identification, evaluation, recommendation, design, and construction of energy conservation measures that guarantee energy savings or performance.

Findings: Are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance, and funding sources.

Goods and services/goods or services: Any item or combination of supplies, equipment, materials, and services other than personal services designated under ORS 279A.055, or other personal property, including tangible, intangible, and intellectual property and rights and licenses in relation thereto.

Informal Solicitation: A solicitation made in accordance with the City's public contracting regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Invitation to bid: A publicly advertised request for competitive sealed bids.

Model Rules: The public contracting rules adopted by the Attorney General under ORS 279A.065.

Nonresident Bidder: A bidder who is not a resident bidder as defined in this section.

Offeror: A person who submits a bid, quote, or proposal to enter into a public contract with the City.

Opening: The date, time, and place announced in the solicitation document for the public opening of written, sealed offers.

Oregon Public Contracting Code: ORS chapters 279A, 279B, and 279C.

Owner: The city of Aumsville, acting through its legally constituted Council.

Person: A natural person or any other private or governmental entity having the legal capacity to enter into a binding contract.

Proposal: A binding offer to provide goods, services, or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or under an informal solicitation.

Personal Services: The services or type of services performed under a Personal Services Contract.

Personal Service Contract: A contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of judgement skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of, architects, engineers, land surveyors, attorneys, auditors, and other licensed professionals, administrators, artists, computer programmers, consultants, designers, performers, and property managers. The city administrator shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Procurement. The act of purchasing, selling, leasing, renting, or other acquisition or disposal by the city of goods, services, public improvements, public works, and personal property, and personal services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a contract, administer a contract, and obtain the performance of a contract under the State Public Contracting Code.

Public Contract: A sale or other disposal, or a purchase, lease, rental, or other acquisition, by the City of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. Public Contract does not include grants.

Public Improvement: A project for construction, reconstruction, or major renovation on real property by or for the City. "Public improvement " does not include:

- (A) Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (B) Emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.

Qualified Pool: A pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

Quote: A price offer made in response to an informal or qualified pool solicitation to provide goods, services, or public improvements.

Request for Proposals: A publicly advertised request for sealed competitive proposals.

Resident Bidder: A bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

Solicitation: An invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications, or letter of interest to the City with respect to a proposed project, procurement, or other contracting opportunity. The work "solicitation" also refers to the process by which the City requests, receives, and evaluates potential contracts and awards public contracts.

Solicitation Agent: With respect to a particular solicitation or contract the staff member charged with the responsibility for conducting the solicitation and making an award or making a recommendation on award to the Board.

Solicitation Documents: All informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations, and documents incorporated by reference.

Standards of Responsibility: The qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- (A) Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- (B) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (C) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (D) Qualified legally to contract with the City;
- (E) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- (F) Not been debarred by the City, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus Property: Personal property owned by the City which is no longer needed for use by the City.

Section 7. Authority of City Administrator.

(A) General Authority.

1. Solicitation Agent. The city administrator is designated as the solicitation agent for all City contracts and concession agreements and will possess the authority granted to a "contracting agency" under the Public Contracting Code, subject to the limitations of these Public Contracting Regulations. The solicitation agent may award contracts for which the contract price does not exceed \$50,000, without additional authorization of the Board; provided there is a current fiscal year budget appropriation; or supplemental budgetary authority from Council, with respect to the contract, is approved. For all other contracts the solicitation agent shall conduct the solicitation and make a recommendation to the Board. The solicitation agent shall award all concession agreements that can be awarded under an informal solicitation or by direct appointment, and shall have authority to award all purchases of surplus property.
2. Execution and Delivery. The city administrator has the authority to execute and deliver on behalf on the City all contracts that the city administrator has the power to award, and all amendments to such contracts. All other contracts and amendments shall be executed by the officer designated by the Board or designee.
3. Publicize Forms and Materials. Subject to the provisions of these Public Contracting Regulations, the city administrator may adopt and amend all solicitation materials, contracts, and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City's contracting needs. The city administrator shall hear all solicitation and award protests.

(B) Delegation of City Administrator's Authority. Any of the responsibilities or authorities of the solicitation agent or the city administrator under this ordinance may be delegated and sub-delegated by written directive.

(C) Solicitation Preferences. When possible, the city administrator shall use solicitation documents and evaluation criteria that:

1. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability, and quality are otherwise equal; and
2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

(D) Purchasing From City Officials. The city administrator shall not make any purchase of goods and services from any City official, or any business with which a City employee is associated; except when the purchase is expressly authorized by the Board; or during a state of emergency. In any situation in which the city administrator believes that a purchase would cause an appearance of impropriety, regardless of whether the purchase is prohibited by this or any other public contracting code provision, the city administrator may forward the proposed purchase to the Board for approval.

- (E) Mandatory Review of Rules. Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify the Model Rules, the city administrator shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the Board any modifications required to ensure compliance with statutory changes.
- (F) Guidelines to Implement Public Contracting Regulations. The city administrator may adopt guidelines and other materials to assist staff and the public with the implementation of these regulations. Such guidelines shall be consistent with these regulations and may include flowcharts to guide staff in the City's day-to-day procurement activities.

Section 8. Personal Service Contracts. Personal services contracts are subject to the regulations established by this section:

- (A) Procedures for the Screening and Selection of Persons to Perform Personal Services.
 - 1. Any Personal Services Contract. Personal services contracts in any amount may be awarded under a publicly advertised request for proposals in accordance with ORS 279B.060.
 - 2. Discretionary Award. The following personal service contracts may be awarded under any method deemed in the City's best interest by the city administrator, including by direct appointment; subject to approval by Council when required by this ordinance.
 - a) Contracts for which the solicitation agent estimates that payments will not exceed \$20,000 in any fiscal year.
 - b) Contracts for legal services for the City.
 - c) Contracts with architects, engineers, surveyors, and other professionals identified in ORS 279C.100 that involve "related services" as that term is defined in ORS 279C.100(8).
 - 3. Personal Service Contracts Not Exceeding \$150,000. Contracts for personal services for which the estimated contract price does not exceed \$150,000, may be awarded using an informal solicitation for proposals.
 - 4. Personal Service Contracts for Continuation of Work. Contracts of not more than \$200,000 for the continuation of work by a contractor who performed preliminary studies, analysis, or planning for the work under a prior contract may be awarded without competition, if the prior contract was awarded under a competitive process, and the city administrator determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
 - 5. \$75,000 Award from Qualified Pool. Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.
- (B) Procedures for Screening and Selection of Persons to Perform Architectural, Engineering, Surveying, or Other Professional Services Governed by ORS 279C.105.

1. Intent. This section implements the qualification-based selection ("QBS") requirements contained in the Public Contracting Code (ORS 279C.100 through 279C.125). The City will rely on this section, not the Model Rules, when it is required to follow the QBS process.
2. Applicability. This section only applies when the services the City seeks are legally required to be performed by an architect, engineer, land surveyor, photogrammetrist or, in certain narrow instances, a transportation planner. If the services qualify as a "related service" as that term is defined in ORS 279C.100(8), the City may rely on Section 8(A) of these rules to award a contract.
3. Methods of Award.
 - a) Direct Award. The City may award a contract directly to a consultant of its choosing under this section:
 - i. If the estimated amount the City will pay a consultant for the consultant's services does not exceed \$100,000;
 - ii. In an emergency; or
 - iii. If the City previously had a contract with the consultant for the same or a substantially similar project and the prior contract was awarded in accordance with these regulations, including prior versions of these regulations.
 - b) RFP. If the City cannot award a contract directly to a consultant, the City will issue an RFP and advertise it in any manner it deems appropriate. If the City directly solicits proposals from consultants, it will contact at least three.
 - i. Criteria. The screening and selection procedures in the RFP will at least include consideration of a consultant's experience, resources, record of past performance, and familiarity with the City and its needs. The RFP must also contain the information required by ORS 279C.110(5)(a). Subject to the limitations in subsection (ii) below, the City may include consideration of additional screening criteria on a case-by-case basis.
 - ii. Costs. The City will consider a consultant's cost and pricing information as part of its screening and selection process in accordance with ORS 279C.110(5). After completing an initial evaluation of consultants pursuant to the criteria in the RFP, the City will announce the initial evaluation scores and rank each of the prospective consultants. The City may then determine that as many as three of the top-ranked consultants are qualified to perform the services and may request a pricing proposal from each consultant in accordance with ORS 279C.110(5)(c). The value assigned to the pricing proposal may not exceed 15 percent of the weight of the total score the City uses to evaluate consultants.
 - iii. Negotiation. After the City completes its evaluation of the top ranked consultants and their respective pricing proposals, the City may select one of the top ranked consultants and proceed to negotiate a contract for the

services. If for any reason the parties cannot arrive at a mutually acceptable contract, the City may terminate negotiations and engage the next highest ranked consultant in negotiations.

- iv. Award. If a contract is negotiated, the City will notify other prospective consultants of its intent to award a contract.

Section 9. Public Contract Exemptions and Process for Approval of Special Solicitation Methods.

- (A) Authority of the City Council. Council upon its own initiative, or upon request of the city administrator, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.
- (B) Basis for Approval. The approval of an exemption from competition or special solicitation methods must be based upon a record before the Board that contains the following:
 - 1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - 2. The estimated contract price or cost of the project, if relevant;
 - 3. Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - 4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
 - 5. A description of the proposed alternative contracting methods to be employed; and
 - 6. The estimated date by which it would be necessary to let the contract(s).In making a determination regarding a special selection method, the Board may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
- (C) Hearing.
 - 1. Notice. The City shall approve the special solicitation or exemption after a public hearing before the Board following notice by publication in at least one publication of general circulation in the City. The notice shall be published at least seven days prior to the hearing. The Notice shall state that the purpose of the hearing is to consider findings in support of, as applicable:
 - a) A special procurement for a single contract or classes of contracts under ORS 2798.085; or
 - b) An exemption from competitive bidding for a single contract or class of contracts under ORS 279C.335.

The notice shall describe how copies of the draft findings may be obtained for review prior to the hearing and state that persons who wish to comment on or protest the considered action may appear and present testimony at the hearing.

2. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
 3. The Board will consider the findings and may approve the special solicitation or exemption as proposed or as modified by the Board after providing an opportunity for public comment.
 4. If the Board approves the special procurement(s) or exemptions(s) at the public meeting of the City Council following the hearing, or at a subsequent public meeting of the City Council, no published notice of the approval shall be required.
- (D) Public Improvement Contract Exemption Special Requirements.
1. Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade publication of general statewide circulation at least 14 days prior to the hearing.
 2. The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.
- (E) Commencement of Solicitation Prior to Approval. A solicitation may be issued prior to the approval of a special exemption under this Section 9, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Board approves the exemption. If the Board fails to approve a requested exemption or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or canceled.

Section 10. Solicitation Methods for Classes of Public Contracts. The City may encourage meaningful competition through a variety of solicitation methods. The solicitation agent shall choose the solicitation method that is most likely to encourage offers representing optimal value to the City. The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the Board. However, nothing in this section may be construed as prohibiting the City from conducting a procurement under competitive bidding or competitive proposal procedures.

- (A) Small Procurements - Direct Purchase or Appointment. The following classes of contracts may be awarded in any manner, which the solicitation agent deems appropriate to the City's needs, including by direct purchase or appointment.
1. Goods and Services Contracts Up to \$10,000. Contracts for goods and services for which the contract price does not exceed \$10,000, may be awarded as a small procurement.
 - a) Notwithstanding any other contrary provisions of these regulations, a goods and services contract awarded as a small procurement may be amended or re-negotiated without additional competition, with prior approval of the city administrator if it is

advantageous to the City; but the cumulative amendments shall not increase the total contract price to greater than \$12,500.

- b) State law prohibits a procurement from being artificially divided or fragmented, so as to constitute a small procurement under this section.
- 2. Public Improvement Contracts Up to \$5000. Contracts for a public improvement for which the contract price does not exceed \$5000 may be awarded as a small procurement. Contracts awarded pursuant to this subsection may be amended but the cumulative amendments shall not increase the total contract price to more than \$10,000.
- 3. Amendments. Contract amendments shall not be considered separate contracts, if made in accordance with the Public Contracting Regulations.
- 4. Advertising. Contracts for the placing of notice or advertisements in any medium.
- 5. Animals. Contracts for the purchase of animals.
- 6. Small Concessions. Concession agreements for which the city administrator estimates that receipts by the City will not exceed \$5,000 in any fiscal year, and \$50,000 in the aggregate may be awarded by any method deemed appropriate by the Solicitation Agent; including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
- 7. Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- 8. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without preliminary dismantling or testing.
- 9. Government Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- 10. Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145.
- 11. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
- 12. Sole Source Contracts. Contracts for goods or services, which are available from a single source, may be awarded without competition.
- 13. Specialty Goods for Resale. Contracts for the purchase of specialty goods by City for resale to consumers.
- 14. Sponsorship Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
- 15. Structures. Contracts for the disposal of structures located on City-owned property.
- 16. Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
- 17. Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently

expired, contract, other than a contract for public improvements.

18. Used Property. The city administrator, for procurements for procurements up to \$50,000, may contract for the purchase of used property by negotiation, if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City. There shall be a written record of the purchase.
19. Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
20. Hazardous Material Removal and Oil Clean-up. The City may acquire services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466.

(B) Intermediate Procurements - Informal Solicitation. The following classes of contracts may be awarded using the informal solicitation procedures in Section 12 of these regulations. State law prohibits a procurement from being artificially divided or fragmented, so as to constitute an intermediate procurement under this section.

1. Public Improvement Contracts.

- a) Public Improvements up to \$100,000. Public improvement contracts for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for competitive quotes. **Contracts in excess of \$100,000, unless approved for a special exemption, shall be issued in accordance with the provisions of ORS 279C;**
- b) Contracts for a public works project estimated to exceed \$50,000 shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, unless otherwise exempt under Oregon law.
- c) Use of Existing Contractors. When a public improvement is in need of minor alteration, repair, or maintenance at or near the site of work being performed by another City contractor, the City may hire that contractor to perform the work provided:
 - i. The contractor was hired through a competitive selection process permitted by these regulations;
 - ii. The solicitation agent first obtains a price quotation from the contractor that is competitive and reasonable or based on unit prices in the current contract;
 - iii. Any prevailing wage requirements are complied with and
 - iv. A change order is issued for the work.

2. Contracts for Goods and Services Exceeding \$10,000. The procurement of goods or services, for which the estimated contract price exceeds \$10,000, but not exceeding \$150,000, may be awarded under an informal solicitation for either quotes or proposals. **Public contracts for goods or services in excess of \$150,000 shall be let in accordance with the provisions of ORS 279B.**

3. Intermediate and Major Concessions. For Concession Agreements for which receipts by the City exceed \$5,000 in a fiscal year or \$50,000 in the aggregate, and the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less; the city administrator has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals. Major concession agreements, for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually, shall be awarded using a request for proposals.
- (C) Hybrid Contracts. The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.
 1. Design/Build and CM/GC Contracts. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals, but only if Council has approved an exemption in accordance with these regulations. The determination to construct a project using a design/build or construction manager/general contractor construction method may be approved by the Board if the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the City. All CM/GC contracts must also comply with ORS 279C.337 and the provisions in the Model Rules that govern the CM/GC delivery method.
 2. Energy Savings Performance Contracts. Unless the contract qualifies for award under another classification in this section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City's Public Contracting Regulations.
- (D) Purchases from Nonprofit Agencies for Disabled Individuals. The City shall purchase goods, services, and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.
- (E) Emergency Procurements.
 1. In General. When an official with authority to enter into a contract on behalf of City determines that immediate execution of a contract, within the official's authority, is necessary to prevent a substantial risk of loss, damage, or interruption of services; or a substantial threat to property, public health, welfare, or safety, the official may execute the contract without competitive selection and award or City approval; but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
 2. Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the city administrator or Board has made a written declaration of emergency. Any public improvement contract awarded under emergency conditions must be awarded within 60 days following the declaration of an emergency, unless the Board grants an extension of the emergency period. All such contracts, whether or not signed by the contractor, shall be deemed to contain a

termination for convenience clause permitting the City to immediately terminate the contract at its discretion and, unless the contract was void, the City shall pay the contractor only for work performed prior to the date of termination plus the contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the city administrator or Board may waive the requirement for all or a portion of required performance and payment bonds.

3. Reporting. An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, document the nature of the emergency; and for good or services contracts, describe the method used for the selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public; and notify the Board of the facts and circumstances surrounding the emergency execution of the contract.

(F) Surplus Property.

1. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the estimated value of the item and the manner of disposal.
2. General Methods. Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the City. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City. The Solicitation Agent shall maintain a record of the manner of disposal, including the name of the person to whom the surplus property was transferred.
 - a) Auction. By publicly advertised auction to the highest bidder.
 - b) Bids. By public advertised invitation to bid.
 - c) Donation. By donation to any non-profit cause or organization operating within or providing a service to residents of the City.
 - d) Governments. Without competition, by transfer or sale to another public agency.
 - e) Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 - f) Liquidation Sale. By liquidation sale using a commercially recognized third- party liquidator selected in accordance with rules for the award of personal services contracts.
 - g) Trade-In. By trade-in, in conjunction with acquisition of other price-based item under procurement. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
3. Restriction on Sale to City Employees. City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property,

but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

4. Personal-Use Items. An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the city administrator.
 5. Police Officers' Handguns. Upon honorable retirement from service with the City, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the City shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
 6. Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the City shall make, execute, and deliver, a bill of sale signed by the city administrator, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.
- (G) Federal Purchasing Programs. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.
1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the city administrator. The Solicitation Agent shall provide the city administrator with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the City to purchase under the federal program.
 2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
 3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.
 4. If a single purchase of goods or services exceeds \$150,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

- (H) Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code, ORS 279A.200-225.
- (I) Report to City Council on Non-Bid Public Improvement Projects.
1. Upon completion of and final payment for any public improvement contract, or class of public improvement contracts described in ORS 279A.050 (3) (b), in excess of \$100,000; for which the City did not use the competitive bidding process, City staff shall prepare and deliver to the City Council an evaluation of the public improvement project, or class of public improvement contracts. The evaluation shall include but not be limited to the following matters:
 - i. The actual project cost as compared with original project estimates;
 - ii. The amount of any guaranteed maximum price;
 - iii. The number of project change orders issued by the Owner;
 - iv. A narrative description of successes and failures during the design, engineering, and construction of the project; and
 - v. An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.
 2. Evaluations required by this section must be made available for public inspection, and be completed within 30 days of the date that the Contracting Agency accepts:
 - i. The public improvement project; or
 - ii. The last public improvement project if the project falls within a class of public improvement contracts.

Section 11. Sole Sources.

- (A) Determination of Sole Source. A sole source contract is a contract with a vendor who is the only responsible source for the goods, services, or personal services required by the City. A determination of sole source may be made by the city administrator based upon written findings that demonstrate that the contractor is a sole source, and that alternative goods, services, or personal services would be unsatisfactory for the City's needs based on factors that may include any of the following:
1. A record that no qualified vendors responded to a notice issued in accordance with Subsection B;
 2. A written statement from a manufacturer established as a sole source that the product is only available to the City from a single point of sale;
 3. Written evidence that the contract is for a patented product and that the proposed vendor is the exclusive holder of a right to sell the product;
 4. Records of research that demonstrate that only one suitable source for the goods or service exists and that alternate goods or services do not meet the City's requirements, including, without limitation, that efficient utilization of existing goods requires the acquisition of compatible goods or services; or
 5. A statement that the goods or services are for use in a pilot or experimental project.

- (B) Manner of Notice. The record that a contractor is a sole source may be established if no qualified alternative sources responded to a public notice of the City's requirements. The notice shall be published at least five business days before contract execution and shall:
 - 1. Describe the goods, services, or personal services sought;
 - 2. State the estimated amount of the contract;
 - 3. Request statements of ability to provide the identified goods, services, or personal services from vendors who are qualified to compete for the contract, and
 - 4. State that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Manager will proceed with a sole-source award.
- (C) Method of Selection. Sole source contracts may be awarded pursuant to direct negotiation with the sole source contractor, without competitive solicitation.

Section 12. Informal Solicitation Procedures and Qualified Pools. When authorized by these regulations, the City may use the following procedures for informal solicitations, and a contract may be awarded using the informal solicitation procedures described in this section.

- (A) Record of Contract Requirements and Evaluation Criteria. The Solicitation Agent shall make a written record of the contract requirements and criteria upon which the award will be based before conducting the solicitation. This record shall be used to provide all potential offeror with the same information concerning the contract requirements and the manner in which their offers will be evaluated.
- (B) Contact with Potential Offerors. The Solicitation Agent request for quotes or proposals may be by general or limited distribution to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner that the Solicitation Agent deems suitable for obtaining a sufficient number of competitive quotes or proposals.
- (C) Number of Offers. The Solicitation Agent shall attempt to obtain at least three responsive quotes or proposals from offerors who are qualified to perform the contract unless three offers cannot be reasonably obtained. If fewer than three quotes or proposals are reasonably available, fewer will suffice, but the Solicitation Agent shall make a record of the efforts made to obtain the offers.
- (D) When Written Solicitation Required. The request for offers and the receipt of offers shall be made in writing in the following cases:
 - 1. Contracts for Goods, Services, or Personal Services. If the estimated Contract Price will exceed \$75,000, the Solicitation Agent shall request written quotes or proposals using a written description of contract requirements and award criteria.
 - 2. Contracts for Public Improvements. The Solicitation Agent shall request written quotes for all public improvement contracts and shall present the description of contract requirements and award criteria using written materials unless the information can be given by other means in a conference or oral presentation at which all potential offerors are present and have an opportunity to ask questions. Notwithstanding the foregoing sentence, when soliciting quotes for a public works project, the Solicitation Agent must deliver all written materials, including written copies of the prevailing wage rates required by the Bureau of Labor and Industries.
- (E) Basis for Award. Selection of contractors for goods, services, and personal services shall be

based on the quote or proposal that is most advantageous to the City. The selection criteria for public improvement contracts shall be based on quotes but may include a consideration of, and ranking of other factors in addition to, price, such as experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors. The Solicitation Agent shall make a written record of all offerors, the prices quoted and, if the award was made on a basis other than price, a record of the evaluation of each offer, and the basis for award.

- (F) Discussions and Negotiations. The Solicitation Agent may discuss the solicitation requirements for any type of informal solicitation with potential offerors and may discuss a quote or proposal with an offeror to clarify its quote or proposal or to effect modifications that will make the quote or proposal responsive to the solicitation requirements. Except for solicitations involving public improvements, after all initial quotes have been received and recorded, the solicitation agent may negotiate with an offeror to effect modifications that will make the quote or proposal more advantageous to the City. The Solicitation Agent may not disclose the price offer or terms of one offeror to another during discussions prior to contract award.
- (G) Amendment. A contract awarded using an Informal Solicitation may be amended only as provided in these regulations.
- (H) Qualified Pools.
 - 1. Purpose of Qualified Pools. In lieu of prequalification on a contract-by-contract basis, the City may establish qualified pools that can be used on a continuous basis for the selection of contractors when direct appointment or Informal Solicitation is otherwise authorized by these regulations.
 - 2. Creation of Qualified Pool. To create a qualified pool, the city administrator may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services and public improvements.
 - 3. Advertisement. The invitation to participate in a qualified pool shall be advertised, at the discretion of the Solicitation Agent, by publication in a publication of general circulation in the Aumsville area, by electronic publication as permitted in these regulations or by any other method that the Solicitation Agent deems desirable to develop a sufficient pool of qualified vendors. The advertisement shall be made at the time of initial formation and whenever the qualified pool contract is subject to re-opening or renewal. If the pool is open to entry at any time, and is continuously advertised on the City's website, no additional advertisement shall be required.
 - 4. Qualification for Participation. A qualified pool shall be open for entry not less than once in each three years. Standards for participation in a qualified pool may include the applicant's financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City. The City may also require, as a condition to participation, that the applicant furnish additional materials such as proof of licensure, insurance, insurance endorsements to protect the interests of the City, material concerning performance and fidelity bonds, and that the

applicant agree to the terms and conditions of participation in the qualified pool. The qualifications for participation in each qualified pool shall be set forth in writing, but may be changed at any time, provided that all participants are notified of the change.

5. Contents of Solicitation. Requests for participation in a qualified pool shall describe the scope of goods or services or personal services for which the pool will be maintained, and the minimum qualifications for participation in the pool.
6. Use of Qualified Pools. The Solicitation Agent may use a qualified pool to make direct appointments as authorized in these regulations or to obtain quotes or proposals for an informal solicitation but shall not be limited to selection from a qualified pool. Participation in a qualified pool shall not entitle any participant to the award of a City contract.
7. Amendment and Termination. The Solicitation Agent may discontinue a qualified pool at any time or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
8. Protest of Failure to Qualify. The Solicitation Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal the Solicitation Agent's decision to the city administrator in the manner described in Section 17.

Section 13. Requirements for Invitation to Bids and Request for Proposals.

- (A) Unless otherwise provided in these regulations, all formal bids, and proposals made to the City shall:
1. Be in writing.
 2. Be filed with the solicitation agent before closing. Any offer received after the closing is late. An offeror's request for withdrawal or modification of an offer received after the closing is late. The City shall not consider late offers or late modification of an offer or late withdrawal of an offer.
 3. Be opened publicly by the City at the date, time, and place designated in the solicitation.

Section 14. Use of Brand Name Specifications for Public Improvements.

- (A) In General. Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
1. It is unlikely that such exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; or
 2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City; or
 3. There is only one manufacturer or seller of the product of the quality required; or
 4. Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.
- (B) Authority of City Administrator. The city administrator shall have authority to determine

whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of Subsection A.

- (C) Brand Name or Equivalent. Nothing in this section prohibits the City from using a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality, or other characteristics of the product needed by the City, or from establishing a qualified product list.

Section 15. Bid, Performance, and Payment Bonds.

- (A) Solicitation Agent May Require Bonds. The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- (B) Bid Security. Except as otherwise exempted, the solicitations for all contracts that include the construction of a non-transportation related public improvement and for which the estimated contract price will exceed \$100,000 shall require bid security. For transportation-related public improvements, bid security is required if the estimated contract price will exceed \$50,000. Bid security for a request for proposal may be based on the City's estimated contract price. The amount of bid security may not exceed 10 percent of the bid amount.
- (C) Performance Bonds.
 - 1. General. Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.
 - 2. Contracts Involving Public Improvements. Prior to executing a contract for more than \$50,000, that includes the construction of a public improvement, Contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract. The performance bond must be solely for the protection of the City and any public agency that is providing funding for the project for which the contract was awarded.
 - 3. Cash-in-Lieu. The city administrator may permit the successful offer or to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.
- (D) Payment Bonds.
 - 1. General. Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.
 - 2. Contracts Involving Public Improvements. Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

- (E) Design/Build Contracts. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim, or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.
- (F) Construction Manager/General Contractor Contracts. If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by Subsection A. of this section upon execution of an amendment establishing the guaranteed maximum price. The City shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- (G) Surety; Obligation. Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the City or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the city administrator.
- (H) Emergencies. In cases of emergency, or when the interest or property of the City probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of Section 10.E.2, unless the Board requires otherwise.

Section 16. Electronic Advertisement of Public Contracts. In lieu of publication in a newspaper of general circulation in the City area, the advertisement for an invitation to bid or request for proposals for any type of public contract may be published electronically by posting on the City's website, provided that the following conditions are met:

- (A) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- (B) The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a publication of general circulation in the area and will provide costs savings for the City, or that the use of

electronic publication will be more effective than publication in a newspaper of general circulation in the area in encouraging meaningful competition.

Section 17. Protests and Appeals.

(A) Protests of Solicitation Procedures.

1. Protests Generally. A prospective offeror for a public contract may file a protest with the City if the prospective offeror believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed, or improperly specifies a brand name. If a prospective offeror fails to timely file such a protest, the prospective offeror may not challenge the contract for any of the foregoing reasons in any future legal or administrative proceeding.
2. Exception for Special Procurements. The procedures for a contract-specific special procurement approved by the Board may not be protested, challenged, or reviewed unless the approval of the special procurement by the Board has been invalidated by a reviewing circuit court under ORS 2798.400.
3. Time for Submission of Protest. Protests of a Solicitation shall only be considered when presented to the city administrator in writing in accordance with the following timelines.
 - (a) Protests shall be submitted in writing, not less than five (5) days prior to the solicitation closing unless the solicitation period is shorter than seven (7) days, in which case, the solicitation documents shall recite another protest deadline that allows a period of at least one (1) business day after the issue date of the solicitation to submit protests; and
 - (b) Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.
4. Identification of Protest. It is the protester's responsibility to ensure that the protest is received by the City within the stated timelines. The protest should be delivered in an envelope that is clearly marked with the protester's name and sufficient information to identify the solicitation being protested, identified as a protest, and directed to the person identified in the solicitation documents for receipt of protests. Faxed protests may not be accepted.
5. Eligibility for Consideration. The city administrator shall consider the protest if the protest is timely filed and contains the following:
 - (a) Sufficient information to identify the solicitation that is the subject of the protest;
 - (b) The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed, or improperly specifies a brand name;
 - (c) Evidence or supporting documentation that supports the grounds on which the protest is based; and
 - (d) The relief sought.
6. Form of Decision. If the protest is timely submitted and contains the required information, the city administrator shall consider the protest and issue a decision in writing. Otherwise, the city administrator shall promptly notify the prospective protesting offeror that the protest is untimely or that the protest failed to meet the

requirements of this section and give the reasons for the failure.

7. Time of Decision. The city administrator shall issue a decision no less than 72 hours before the solicitation closing, unless a written determination is made by the city administrator that circumstances exist that require a shorter time limit.
8. Appeal. If the city administrator is the city administrator's designee, the city administrator's decision may be appealed to the city administrator by notifying the city administrator of the intent to appeal within three business days after the date on which the city administrator sends its decision to the protestor's electronic or postal address specified in the written protest.
9. Finality of Decision. The decision of the city administrator, or if no appeal is made to the city administrator, of the city administrator, shall be the final determination of the city on the protest.
10. Delay of Solicitation Closing. If the City receives a protest from an offeror in accordance with this section, the city administrator may in his or her discretion extend the date of solicitation closing if the city administrator determines an extension is necessary to consider the protest and, if necessary, to issue addenda to the solicitation documents or otherwise cancel the solicitation.

(B) Protest of Competitive Range Decisions and Contract Awards.

1. Delay of Evaluation or Award. The city administrator will not proceed with a subsequent tier or evaluation, or award a contract under an invitation to bid or request for proposals, until the period of time for filing a protest of competitive range determination, or award, as applicable, has expired, and the city administrator has responded to all timely filed protests of aggrieved offerors.
2. Definition of Aggrieved Offeror. An offeror is an aggrieved offeror only if the person is one to whom a notice of selection of a competitive tier or notice of intent to award has been, or should have been, sent, and such person has been erroneously denied the award of a contract, or has been erroneously eliminated from competition because:
 - (a) All higher-ranked offers were non-responsive, or all higher-ranked offerors clearly failed to meet the standards of responsibility;
 - (b) The evaluation of offers was not conducted in accordance with the criteria or processes described in the solicitation documents;
 - (c) The evaluator abused its discretion in disqualifying the protestor's offer as non-responsive or as failing to meet the standards of responsibility; or
 - (d) The evaluation of offers or subsequent determination of award was otherwise made in violation of the Oregon Public Contracting Code or these regulations.
3. Filing of Protests. Unless a longer or shorter time period is provided in the solicitation documents, an aggrieved offeror shall have five (5) days after the date of issuance of the notice of intent to award, and three (3) days, if mailed, or 72 hours, if issued electronically after a notice of competitive range determination, to submit to the city administrator a written protest of the matter described in the award. The written protest must specify the grounds upon which the protest is based, demonstrate the basis for the protestor's status as an aggrieved offeror, and include an electronic or postal address at which the protestor will receive the city administrator's response. Notwithstanding the foregoing, the period of protest may not be shorter than five (5)

days after the date of notice of award, unless the city administrator determines that the immediate execution of a contract is necessary to avoid a loss of funding for the contract or that further delay in execution will result in injury, property damage, or other serious adverse consequences.

4. Authority to Resolve Protests. The city administrator shall consider a written protest and issue a written decision on the protest. The city administrator may not consider a protest that is filed in an untimely manner or that fails to allege facts that would support a finding that the protester is an aggrieved offeror. If the city administrator is the city administrator's designee, the city administrator's decision may be appealed to the city administrator by notifying the city administrator of the intent to appeal within three business days after the date on which the city administrator sends its decision to the proposer's electronic or postal address specified in the written protest. The decision of the city administrator, or if no timely appeal to the city administrator is made, the decision of the city administrator, shall be the final decision of the city on the protest.
5. Delay of Award; Cancellation of Solicitation. If the City receives a protest from an offeror in accordance with this section, the city administrator shall not submit the contract for execution until the protest is resolved through the final decision under 17.2.4. In addition, the city administrator shall have discretion to delay or cancel an award or a solicitation in response to a protest, regardless of the final decision on the protest, and may, but shall not be required to, reissue the solicitation, if the city administrator determines that such action best serves the City's interests.

(C) Appeal of Debarment or Prequalification Decision.

1. Right to Hearing. Any person who has been debarred from competing for City contracts or for whom prequalification has been denied, revoked, or revised may appeal the City's decision to Council as provided in this section.
2. Filing of Appeal. The person must file a written notice of appeal with the city administrator within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
3. Notification of City Council. Immediately upon receipt of such notice of appeal, the city administrator shall notify Council of the appeal.
4. Hearing. The procedure for appeal from a debarment or denial, revocation, or revision of prequalification shall be as follows:
 - (a) Promptly upon receipt of notice of appeal, the City shall notify the appellant of the time and place of the hearing;
 - (b) Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the city administrator; and
 - (c) At the hearing, Council shall consider de novo the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
5. Decision. Council shall set forth in writing the reasons for the decision.
6. Costs. Council may allocate Council's costs for the hearing between the appellant and the City. The allocation shall be based upon facts found by Council and stated in Council's decision that, in the Council's opinion, warrant such allocation of costs. If

Council does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City, if the decision is overturned.

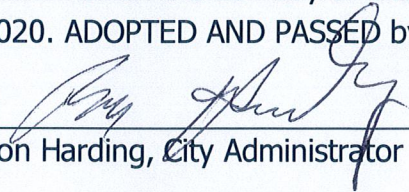
Section 18. Public Contracts Amendments.

- (A) **Amendment Defined.** An amendment is any change or modification of any term or condition of a contract or any addition or deletion of any term or provision of a contract. Amendments include, but are not limited to change directives, change orders, and any addition, deletion, or modification that affects the nature, quantity, degree, or scope of the goods or services or improvements to be provided under a contract or the time of performance or price or that affects any provision concerning the rights or obligations of a party.
- (B) **Writing and Signature Requirements.** No amendment will be binding on the City unless set forth in writing and signed by an official who is duly authorized to bind the City in the manner described by the amendment.
- (C) **Amendments That Increase Price.** Except in connection with a contract renewal or extension, no contract may be amended to increase the contract price unless the increase is directly related to an increase in the quantity or types of goods or services to be provided, a betterment in the quality of goods or materials to be provided, or to compensate the contractor for delays occurring after the execution of the contract for which the City is responsible. Amendments that increase the contract price are further limited as follows:
 - 1. Price Established by Contract. Amendments that increase the quantity of goods or services to be provided under the contract and for which unit prices were established in the original contract (for example, by weight, volume, itemized equipment price lists, or hourly fees) shall be permitted without limitation.
 - 2. Price Not Established by Contract. Amendments that increase the contract price and that are not described in subsection 18(C)(1) may not, in the aggregate, increase the total amount to be paid under the contract by more than twenty-five percent (25%) of the original contract price unless approved in advance by Council.
 - 3. Contracts Issued Under Price-Based Solicitation. Except in an emergency, or under a waiver approved by the Council, a contract awarded under a solicitation method based on contract price may not be amended if the resulting contract price would exceed either of:
 - (a) The limitations on amendment under subsections 18(C)(1) or (2), as applicable, or
 - (b) 125% of the maximum contract price for the class of contracts under which the solicitation was conducted.
- (D) **Time.** The time of performance under a contract, or the term of an expiring contract, may not be extended by amendment except as provided in the original contract or on a temporary basis as provided in Section 10.

Section 19. Repeal. Ordinance 559, adopting public contracting regulations, enacted November 8, 2005, is hereby repealed.

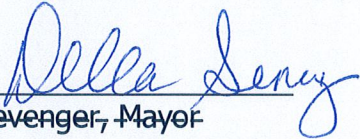
Section 20. Effective Date. This ordinance shall take effect on the thirtieth day after its enactment.

Read first on the 26th day of October, 2020. READ a second time on the 9th day of November, 2020. ADOPTED AND PASSED by the Council on the 9th day of Nov., 2020.



Ron Harding, City Administrator

SIGNED by the mayor this 12 day of November, 2020



~~Derek Clevenger, Mayor~~
Della Seney, Mayor Pro-tem