

PUBLIC CONTRACTING RULES

**Adopted by City of Salem Council on February 28, 2005
Resolution No. 2005-14; Amended by Resolution No. 2005-73**

**Adopted by the Housing Authority of the City of Salem, Oregon on February 28, 2005
Resolution No. 1993; Amended by Resolution No. 2005**

**Adopted by the Urban Renewal Agency of the City of Salem, Oregon on February 28, 2005
Resolution No. 05-4; Amended by Resolution No. 05-13**

I.	GENERAL PROVISIONS	7
	PCR 1.1: Definitions.	7
	PCR 1.2: Application; Exceptions.	14
	PCR 1.3: Local Contract Review Board; Delegation of Powers and Duties.	16
	PCR 1.4: Signature and Rulemaking Authority.	16
	PCR 1.5: Authority and Duties of Purchasing Administrator.	16
	PCR 1.6: Contract Administration.	18
	PCR 1.7: Public Notice.	18
	PCR 1.8: Purchasing From City Employees Prohibited.	18
	PCR 1.9: Cancellation of Solicitation; Rejection of Bids or Proposals; Costs.	19
	PCR 1.10: Amendments.	19
	PCR 1.11: Renegotiated Contracts.	20
	PCR 1.12: Contract Reinstatements.	21
	PCR 1.13: Retroactive Approval.	22
II.	PROCUREMENT PROCESS FOR GOODS AND SERVICES, PERSONAL SERVICES AND PROFESSIONAL SERVICES	23
	PCR 2.1: Public Notice of Solicitation.	23
	PCR 2.2: Bids or Proposals are Offers.	23
	PCR 2.3: Facsimile Bids and Proposals.	24
	PCR 2.4: Electronic Procurement.	25
	PCR 2.5: Offer Preparation and Submission.	27
	PCR 2.6: Pre-Offer Conferences.	28
	PCR 2.7: Changes to Solicitation Documents.	29
	PCR 2.8: Pre-Closing Modification or Withdrawal of Offers.	30
	PCR 2.9: Receipt, Opening, and Recording of Offers; Confidentiality of Offers.	30
	PCR 2.10: Late Offers, Late Withdrawals and Late Modifications.	31
	PCR 2.11: Mistakes.	31
	PCR 2.12: Responsibility of Offerors.	33
	PCR 2.13: Debarment of Prospective Offerors.	35
	PCR 2.14: Offer Evaluation and Award.	36
	PCR 2.15: Intent to Award.	37
	PCR 2.16: Documentation of Award.	38
	PCR 2.17: Contract Documents; Availability of Award Decisions.	38
	PCR 2.18: Rejection of an Offer.	39
	PCR 2.19: Rejection of All Offers.	40
	PCR 2.20: Cancellation, Delay or Suspension of a Procurement or Solicitation.	41
	PCR 2.21: Disposition of Offers if Procurement or Solicitation Canceled or All Offers Rejected.	42
	PCR 2.22: Qualified Products Lists.	42
	PCR 2.23: Prequalification of Prospective Offerors.	42
	PCR 2.24: Identical Offers; Preference for Oregon and City of Salem Goods or Services; Nonresident Bidders.	42

III.	INFORMAL SOURCE SELECTION METHODS FOR GOODS OR SERVICES	45
	PCR 3.1: Small Procurements.	45
	PCR 3.2: Intermediate Procurements.	45
	PCR 3.3: Solicitation Method for Competitive Verbal Quotes and Proposals.	46
	PCR 3.4: Solicitation Method for Informal Written Solicitations.	46
IV.	ALTERNATIVE SOURCE SELECTION METHODS FOR GOODS OR SERVICES, PERSONAL SERVICES AND PROFESSIONAL SERVICES	48
	PCR 4.1: Sole-Source Procurements.	48
	PCR 4.2: Emergency Procurements.	48
	PCR 4.3: Special Procurements.	49
V.	FORMAL COMPETITIVE SOURCE SELECTION METHODS FOR GOODS OR SERVICES	51
	PCR 5.1: Competitive Sealed Bidding.	51
	PCR 5.2: Multistep Competitive Sealed Bids.	53
	PCR 5.3: Competitive Sealed Proposals.	55
	PCR 5.4: Competitive Range for Proposers, Discussions Leading to Best and Final Offers and Negotiations.	57
	PCR 5.5: Multistep Competitive Sealed Proposals.	61
VI.	PROCUREMENT METHODS FOR PERSONAL SERVICES CONTRACTS	65
	PCR 6.1: Definition; Classification of Services as Personal Services.	65
	PCR 6.2: Requests for Qualifications.	66
	PCR 6.3: Direct Negotiations.	66
	PCR 6.4: Informal Written Solicitations.	67
	PCR 6.5: Request for Proposals.	68
	PCR 6.6: Contractors of Record.	70
	PCR 6.7: Emergencies.	72
	PCR 6.8: Award.	73
VII.	PROCUREMENT METHODS FOR ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS	74
	PCR 7.1: Definitions.	74
	PCR 7.2: List of Interested Consultants.	74
	PCR 7.3: Applicable Selection Procedures; Pricing Information.	74
	PCR 7.4: Direct Appointment.	74
	PCR 7.5: Informal Written Solicitations.	76
	PCR 7.6: Requests for Qualifications and Requests for Proposals.	79
	PCR 7.7: Two-Tiered Selection Procedure for Public Improvement Projects Where State Agency is Lead Contracting Agency.	85
	PCR 7.8: Primary and Alternate Consultants of Record.	86
	PCR 7.9: General Civil Consultants of Record.	87
	PCR 7.10: Ties Among Proposers for Professional Services.	90

PCR 7.11:	Prohibited Payment Methodology; Purchase Restrictions.	91
PCR 7.12:	Effect of Material Alteration or Delay of Project.	91
VIII.	PROCUREMENT PROCEDURES FOR PUBLIC IMPROVEMENTS	92
PCR 8.1:	Public Notice.	92
PCR 8.2:	Prequalification of Offerors.	93
PCR 8.3:	Eligibility to Bid or Propose; Registration or License.	94
PCR 8.4:	Pre-Offer Conferences.	95
PCR 8.5:	Addenda to Solicitation Documents.	95
PCR 8.6:	Request for Clarification or Change to Solicitation Document or Addenda; Protests.	96
PCR 8.7:	Cancellation of Procurement.	97
PCR 8.8:	Bids or Proposals are Offers.	97
PCR 8.9:	Offer Preparation and Submission.	98
PCR 8.10:	Bid or Proposal Security	99
PCR 8.11:	Facsimile Bids and Proposals.	100
PCR 8.12:	Pre-Closing Modification or Withdrawal of Offers.	101
PCR 8.13:	Receipt, Opening and Recording of Offers; Confidentiality of Offers. .	102
PCR 8.14:	Late Bids, Late Withdrawals and Late Modifications.	103
PCR 8.15:	Mistakes.	103
PCR 8.16:	First-Tier Subcontractors; Disclosure and Substitution	105
PCR 8.17:	Disqualification of Persons.	107
PCR 8.18:	Offer Evaluation and Award; Determination of Responsibility.	109
PCR 8.19:	Documentation of Award; Availability of Award Decisions	111
PCR 8.20:	Time for City Acceptance; Extension.	112
PCR 8.21:	Negotiation With Bidders Prohibited	113
PCR 8.22:	Rejection of an Offer.	113
PCR 8.23:	Rejection of All Offers.	114
PCR 8.24:	Performance and Payment Security; Waiver.	115
IX.	SOURCE SELECTION METHODS FOR PUBLIC IMPROVEMENTS	118
PCR 9.1:	Contracts for Minor Alteration, Ordinary Repair or Maintenance of Public Improvements.	118
PCR 9.2:	Emergency Procurements.	118
PCR 9.3:	Intermediate Procurements; Competitive Quotes and Amendments.	119
PCR 9.4:	Public Improvement Contracts in Connection with Land Use Approvals and Construction by Other Governmental Entities	120
PCR 9.5:	Formal Competitive Bids.	121
PCR 9.6:	Negotiation When Bids Exceed Cost Estimate.	124
PCR 9.7:	Exemptions from Requirement of Competitive Bidding.	125
PCR 9.8:	Definitions of Alternative Contracting Methods.	126
PCR 9.9:	Alternative Contracting Source Selection Method and Process.	127
PCR 9.10:	Notice of Competitive Range and Intent to Award.	137
PCR 9.11:	Additional Requirements for Design-Build Contracts.	138
PCR 9.12:	Additional Requirements for CM/GC Contracts.	139

PCR 9.13:	Substitution of Contractors by Sureties.	141
PCR 9.14:	Waiver of Delay Damages Against Public Policy.	141
PCR 9.15:	Retainage.	141
PCR 9.16:	Contractor Progress Payments.	143
PCR 9.17:	Interest	143
PCR 9.18:	Final Inspection.	144
PCR 9.19:	Post-Project Evaluation.	144
PCR 9.20:	Required Contract Clauses.	144
PCR 9.21:	Specifications; Brand Name Products	145
PCR 9.22:	Records Maintenance; Right to Audit Records	145
PCR 9.23:	Payment for Unpaid Labor or Supplies.	146
PCR 9.24:	Contract Suspension; Termination Procedures.	146
PCR 9.25:	Foreign Contractor; Final Payment.	147
PCR 9.26:	Disposition of Development Agreements	148
X.	COOPERATIVE PROCUREMENTS	150
PCR 10.1.	Authority and Cooperative Procurements Generally.	150
PCR 10.2:	Joint Cooperative Procurements.	151
PCR 10.3:	Permissive Cooperative Procurements.	152
PCR 10.4:	Interstate Cooperative Procurements.	153
PCR 10.5:	Cooperative Procurements for Public Works.	155
XI.	PROTEST PROCEDURES	156
PCR 11.1:	Protests and Judicial Review of Special Procurements.	156
PCR 11.2:	Protests and Judicial Review of Sole-Source Procurements.	157
PCR 11.3:	Protests and Judicial Review of Personal Services Procurements.	157
PCR 11.4:	Protests and Judicial Review of Multi-Tiered and Multistep Solicitations.	159
PCR 11.5:	Protests and Judicial Review of Solicitation Documents and the Procurement Process.	161
PCR 11.6:	Protests and Judicial Review of Addenda to Contracts of Goods or Services, Personal Services or Professional Services.	162
PCR 11.7:	Protests of and Judicial Review of Addenda to Public Improvement Contracts.	163
PCR 11.8:	Protests and Judicial Review of Public Improvement Contract Award.	165
PCR 11.9:	Protests and Judicial Review of Qualified Products List Decisions.	166
PCR 11.10:	Protest of Prequalification and Debarment Decisions.	167
PCR 11.11:	Protests of Award of Professional Services Contracts.	167
PCR 11.12:	Protest of Contractor Selection for Public Improvement Contract	168
PCR 11.13:	Protests of Cooperative Procurements.	170
XII.	SALE, TRANSFER AND DISPOSAL OF PUBLIC PROPERTY	171
PCR 12.1:	Surplus Personal Property.	171
PCR 12.2:	Lost, Abandoned or Unclaimed Property.	171

PCR 12.3:	Auction Sale.	171
PCR 12.4:	Competitive Sales of Personal Property.	171
PCR 12.5:	Negotiated Sales of Personal Property.	171
PCR 12.6	Liquidation Sales of Personal Property.	171
PCR 12.7:	Transfers of Personal Property.	172
PCR 12.8:	Transfers of Surplus Property.	172

I. GENERAL PROVISIONS

PCR 1.1: Definitions. Unless the context or specifically applicable definition otherwise requires, the following terms shall mean:

- (a) "Addendum" or "addenda" means additions to or deletions from, or material changes in, a solicitation document.
- (b) "Administering agency" means the contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.
- (c) "Affected person" or "affected offeror" means a person whose ability to participate in a procurement is adversely impaired by a City decision.
- (d) "Architect," "licensed architect" or "registered architect" means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220.
- (e) "Architectural, engineering and land surveying services" means professional services performed by an architect, engineer or land surveyor and includes architectural, engineering or land surveying services, separately or any combination thereof, as appropriate within the context of a rule.
- (f) "Award" means the decision to enter into a contract with a specific offeror.
- (g) "Bid" means a response to an invitation to bid.
- (h) "Bidder" means a person who submits a bid in response to an invitation to bid.
- (i) "Brand name specification" means a limitation to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristic.
- (j) "City" means the City of Salem, Oregon.
- (k) "City Manager" means the City Manager of the City, and the City Manager's designee.
- (l) "Closing" means the date and time announced in a solicitation document as the deadline for submitting offers.
- (m) "Code" means the Salem Revised Code.

- (n)** “Competitive range” means the number of proposers with whom the City will, or the minimum score required of a proposal for the City to, conduct discussions or negotiations.
- (o)** “Contract” means a public contract.
- (p)** “Contractor” means the person who enters into a contract with the City.
- (q)** “Contract price” means, as the context requires:
- (1)** The maximum payment that City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts;
 - (2)** The maximum not-to-exceed payment specified in the contract; or
 - (3)** The unit prices set forth in the contract.
- (r)** “Contracting agency” means a public body authorized by law to conduct a procurement.
- (s)** “Cooperative procurement” means a procurement conducted by, or on behalf of, one or more contracting agencies, as provided in PCR 6.1 through 6.4.
- (t)** “Days” means calendar days.
- (u)** “Department Head” means the public official appointed by the City Manager as the chief manager for a City department.
- (v)** “Descriptive literature” means materials submitted by an offeror to provide information concerning products or services available in response to a solicitation document.
- (w)** “Electronic procurement system” means an information system that persons may access through the internet, or otherwise remotely access using a computer, that enables the City to post electronic advertisements, receive electronic offers, or conduct other activities related to a procurement.

- (x) “Emergency” means circumstances that:
- (1) Could not have been reasonably 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 or amendment in order to remedy the condition.
- (y) “Engineer” means a person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2).
- (z) “Findings” means the justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:
- (1) Operational, budget and financial data;
 - (2) Public benefits;
 - (3) Value engineering;
 - (4) Specialized expertise;
 - (5) Public safety;
 - (6) Market conditions;
 - (7) Technical complexity; and
 - (8) Funding sources.
- (aa) “Goods and services” or “goods or services” means supplies, equipment, materials and services, other than personal services, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. “Goods and services” or “goods or services” includes combinations of any of the items identified in this definition.

(bb) “Grant” means:

(1) An agreement under which:

(A) The City receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;

(B) The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and

(C) No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or

(2) An agreement under which:

(A) The City provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;

(B) The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and

(C) No substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.

(cc) “Invitation to bid” means a solicitation document calling for bids.

(dd) “Land surveyor” means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (4).

(ee) “Offer” means a bid, proposal, quote, or other response to a solicitation document.

(ff) “Offeror” means a person who submits an offer.

(gg) “Opening” means the date, time and place announced in the solicitation document for the public opening of written sealed offers.

(hh) “Original contract” means the initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.

(ii) “Participating agency” or “purchasing agency” means an agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.

(jj) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.

(kk) “Price agreement” means a contract for the procurement of goods or services at a set price which has:

(1) No guarantee of a minimum or maximum purchase; or

(2) An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase

(ll) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. “Procurement” includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.

(mm) “Product sample” means a representative specimen of an item offered by the offeror in response to a solicitation document. Unless otherwise provided in the solicitation document, the product sample shall be the exact product or a representative portion of that product offered by the offeror.

(nn) “Proposal” means a response to a request for proposals.

(oo) “Proposer” means a person that submits a proposal in response to a request for proposals.

(pp) “Provider” means, as the context requires, a supplier of goods or services, personal services, or professional services.

(qq) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or

ordinary repair or maintenance necessary to preserve a public improvement. “Public contract” does not include grants.

(rr) “Public contracting” means procurement activities relating to obtaining, modifying or administering contracts or price agreements.

(ss) “Public Contracting Code” means ORS Chapters 279A, 279B and 279C.

(tt) “Public improvement” means a project for construction, reconstruction, or major renovation on real property, by or for the City. “Public improvement” does not include 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 emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

(uu) “Public improvement contract” means a contract for a public improvement, but does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.

(vv) “Purchasing Administrator” means the person serving as the supervisor of procurements for the City, and the Purchasing Administrator’s designee.

(ww) “Related services” means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representative services or land-use planning services.

(xx) “Request for proposals” means a solicitation document used for soliciting proposals.

(yy) “Request for qualifications” means a written document issued by the City describing particular services, to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.

(zz) “Resident bidder” means a bidder that has paid unemployment taxes or income taxes in the State of Oregon during the twelve calendar months immediately preceding

submission of a bid, has a business address in the State of Oregon, and has stated in the bid that the bidder is a “resident bidder,” as defined by these rules and ORS 279A.120(1). A “non-resident bidder” is any bidder who is not a resident bidder.

(aaa) “Responsible bidder” means a person who has:

- (1)** 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 person to meet all contractual responsibilities;
- (2)** A satisfactory record of performance;
- (3)** A satisfactory record of integrity;
- (4)** Qualified legally to contract with the City;
- (5)** Supplied all necessary information in connection with an inquiry concerning responsibility; and
- (6)** Has not been debarred, pursuant to PCR 2.13, or disqualified pursuant to PCR 8.17.

(bbb) “Responsive bid” or “responsive proposal” means a bid or proposal that substantially complies with the invitation to bid or request for proposals and all prescribed procurement procedures and requirements.

(ccc) “Revenue generating agreements” means contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.

(ddd) “Scope” means the range and attributes of the goods or services described in a procurement document.

(eee) “Signed” or “signature” means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the intent to be bound.

(fff) “Solicitation” means, as the context requires:

- (1)** A request for the purpose of soliciting offers, including an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;
- (2)** The process of notifying prospective offerors of a request for offers; or

(3) The solicitation document.

(ggg) “Solicitation document” means an invitation to bid, request for proposals or other document, including addenda, issued to invite offers from prospective contractors.

(hhh) “Specification” means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery, and the quantities or qualities of materials to be furnished under a contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.

(iii) “Work” means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.

(jjj) “Written” or “in writing” means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, and includes electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

PCR 1.2: Application; Exceptions.

(a) Pursuant to ORS 279.065(5), the City has elected to establish its own rules of procedures for public contracting. These rules set forth the rules of procedure for public contracting for the City. The Attorney General’s Model Rules of Procedure for Public Contracting, OAR 125-246-0100 through OAR 125-249-0910 do not apply to the City.

(b) These rules do not apply to:

(1) Contracts or agreements to which the Public Contracting Code does not apply. A list of all contracts or agreements to which the Public Contract Code does not apply will maintained in the office of the Purchasing Administrator ;

(2) Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter 190;

(3) Grants;

(4) Acquisitions or disposals of real property or interests in real property;

(5) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(6) Procurements from an Oregon Corrections Enterprises program;

- (7) Energy savings performance contracts;
- (8) Contracts, agreements or other documents entered into, issued or established in connection with:
 - (A) The incurring of debt by the City, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations 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 body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - (C) The investment of funds by the City as authorized by law, and other financial transactions of the City that by their character cannot practically be established under the competitive procurement procedures authorized by these rules;
 - (D) Banking, money management or other predominantly financial transactions of the City that, by their character, cannot practically be established under competitive contractor selection procedures, based upon findings of the Purchasing Administrator;
- (9) Contracts for employee benefit plans as provided in ORS 243.105, ORS 243.125, ORS 243.221, ORS 243.275, ORS 243.291, ORS 243.303 and ORS 243.565;
- (10) Contracts with newspapers and other publications for the placement of advertisements or public notices;
- (11) Contracts for items where the price is regulated and available from a single source or a limited number of sources;
- (12) Insurance contracts negotiated through a competitively procured broker; and
- (13) Revenue generating agreements.

(c) **Contracts Involving Federal Funds.**

- (1) Except as otherwise expressly provided in ORS 279C.800-279C.870, and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005-279C.670,

federal statutes and regulations govern procurements, when federal funds are involved and applicable federal statutes or regulations conflict with any provision of, or require additional conditions in contracts not otherwise authorized by, ORS Chapters 279A, 279B, and ORS 279C.005-279C.670 or these rules.

(2) The City may enter into contracts under 10 U.S.C. §381 for the procurement of law enforcement equipment suitable for counter-drug activities without following the competitive procurement procedures established by these rules if the contract is first approved by the City Council.

PCR 1.3: Local Contract Review Board; Delegation of Powers and Duties.

(a) Pursuant to ORS 279A.060 the City Council is Local Contract Review Board for the City of Salem. The Local Contract Review Board hereby delegates to the City Manager all authority granted and duties conferred upon the Local Contract Review Board by the Public Contract Code and these rules.

(b) Unless otherwise specifically provided, the City Manager shall exercise all authority granted, and undertake all duties conferred, by these rules. The City Manager may delegate any authority conferred by these rules, which may be further sub-delegated, in writing, provided, however, that each person making a sub-delegation shall be responsible to ensure compliance with these rules.

PCR 1.4: Signature and Rulemaking Authority.

(a) The City Manager, or in the absence of the City Manager, the Acting City Manager, is authorized to execute any contract, change order or contract amendment. The City Manager may provide, in writing, for sub-delegation of this authority for any contract with a contract price of less than \$250,000, and any change order or contract amendment.

(b) The City Manager may adopt additional administrative rules necessary to carry out the provisions of these rules, including, but not limited to rules establishing or limiting the delegation of authority and rules establishing fees and charges for the receipt of copies of solicitation documents and other documents related to contracting under the Public Contracting Code and these rules.

PCR 1.5: Authority and Duties of Purchasing Administrator.

(a) The Purchasing Administrator shall, except as otherwise provided by these rules, conduct all procurements and shall, subject to the direction and control of the City Manager, administer these rules.

(b) The Purchasing Administrator shall ensure that each contract contains the conditions statutorily required by the Public Contracting Code and other applicable law,

including, but not limited to, the provisions of ORS 279B.220-279B.235 and ORS 279C.500-279C.530.

(c) The Purchasing Administrator shall determine whether goods or services are available from a qualified nonprofit agency providing employment opportunities for disabled individuals under ORS 279.835-279.855 before any source selection method may be used for the acquisition of goods or services. Contracts with qualified nonprofit agencies must be entered into in accordance with administrative rules promulgated by the Oregon Department of Administrative Services.

(d) **Procurement Files.** Subject to the oversight of the City Recorder, the Purchasing Administrator shall be the records custodian for all procurement files, and shall be responsible for ensuring a procurement file is maintained for each procurement.

(1) The Purchasing Administrator shall maintain procurement files for:

(A) Each sole-source procurement, emergency procurement, special procurement;

(B) Each procurement at and exceeding the intermediate procurement threshold contract price for goods or services; the informal selection threshold contract price for personal services and for architectural, engineering, and land surveying services; and the intermediate procurement threshold contract price for public improvements.

(2) Unless otherwise directed by the Purchasing Administrator, Department Heads shall be responsible for maintaining procurement files for each small procurement for goods or services; each personal services contract with a contract price of less than \$25,000; each contract for architectural, engineering, and land surveying services with a contract price of less than \$25,000; and each contract for a public improvement with a contract price of less than \$25,000.

(3) **Contents.** Procurement files shall contain:

(A) A copy of any solicitation document and any required findings for justification of sole source, emergency or other alternative procurement method;

(B) A copy of any published notice;

(C) A list of prospective contractors notified of the solicitation;

(D) The method used to advertise or notify prospective contractors;

(E) A copy of each offer that resulted in award of a contract;

(F) The method of evaluating offers, the results of the evaluation, and basis of selection;

(G) A record of any negotiation of the statement of work and results;

(H) All information describing how the contractor was selected, including the basis for awarding the contract;

(I) A copy of the resulting contract, if awarded;

(J) Documentation of the reasons for any cancellation of the solicitation or rejection of any part of any offer;

(K) If a request for proposals is canceled after proposals are received, a list of returned proposals; and

(L) Documentation of the reasons for any delay or suspension of a solicitation.

(4) Procurement files, including all documentation, shall be maintained in accordance with applicable public records retention requirements.

PCR 1.6: Contract Administration. Every contract shall have a contract administrator who shall assure conformance with contract terms, conditions, specifications, applicable statutes, ordinances and administrative rules. This duty extends from the time the contract is awarded until the work is completed and accepted and payment has been made, or until the contract is terminated and all disputes have been resolved.

PCR 1.7: Public Notice. Unless otherwise specifically provided by these rules, any notice required to be published by these rules shall be published at least once in one newspaper of general circulation within Salem, and in as many additional issues or publications as the Purchasing Administrator deems appropriate, unless the Purchasing Administrator reasonably believes that the total contract price will be less than \$100,000, in which case the Purchasing Administrator may publish notice on the City's or State of Oregon's electronic procurement system. Additional notice may be given using any other method deemed appropriate, including, but not limited to, mailing notice to persons that have requested notice, in writing, or placing notice on the City's website. The Purchasing Administrator shall maintain a copy of each published notice. An offeror may obtain a copy of the published notice upon request.

PCR 1.8: Purchasing From City Employees Prohibited.

(a) No contract shall be entered into with any employee of the City, or any business with which the employee is associated, unless:

(1) The contract is expressly authorized and approved by City Council; or

(2) The need for the contract occurs during a state of emergency, and City Manager finds, in writing, that the acquisition from the employee or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare.

(b) “Business with which the employee is associated” means any business in which the employee is a director, officer, owner or employee, or any corporation in which the employee owns or has owned ten percent or more of any class of stock at any point in the preceding calendar year.

PCR 1.9: Cancellation of Solicitation; Rejection of Bids or Proposals; Costs.

(a) The City may cancel any solicitation, whether informal or formal, reject all bids or proposals, whether formal or informal, terminate negotiations with any prospective contractor, or any combination of the foregoing, without liability to the City, if the City determines it is in the public interest to do so.

(b) Persons submitting bids or proposals or responding to requests for qualifications, are responsible for any and all costs incurred in connection with submitting a bid or response to any solicitation, and do so at their sole cost and expense. The City shall not be liable for any costs incurred by a person as a result of that person’s participation in a solicitation, including, but not limited to costs incurred by a person as a result of rejection of bids or proposals, cancellation of a solicitation, or delay or suspension of a solicitation.

PCR 1.10: Amendments.

(a) **Amendments to Contracts for Goods or Services.** A contract for goods or services may be amended if the amendment adds goods or services that are within the scope of the original solicitation document, the contract, or scope of an approved special procurement, and either

(1) The total purchase value of the goods or services is modified only as follows:

(A) When the total purchase value for the goods or services is based on unit prices, unit prices that establish the cost basis for the additional goods or services were provided in the offer, contract, or approved special procurement, and those prices do not increase except as permitted by an escalation clause in the contract; or

(B) When the total purchase value for the goods or services is not based on unit prices, options that establish the cost basis for the additional goods or services were provided in the original solicitation document, the contract, or the approved special procurement.

(2) The additional goods or services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the contract.

(b) Amendments to Contracts for Personal and Professional Services. A contract for personal or professional services may be amended if the amendment is within the scope of services contemplated under the original solicitation, and the amendment would not have materially affected the field of competition for the services described in the original solicitation.

(1) An amendment would not materially impact the field of competition if:

(A) The number of proposers would not be significantly increased if the original solicitation had included the additional services; or

(B) The additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies that affect performance of the original contract.

PCR 1.11: Renegotiated Contracts.

(a) The City Manager may authorize the renegotiation of a single contract, or the renegotiation of multiple contracts with a single contractor, without additional competition if the Department Head responsible for the contract or contracts submits a request for permission to renegotiate the contract or contracts to the Purchasing Administrator, including a description of why it is in the best interest of the City to renegotiate the contract or contracts and how any resulting renegotiated contract will be at least as favorable to the City as the contract or contracts.

(b) Criteria. Renegotiation shall not be authorized, unless:

(1) The renegotiated contract is at least as favorable to the City as the contract or contracts, and:

(2) If a single contract will be renegotiated, the renegotiated contract will not have a total contract term longer than the term provided in the original solicitation document, original contract or approval of a special procurement, after combining the initial and any renewal terms. For example, a one-year contract, renewable each year for up to four additional years, may be renegotiated as a two-year to five-year contract, but not beyond a total of five years;

(3) If multiple contracts with a single contractor are renegotiated as a single contract, the term of the single contract may not have a term greater than the longest term of any of the existing contracts;

(4) If the contractor offers a lower price in exchange for a change in a term or condition that was expressly rejected in the original solicitation, the renegotiated contract may be structured with this changed term as an optional, but not a mandatory, contract term.

(5) If the contract is a cooperative procurement, the renegotiated contract must be within the scope of the original contract and may not materially change the terms, conditions, and prices of the original contract.

(6) Negotiation of contract amendments and change orders shall not be considered renegotiation for purposes of this rule.

PCR 1.12: Contract Reinstatements.

(a) “Reinstatement of expired contracts” means the restoration of an expired contract that was properly executed. Once reinstated, a contract is in full force and effect, as if it had not expired.

(b) **Criteria.** The City Manager may approve reinstatement of an expired contract if:

(1) The contract administrator demonstrates in a written request for reinstatement provided to the City Manager, that the failure to extend or renew the contract in a timely manner was due to unforeseen or unavoidable conditions;

(2) The request for reinstatement is presented for approval within ninety days after expiration of the expired contract; and

(3) The contract administrator provides the City Manager a concise written statement justifying the contractor's completion of the work, verifying there is no change in the statement of work in the original contract, and either:

(A) The reinstatement is exclusively for the purpose of permitting completion of the work for no additional compensation; or

(B) When the work is services of a continuing or repetitive nature that is compensated at an hourly, daily or similar periodic rate, and the reinstatement does not increase the rate of compensation under the expired contract.

(c) No reinstatement may modify the expired contract in any manner, other than with respect to time for performance. No reinstatement may raise the total amount of compensation more than any limit established for amendments elsewhere in these rules. When an expired contract is reinstated, the contractor shall be compensated at the rate specified in the expired contract for work performed in the interim between the

expiration of the contract and the approval of reinstatement. A contract may be reinstated only once.

PCR 1.13: Retroactive Approval.

(a) Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution.

(b) The City Manager may make a retroactive approval of a contract only if the contract administrator submits a copy of the proposed contract to the Purchasing Administrator, along with a written request for contract retroactive approval, that contains:

- (1) An explanation of why work was commenced before the contract was finally awarded or executed;
- (2) A description of steps being taken to prevent similar occurrences in the future;
- (3) Evidence that, but for the failure to finally award or execute the contract, the contract administrator complied with all other steps required to properly select a contractor and negotiate the contract;
- (4) A proposed form of contract.

II. PROCUREMENT PROCESS FOR GOODS AND SERVICES, PERSONAL SERVICES AND PROFESSIONAL SERVICES

PCR 2.1: Public Notice of Solicitation.

(a) **Public Notice.** The Purchasing Administrator shall publish notice not less than fourteen days prior to closing for an invitation to bid, and not less than twenty-one days prior to closing for a request for proposals, unless the Purchasing Administrator determines that a shorter interval is in the public's interest or will not substantially affect competition. The specific reasons for shorter notice shall be documented in the procurement file.

(b) **Contents of Notice.** Unless otherwise specifically provided by these rules, all published notices of solicitations shall contain the following:

- (1) Where, when, how, and for how long the solicitation document may be obtained;
- (2) A general description of the procurement requirements and specifications;
- (3) The interval between the first date of notice of the solicitation and closing;
- (4) The date that persons must file applications for prequalification if prequalification is a requirement;
- (5) The office where contract terms, conditions and specifications may be reviewed;
- (6) The name, title and address of the individual authorized to receive offers;
- (7) The scheduled opening; and
- (8) Any other information the Purchasing Administrator deems appropriate.

(c) **Fees.** The City Manager may establish a fee or deposit to be charged to potential bidders or proposers to cover the cost of reproducing and distributing a solicitation document or copies of public notices.

PCR 2.2: Bids or Proposals are Offers.

(a) **Offer and Acceptance.**

- (1) A bid or proposal is an offer to enter into a contract. All offers are firm offers, irrevocable, valid and binding on the offeror for the period stated in the

solicitation document, or, if no period is stated in the solicitation document for thirty days following closing.

(2) The City may request, orally or in writing, an extension of the time to consider offers. If an offeror agrees, in writing, to such extension, the offer shall be deemed a firm offer for the agreed-upon time.

(3) Award of the contract constitutes acceptance of the offer and binds the offeror to the contract.

(b) Contingent Offers in Proposals. Except to the extent the proposers are authorized to propose alternative terms and conditions in the request for proposals, a proposer shall not make an offer that is contingent upon the acceptance of any terms or conditions, including specifications.

(c) Offeror's Acknowledgment. By signing and returning the offer, the offeror acknowledges the offeror has read, understands, and agrees to be bound by the terms and conditions contained in the solicitation document. If a request for proposals permits proposal of alternative terms and conditions under, the offer shall include, in addition to all nonnegotiable terms and conditions, any alternative terms and conditions offered for negotiation.

PCR 2.3: Facsimile Bids and Proposals.

(a) Authorization. The Purchasing Administrator may authorize the submission of facsimile offers, provided, however, the City's equipment and personnel are capable of receiving the size and volume of anticipated offers. If authorized, the Purchasing Administrator shall establish administrative procedures and controls:

- (1) To receive, identify, record, and safeguard facsimile offers;
- (2) To ensure timely delivery of facsimile offers to the location of opening;
and
- (3) To preserve the facsimile offers as sealed.

(b) Provisions to be Included in Solicitation Document Allowing for Facsimile Offers. In addition to all other requirements, a solicitation document allowing for facsimile offers shall include:

- (1) A statement in substantially the following form:

“A ‘facsimile offer,’ as used in this solicitation document, means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the City via a facsimile machine. Offerors may submit

facsimile offers in response to this solicitation document. The entire response must arrive at the place and by the time specified in this solicitation document. The City reserves the right to award the contract solely on the basis of a facsimile offer. However, upon the Purchasing Administrator's request the apparent successful offeror shall promptly submit its complete original signed offer.”

- (2) A statement that offerors must sign their facsimile offers;
- (3) The telephone number of the facsimile machine, and data and compatibility characteristics of the facsimile machine, including, but not limited to, make and model number, receiving speed, communications protocol; and
- (4) A statement that the City is not responsible for any failure attributable to the transmission or receipt of the facsimile offer, including, but not limited to:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the offeror to properly identify the offer documents;
 - (F) Illegibility of offer documents; and
 - (G) Security and confidentiality of data.

(c) **Bid or Proposal Security.** If bid or proposal security is required for a procurement, the Purchasing Administrator shall not authorize the use of facsimile offers unless security will be provided by a method approved by the City Attorney.

PCR 2.4: Electronic Procurement.

(a) **Authorization.** The Purchasing Administrator may authorize the conduct of all phases of a procurement, including, but not limited to, posting of advertisements and receipt of offers, by electronic methods. The Purchasing Administrator shall specify in the solicitation document how to participate in the procurement.

(b) The City shall open electronic offers in accordance with any electronic security measures in effect at the time the electronic offer is received. The person submitting the

electronic offer assumes all risk of premature disclosure of the offer due to submission in electronic form.

(c) The City's use of electronic signatures shall be consistent with the "Uniform Electronic Transactions Act," ORS 84.061-84.067, and any other applicable statutes and rules.

(d) **Bid or Proposal Security.** If bid or proposal security is required for the procurement, the Purchasing Administrator shall not authorize the use of electronic offers unless security will be provided by a method approved by the City Attorney.

(e) **Preliminary Matters.** As a condition of participation in an electronic procurement, potential offerors may be required to register with the Purchasing Administrator before the date and time when offers will be accepted, to agree to the terms, conditions, and other requirements contained in the solicitation document or the procurement, such as the means the City may use to attribute, authenticate or verify the accuracy of an electronic offer, or the actions that constitute an electronic signature.

(f) **Date and Time for Receipt of Electronic Offers.**

(1) The solicitation document may specify that persons must submit an electronic offer by a particular date and time, or that persons may submit multiple electronic offers during a period of time established in the electronic advertisement.

(2) When the solicitation document specifies that persons may submit multiple electronic offers during a specified period of time, the Purchasing Administrator must designate a date and time on which persons may begin to submit, and date and time after which persons may no longer submit, electronic offers. The date and time after which persons may no longer submit electronic offers may be specified by a description of the conditions that, when they occur, will establish the date and time after which persons may no longer submit electronic offers.

(3) When electronic offers will be accepted for a designated period of time, then at the commencement of designated date and time, the Purchasing Administrator must begin to accept real time electronic offers and shall continue to accept electronic offers until the end of the specified date and time, after which time electronic offers shall no longer be accepted.

(g) **Receipt of Electronic Offers.**

(1) When the solicitation document specifies that persons may submit multiple electronic offers during a period of time, offerors may submit, and electronic offers shall be accepted, as follows:

(A) Following receipt of the first electronic offer after the date and time specified for receipt of electronic offers, the Purchasing Administrator shall post on the City's electronic procurement system, or otherwise make available, and update on a real time basis, the lowest electronic offer price or the highest ranking electronic offer.

(B) At any time before the date and time after which electronic offers will no longer be received, offerors may revise their electronic offers, except that an offeror may not lower the contract price, unless that price is below the price in the then-lowest electronic offer. An offeror may not increase the offeror's price set forth in an electronic offer after the date and time when the City first accepts electronic offers.

(C) If a bidder or proposer withdraws an electronic offer, the bidder or proposer may not later submit an electronic offer with a price higher than that set forth in the withdrawn electronic offer.

(h) **Failure of the Electronic Procurement System.** In the event of a failure of the City's electronic procurement system that interferes with the ability to submit electronic offers, to protest, or to otherwise participate in the procurement, the Purchasing Administrator may cancel the procurement, or may extend the date and time for receipt of electronic offers by providing notice of the extension immediately after the electronic procurement system again becomes available.

PCR 2.5: Offer Preparation and Submission.

(a) **Instructions.** Each offeror shall submit and sign the offer in accordance with the instructions in the solicitation document. An offeror shall initial and submit any correction or erasure to its offer prior to opening, in accordance with the instructions for submitting an offer set forth in the solicitation document.

(b) **Forms.** Each offeror shall submit the offer on the form or forms provided in the solicitation document, unless the solicitation document otherwise instructs.

(c) **Documents.** Each offeror shall provide all documents and descriptive literature required by the solicitation document. If the solicitation document instructs offerors not to include documents or literature, those documents may be disregarded.

(d) **DBE Certification.** Each offeror shall certify in the documents accompanying the offer that the offeror has not discriminated, and will not discriminate, in the award of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

(e) **Facsimile and Electronic Submissions.** Facsimile and electronic offers shall not be considered submitted, unless facsimile or electronic submissions have been authorized

by the Purchasing Administrator, and notice of such authorization was included in the solicitation document.

(f) Product Samples. The City may require product samples necessary or desirable to evaluate the quality, features or characteristics of an offer, and may dispose of the product samples, or make them available to the offeror in accordance with instructions in the solicitation document.

(g) Identification of Offers. Offers shall be submitted in a sealed envelope appropriately and prominently marked to ensure proper identification and handling, or in an envelope provided by the City along with the solicitation document, whichever is applicable. If facsimile or electronic offers are authorized, the offeror must submit and identify facsimile or electronic offers in accordance with the instructions set forth in the solicitation document.

(h) Receipt of Offers. An offeror is responsible for ensuring the City receives the offer at the required delivery point prior to the closing, regardless of the method used to submit the offer.

(i) Offers Must Conform with Requirements of Solicitation Document. The City shall not consider, and is not responsible for, offers submitted in any manner other than that required by or permitted in the solicitation document.

PCR 2.6: Pre-Offer Conferences.

(a) Purpose. Pre-offer conferences may be held with prospective offerors prior to closing to explain procurement requirements, to obtain information, or to conduct site inspections.

(b) Mandatory Attendance. Attendance at the pre-offer conference may be required as a condition for making an offer. An offer made by a person who fails to attend a mandatory pre-offer conference shall be rejected as non-responsive.

(c) Scheduled Time. If a pre-offer conference is held, the pre-offer conference shall occur within a reasonable time after the solicitation document is issued, but sufficiently prior to closing to allow offerors to consider information provided at that pre-offer conference.

(d) Statements Not Binding. Statements made by a City representative at the pre-offer conference do not modify or change the solicitation document, unless the City confirms such statements with a written addendum.

(e) Notice to be Included in Solicitation Document. The Purchasing Administrator shall ensure notice of any pre-offer conference is included in the solicitation document.

PCR 2.7: Changes to Solicitation Documents.

(a) **Generally.** A solicitation document may only be changed by written addenda. The solicitation document shall specify how notice of addenda will be provided and how the addenda will be made available.

(b) **Requests for Change.** Unless a different deadline is set forth in the solicitation document or an addendum, an offeror must submit a written request for a change to a solicitation document no later than five days prior to closing. A request for a change to an addendum must be made not later than the close of the next business day following issuance of the addendum. Any request shall clearly describe the change, include the reasons for the change, and a description of any prejudice to the person if the change is not made.

(c) **Notice and Distribution.** The Purchasing Administrator shall notify all persons who have received a copy of the solicitation document, and any other persons the Purchasing Administrator deems may be prospective offerors, of any addenda.

(d) **Receipt.** Offerors shall include written acknowledgment of receipt of all issued addenda with their offers, unless otherwise specifically provided in the solicitation document or the addenda.

(e) **Time lines; Extensions.**

(1) Any addenda shall be issued within a reasonable time prior to closing, to allow prospective offerors to consider the addenda in preparing their offers. Closing may be extended if the Purchasing Administrator determines prospective offerors need additional time to review and respond to addenda. Unless required by a countervailing public interest and documented in writing in the procurement file, no addenda shall be issued less than 72 hours before closing, unless the addenda also extends closing.

(2) An addenda that modifies evaluation criteria or the selection process or procedure for any tier or step of competition in a multistep sealed bid or a multi-tiered or multistep sealed proposal shall be issued no fewer than five days before the beginning of that tier or step of competition, unless the Purchasing Administrator determines that a shorter period is sufficient to allow offerors to prepare for that tier or step of competition. The Purchasing Administrator shall document the factors considered in making such determination, including, but not limited to, the scope of the changes to the solicitation document, the location of the remaining eligible proposers, and whether shortening the period between issuing an addenda and the beginning of the next tier or step of competition favors or disfavors any particular offeror.

PCR 2.8: Pre-Closing Modification or Withdrawal of Offers.

(a) Modifications. An offeror may modify an offer, in writing, prior to closing. An offeror shall submit any modification of its offer to the City in accordance with PCR 2.5(a), unless otherwise specified in the solicitation document. Any modification must include the offeror's statement that the modification amends and supersedes the offeror's prior offer. The offeror shall mark the submitted modification with the following:

- (1) "Bid Modification" or "Proposal Modification;" and
- (2) The solicitation document number, or such other identification as specified in the solicitation document.

(b) Withdrawals. An offeror may withdraw an offer, by written notice submitted on the offeror's letterhead, signed by the offeror's authorized representative, delivered to the individual and location specified in the solicitation document for the receipt of offers or to the Purchasing Administrator, at the Purchasing Administrator's office if no person or place of closing is specified. To be effective, the withdrawal must be received prior to closing. The offeror or offeror's authorized representative may withdraw an offer by appearing in person before the Purchasing Administrator prior to closing, with presentation of appropriate identification and evidence of authority to make the withdrawal satisfactory to the Purchasing Administrator. The offeror shall mark a written request to withdraw an offer as follows:

- (1) "Bid Withdrawn" or "Proposal Withdrawal;" and
- (2) The solicitation document number, or such other identification as specified in the solicitation document.
- (3) The Purchasing Administrator may return an unopened offer that has been withdrawn to the offeror or the offeror's authorized representative, after voiding any date and time stamp mark.

(c) Documentation. The Purchasing Administrator shall include all documents relating to a modification or withdrawal of offers in the procurement file.

PCR 2.9: Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(a) Receipt. The person authorized to receive offers shall, upon receipt, electronically or mechanically time-stamp or hand-mark each offer and any modification. No offer or modification shall be opened, and each offer and modification shall be maintained as confidential and secure until opening. If an offer or a modification is inadvertently opened prior to opening, the offer or modification shall be resealed, returned to a confidential and secure state, and maintained in such state until opening. The Purchasing Administrator shall document the fact of, and reasons for, the resealing

in the procurement file, i.e., “City inadvertently opened the offer due to improper identification of the offer.”

(b) Opening and Recording.

(1) Bids. Bids and modifications shall be publicly opened. To the extent practicable, the Purchasing Administrator shall read aloud the name of each bidder, and such other information as the Purchasing Administrator considers appropriate.

(2) Proposals. Unless the solicitation document provides otherwise, proposals will not be publically opened or read aloud. The names of proposers shall be made available from and after opening, and included in the procurement file.

(3) Proprietary Information and Trade Secrets. The City may withhold from disclosure information in bids or proposals that is conditionally exempt from disclosure under ORS 192.501 or ORS 192.502.

(c) Availability for Public Inspection. After opening or notice of intent to award is issued, as applicable, offers shall be available for public inspection, except for those portions that the offeror has designated as trade secrets or as confidential proprietary data in its offer, in accordance with ORS 192.501(2) and ORS 646.461-646.475. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be made publicly available regardless of an offeror's designation to the contrary. To the extent a designation of information as trade secrets or confidential proprietary information is not in accordance with ORS 192.501(2), the City shall make those portions available for public inspection.

PCR 2.10: Late Offers, Late Withdrawals and Late Modifications. Any offer received after closing is late. An offeror's requests for modification of an offer, or withdrawals of an offer, received after closing is late. The City shall not consider late offers, late requests for modifications or late withdrawals, except as specifically provided by these rules.

PCR 2.11: Mistakes.

(a) Generally. To protect the integrity of the procurement process and to assure fair treatment of offerors, the Purchasing Administrator shall not permit waiver, correction or withdrawal of offers for mistakes, except as provided in this rule.

(b) Treatment of Errors in Judgment. The Purchasing Administrator shall not allow an offeror to correct or withdraw an offer for an error in judgment.

(c) Treatment of Mistakes After Opening But Before Award. If the Purchasing Administrator discovers mistakes in an offer after opening, but before award, the Purchasing Administrator:

(1) May waive, or permit an offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the offer, or an insignificant mistake that does not result in prejudice to other offerors. Examples of minor informalities include, but are not limited to:

(A) Failure to return the correct number of signed offers or other documents required by the solicitation document;

(B) Failure to sign the offer in the designated block; provided, however, that a signature evidencing an intent to be bound appears elsewhere in the offer; or

(C) Failure to acknowledge receipt of an addenda to the solicitation document, provided that it is clear on the face of the offer that the offeror received the addenda and intended to be bound by its terms, or provided the Purchasing Administrator determines the addenda did not affect price, quality or delivery.

(2) May allow the correction of a clerical error if the error is evident on the face of the offer or other documents submitted with the offer. A clerical error is an offeror's error in transcribing its offer. Examples of clerical errors include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. An example of a clerical error would be a missing unit price, which may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item which may be established by multiplying the unit price by the quantity when those figures are available in the offer. In the event of a discrepancy, unit prices shall prevail over extended prices unless the solicitation document otherwise provides.

(3) May permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror identifies the nature of the error and demonstrates by clear and convincing evidence:

(A) That the error is not a minor informality under this subsection or an error in judgment;

(B) That the error cannot be corrected or waived under subsection (b)(1) & (2) of this rule;

(C) That the offeror acted in good faith in submitting the offer and in claiming that the alleged error exists;

(D) That the offeror acted without gross negligence in submitting the offer;

(E) That the offeror will suffer substantial detriment if the City does not grant the offeror permission to withdraw the offer;

(F) That withdrawal of the offer will not work a substantial hardship on the City or the public; and

(G) That the offeror promptly gave notice of the claimed error to the City after discovery.

(4) The criteria in this subsection shall be used to determine whether an offeror may withdraw its offer without forfeiture of the bid bond or other security, or without liability to the City based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by the City, whether award should be made to the next lowest responsive and responsible bidder or the most advantageous responsive and responsible proposer, or whether the procurement should be made by a new solicitation.

(d) **Rejection for Mistakes.** The Purchasing Administrator shall reject any offer in which a mistake is evident on the face of the offer, and the intended offer is not evident or cannot be substantiated from other documents submitted with the offer.

(e) **Identification of Mistakes after Award.** Following award, an offeror is bound by its offer, and may not withdraw its offer or rescind a contract unless otherwise provided by law.

PCR 2.12: Responsibility of Offerors.

(a) **Determination of Responsibility.** Before a contract may be awarded, the Purchasing Administrator shall determine whether the bidder submitting the lowest bid or proposer submitting the most advantageous proposal is responsible. In the event the Purchasing Administrator determines a bidder or proposer is not responsible, the Purchasing Administrator shall prepare and place a written determination of non-responsibility in the procurement file, and reject the offer.

(b) To be a responsible offeror, a bidder or proposer shall:

(1) Have 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.

(2) Have a satisfactory record of contract performance.

(A) The Purchasing Administrator should carefully scrutinize an offeror's record of performance if the offeror is or recently has been materially deficient in contract performance, and, in reviewing the offeror's performance, should determine whether the deficient performance was expressly excused under the terms of the contract, or whether the offeror took appropriate corrective action.

(B) The Purchasing Administrator may review the offeror's performance on both public and private contracts and subcontracts in determining the offeror's record of contract performance.

(3) Have a satisfactory record of integrity:

(A) An offeror may lack integrity if the offeror demonstrates a lack of business ethics, such as violation of state environmental laws or false certifications made to any public body. The standards for debarment under PCR 2.13 may be used to determine an offeror's integrity.

(B) The Purchasing Administrator may find that an offeror is non-responsible based on the lack of integrity of any person having influence or control over the offeror, such as a key employee of the offeror that has the authority to significantly influence the offeror's performance of the contract.

(4) Be qualified legally to contract with the City.

(5) Have supplied all necessary information in connection with an inquiry concerning responsibility:

(A) Before awarding a contract, the Purchasing Administrator may request any information it deems necessary to indicate that the offeror meets the standards for responsibility.

(B) If the offeror fails to promptly supply information requested, the Purchasing Administrator may base the determination of responsibility on any readily available information, or may find the offeror non-responsible.

PCR 2.13: Debarment of Prospective Offerors.

(a) Generally. The Purchasing Administrator may debar prospective offerors from consideration for contracts for a period of not more than three years if:

(1) The prospective offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(2) The offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective bidder's or proposer's responsibility as a contractor;

(3) The prospective offeror has been convicted under state or federal antitrust statutes;

(4) The prospective offeror has committed a violation of a contract provision and debarment for such a violation was listed in the contract terms and conditions as a potential penalty. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance of the terms of the contract. A failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment; or

(5) The prospective offeror does not carry workers' compensation or unemployment insurance as required by applicable law.

(b) Procedure. A prospective offeror shall be debarred as follows:

(1) The Purchasing Administrator shall give written notice of the reasons for the debarment and the proposed length of debarment to the person for whom debarment is being considered.

(2) The person shall be given not less than fourteen days to respond to the Purchasing Administrator in writing.

(3) The Purchasing Administrator shall issue a written decision that states the reason for the action taken and that informs the person of the person's appeal rights.

(c) Imputed Knowledge. The Purchasing Administrator may attribute to a prospective offeror improper conduct of a prospective offeror's affiliate or other persons with a contract with the prospective offeror, where the impropriety occurred in

connection with the person's duty for, or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective offeror.

(d) Limited Participation. The Purchasing Administrator may allow a debarred person to participate in solicitations on a limited basis during the debarment period, upon written determination that participation is advantageous to the City. The determination shall specify the factors upon which participation is based and define the extent of the limits imposed.

PCR 2.14: Offer Evaluation and Award.

(a) Evaluation. Offers shall be evaluated only as set forth in the solicitation document, and in accordance with these rules and any other applicable law.

(b) Nonresident Bidders. In determining the lowest responsive bid or most advantageous proposal, the City shall apply the reciprocal preference set forth in PCR 2.24(d).

(c) Public Printing. For the purpose of evaluating bids or proposals for printing, binding or stationary goods or services, the City shall apply the public printing preference set forth in ORS 282.210.

(d) Recycling Preferences. In determining the lowest responsive bid or most advantageous proposal for goods, the City shall apply the preference for recycled goods set forth in PCR 2.25.

(e) Clarification of Bids. After opening, the City may engage in discussions with apparent responsive bidders for clarification of bids, to assure full understanding of the bids and to determine whether an offer is responsive. All bidders submitting bids needing clarification shall be afforded an opportunity to clarify their bids. The Purchasing Administrator shall document discussions regarding clarification of any bid in the procurement file.

(f) Negotiations Prohibited. Except as otherwise specifically permitted by these rules, the City shall not negotiate with any bidder or proposer.

(g) Award.

(1) General. If awarded, the City shall award the contract to the responsible bidder submitting the lowest responsive bid or the responsible proposer submitting the responsive proposal that is most advantageous to the City.

(2) Identical Offers. If the City determines that one or more offers are identical under PCR 2.24, the contract shall be awarded in accordance with the procedures set forth in that rule.

(3) **Multiple Items.** An invitation to bid or request for proposals may call for pricing of multiple items of similar or related type, with award based on individual line item, group total of certain items, a “market basket” of items that are representative of expected purchases, or grand total of all items. The City may award by item, groups of items or the entire offer, provided such award is consistent with the solicitation document and is in the public interest.

(4) **All or None Bids.** “All or none” bids or proposals may be accepted, if not prohibited by the solicitation document and the evaluation shows an “all or none” bid to provide the lowest cost of those bids submitted.

(5) **Multiple Awards.**

(A) Multiple contracts may be awarded in accordance with criteria set forth in the solicitation document. A multiple award may be made if the Purchasing Administrator determines that award to two or more offerors of similar goods or services is necessary for adequate availability, delivery, service or product compatibility. Multiple awards may not be made for the purpose of dividing a procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective offerors that multiple contracts may be awarded for any solicitation document shall not preclude the award of a single contract for such procurement.

(B) If a solicitation document permits award of multiple contracts, the solicitation document shall specify the criteria that will be used to choose from the multiple contracts when purchasing goods or services.

(6) **Partial Awards.** If, after evaluation of offers, the Purchasing Administrator determines that an acceptable offer has been received for only parts of the requirements of the solicitation document:

(A) The contract may be awarded for the parts of the solicitation document for which acceptable offers have been received; or

(B) All offers may be rejected and a new solicitation document may be issued on the same or revised terms, conditions and specifications.

PCR 2.15: Intent to Award.

(a) **Notice of Intent to Award.** Unless otherwise provided in these rules, the Purchasing Administrator shall post notice of intent to award a contract pursuant to competitive sealed bidding or competitive sealed proposals in the Purchasing Administrator’s office, at least seven days prior to award, unless circumstances require prompt execution of the contract, in which case the Purchasing Administrator may

provide shorter notice. The Purchasing Administrator shall document the specific reasons for shorter notice in the procurement file. No notice of intent to award must be given for a small procurement under PCR 3.1, an intermediate procurement under PCR 3.2, a sole-source procurement under PCR 4.1, an emergency procurement under PCR 4.2, or a special procurement under PCR 4.3.

(b) Finality. A contract shall not be finally awarded until the later of the following:

- (1)** The expiration of any protest period provided by these rules; or
- (2)** The City Manager provides written responses to all protests that were timely filed, denying the protests and written notice to the affected person of the date by which award will be made.

PCR 2.16: Documentation of Award. After the notice of intent to award is provided, or after award if no notice of intent to award is required, the basis for determining the successful offeror shall be documented as part of the procurement file. The documentation shall include:

(a) For solicitations made by invitation to bid:

- (1)** All bids;
- (2)** The completed bid tabulation sheet; and
- (3)** A written justification for any rejection of bids.

(b) For solicitations made by request for proposals:

- (1)** All proposals;
- (2)** The completed evaluation of the proposals;
- (3)** A written justification for any rejection of higher scoring proposals; and
- (4)** If contractor selection was made pursuant to PCR 5.4, written documentation of the content of any discussions, negotiations, best and final offers, or any other procedures used to select the proposer to whom the contract was awarded.

PCR 2.17: Contract Documents; Availability of Award Decisions.

(a) Contract Documents. To the extent required by the solicitation document, the City shall deliver to the successful offeror a contract or other applicable contract documents, including, but not limited to, a purchase order or price agreement.

(b) Availability of Award Decisions. Any person may obtain bid tabulations or evaluations of proposals for a fee, as established in a schedule adopted by the City Manager. The request shall include the solicitation document number and a self-addressed, stamped envelope. The Purchasing Administrator may make bid tabulations and evaluations of proposals available electronically.

PCR 2.18: Rejection of an Offer.

(a) Grounds for Rejection.

(1) Any offer may be rejected, in whole or in part, when the Purchasing Administrator determines rejection is in the best interest of the City.

(2) An offer shall be rejected by the Purchasing Administrator as non-responsive upon finding that an offer:

(A) Is contingent upon the acceptance of terms and conditions, including specifications, that differ from those contained in the solicitation document;

(B) Takes exception to terms and conditions, including specifications, set forth in the solicitation document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or attempts to prevent public disclosure of the entire contents of the offer;

(D) Offers goods or services that fail to meet the specifications of the solicitation document;

(E) Is late;

(F) Is not in substantial compliance with the solicitation document; or

(G) Is not in substantial compliance with all prescribed public procurement procedures.

(3) An offer shall be rejected by the Purchasing Administrator upon finding that the offeror:

(A) Has not been prequalified, if mandatory prequalification was required;

(B) Has been debarred;

(C) Has not met the requirements of ORS 279A.105, “Subcontracting to emerging small businesses,” if required by the solicitation document;

(D) Has not submitted properly executed bid or proposal security as required by the solicitation document;

(E) Has failed to provide any certification of non-discrimination against any minority, women or emerging small business enterprise required under ORS 279A.110(4) and PCR 2.5(d); or

(F) Is non-responsible.

(4) The Purchasing Administrator shall document the reason for rejection of any offer in the procurement file.

(b) **Form of Business Entity.** For purposes of making any determination under this rule, the Purchasing Administrator may investigate any offeror submitting an offer, which may include an investigation of the offeror’s officers, directors, owners, affiliates, or any other person acquiring ownership of the offeror.

(c) The Purchasing Administrator shall document the reason for any rejection in the procurement file.

PCR 2.19: Rejection of All Offers.

(a) **Rejection.** All offers may be rejected when the Purchasing Administrator determines that rejection is in the best interest of the City. The Purchasing Administrator shall notify all offerors of the rejection of all offers, along with the reasons therefor.

(b) **Criteria.** Whether rejection is in the best interest of the City shall be based upon the following criteria:

(1) Whether the content of, or an error in, the solicitation document, or an error in the procurement process unnecessarily restricted competition for the contract;

(2) Whether the price, quality or performance presented by the offerors are too costly or of insufficient quality to justify acceptance of any offer;

(3) Whether misconduct, error, or ambiguous or misleading provisions in the solicitation document threaten the fairness and integrity of the competitive process;

(4) Whether causes other than legitimate market forces threaten the integrity of the competitive process or tend to limit competition. Causes include, but are

not limited to, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the solicitation document; or

(5) Whether any other circumstances exist that indicate award of the contract would not be in the public interest.

(c) The Purchasing Administrator shall document the reason for rejection of all offers in the procurement file.

PCR 2.20: Cancellation, Delay or Suspension of a Procurement or Solicitation.

(a) **Cancellation.** A procurement or solicitation may be cancelled whenever the Purchasing Administrator determines that cancellation is in the best interest of the City.

(1) **Notice of Cancellation Before Opening.** If a procurement or solicitation is cancelled prior to opening, the Purchasing Administrator shall provide written notice of cancellation to all persons who received the solicitation document and who also attended any mandatory pre-offer conference. The Purchasing Administrator may also choose to provide notice of the cancellation in the same manner that notice was initially provided for the notice of solicitation.

(2) **Notice of Cancellation After Opening.** If a procurement or solicitation is cancelled after opening, the Purchasing Administrator shall provide written notice of cancellation to all offerors who submitted offers.

(b) **Contents.** Notice of cancellation shall contain:

(1) An identification of the solicitation document;

(2) A brief explanation of the reason for cancellation; and

(3) If appropriate, an explanation that an opportunity will be given to compete on any re-solicitation.

(c) **Delay or Suspension.** A procurement or solicitation may be delayed or suspended when the Purchasing Administrator determines that delay or suspension is in the best interest of the City. The Purchasing Administrator shall document the reason for any cancellation, delay or suspension in the procurement file.

PCR 2.21: Disposition of Offers if Procurement or Solicitation Canceled or All Offers Rejected.

(a) **Prior to Opening.** If the Purchasing Administrator cancels a procurement or solicitation prior to opening, all offers shall be returned to the offerors unopened, provided the offer was submitted in a hard copy format with a clearly visible return

address. If there is no clearly visible return address on the envelope, the Purchasing Administrator shall open the offer to determine the source and then return the offer to the offeror. If the solicitation was by electronic offer, the Purchasing Administrator shall make a reasonable effort to have offers deleted from the City's electronic procurement system.

(b) After Opening. If a procurement or solicitation is cancelled after opening, the Purchasing Administrator:

- (1)** May keep proposals in the procurement file or return proposals to the proposer, but shall keep a list of returned proposals in the procurement file; and
- (2)** Shall keep all bids in the procurement file.

(c) Rejection of All Offers. If all offers are rejected, and the procurement or solicitation is cancelled, the Purchasing Administrator shall keep all proposals and bids in the procurement file.

PCR 2.22: Qualified Products Lists. The Purchasing Administrator may develop and maintain a qualified products list, pursuant to ORS 279B.115.

PCR 2.23: Prequalification of Prospective Offerors. The City Manager may allow for the prequalification of prospective offerors pursuant to ORS 279B.120-279B.125. Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), the Purchasing Administrator may determine that a prequalified offeror is not responsible prior to award.

PCR 2.24: Identical Offers; Preference for Oregon and City of Salem Goods or Services; Nonresident Bidders.

(a) Award When Offers Identical. When offers which are identical in price, fitness, availability and quality, are received in response to a solicitation document, the contract award shall be determined by the following order of precedence:

- (1)** The contract shall be awarded to the offeror among those submitting identical offers that is offering goods or services that have been manufactured or produced in Oregon.
- (2)** If two or more offerors submit identical offers, and both offer goods or services manufactured or produced in Oregon, the contract shall be awarded to the offeror among those submitting identical offers that is offering goods or services that have been manufactured or produced in the City.
- (3)** If two or more offerors submit identical offers, and both offer goods or services manufactured or produced in the City, the contract shall be awarded by

drawing lots among the identical offers offering goods or services that have been manufactured or produced in the City.

(4) If identical offers are received and none of the identical offers offer goods or services manufactured or produced in the City, then the contract shall be awarded by drawing lots among the identical offers.

(b) Determining if Offers are Identical. Offers shall be considered identical in price, fitness, availability and quality if:

(1) The bids are responsive and offer the goods or services described in the invitation to bid at the same price;

(2) The proposals are responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the request for proposals.

(3) The City Manager determines offers received in response to a special procurement are equally advantageous to the City.

(c) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon or the City. For the purposes of complying with this section, the Purchasing Administrator may request in the solicitation document, following closing or at any other time, information appropriate and necessary to allow a determination that the goods or services or personal services are manufactured or produced in Oregon or the City. The Purchasing Administrator may use any reasonable criteria to determine if goods or services or personal services are manufactured or produced in Oregon or the City, provided that the criteria reasonably relate to that determination, and provided the criteria are applied equally to each offeror.

(d) Reciprocal Preferences for Non-Resident Bidders. When evaluating bids, a percentage increase shall be added to the bid of a nonresident bidder equal to the percentage, if any, of the preference that would be given to that bidder in the state in which the bidder resides. The list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) will be used to determine whether the nonresident bidder's state gives preference to in-state bidders and the amount of such preference.

(e) Procedure for Drawing Lots. When this rule calls for drawing lots, lots shall be drawn by a procedure that affords each offeror who is eligible to participate in the drawing a substantially equal probability of being selected.

PCR 2.25: Preference for Recycled Materials. In the procurement of goods, preference shall be given to goods manufactured from recycled materials.

(f) In comparing goods from two or more offerors, if at least one offeror offers goods manufactured from recycled materials, the offeror offering goods manufactured from recycled materials shall be selected if each of the following four conditions exists:

(1) The recycled product is available;

(2) The recycled product meets applicable standards, as set forth in the solicitation document;

(3) The recycled product can be substituted for a comparable non-recycled product; and

(4) The recycled product's costs do not exceed the cost of non-recycled products by more than five percent, or such higher percentage as determined applicable to a specific procurement by the City Manager, in writing and set forth in the solicitation document. The percent preference provided in this subsection shall only apply to the value of that portion of the offer that offers recycled products containing verifiable recycled contents.

(g) To be eligible for the preference under this section, an offeror must:

(1) Request the preference in their offer;

(2) Indicate in the offer the materials considered relevant for the preference; and

(3) Identify the minimum or, if available, the approximate or exact, percentage of recycled product in all goods offered.

(h) For the purposes of this rule, the Purchasing Administrator shall have the authority to determine if goods are manufactured from recycled materials in accordance with standards established by the City.

III. INFORMAL SOURCE SELECTION METHODS FOR GOODS OR SERVICES

PCR 3.1: Small Procurements.

- (a) **Generally.** Contracts for goods or services with a contract price of \$5,000 or less are small procurements.
- (b) **Purchases Up To \$2,500.** A Department Head may use any procurement method the Department Head deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contract price of less than \$2,500.
- (c) **Purchases Between \$2,500 and \$5,000.** A Department Head may use competitive verbal quotes or proposals, and informal written solicitations for small procurements of goods or services with a contract price between \$2,500 and \$5,000.
- (d) **Negotiations.** The Department Head may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals, or to make modifications that will make the quote or proposal acceptable or more advantageous to the City.
- (e) **Award.** Small procurements may be awarded by a Department Head. The contract, if awarded, shall be awarded to the provider whose verbal quote or proposal the Department Head determines will best serve the interests of the City, taking into account price as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.
- (f) **Amendments.** Small procurement contracts may be amended, as provided in PCR 1.10, if the cumulative amendments do not increase the total contract price to more than twenty-five percent of the original contract price.
- (g) **Public Notice.** No public notice of a small procurement is required.

PCR 3.2: Intermediate Procurements.

- (a) **Generally.** Contracts for goods or services with a contract price greater than \$5000 and less than or equal to \$150,000 are intermediate procurements. Intermediate procurements shall be by informal written solicitation.
- (b) **Negotiations.** The Purchasing Administrator may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.

(c) **Award.** The Purchasing Administrator may award all intermediate procurements with a contract price of up to \$50,000. City Manager shall award all intermediate procurements with a contract price of \$50,000 or greater. If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation will best serve the interests of the City, taking into account price, as well as any other relevant considerations, including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility.

(d) **Amendments.** Intermediate procurement contracts may be amended, as provided in PCR 1.10, if the cumulative amendments do not increase the total contract price by more than twenty five percent of the original contract price.

(e) **Public Notice.** Public notice is required for intermediate procurements with a contract price equal to or exceeding \$50,000.

PCR 3.3: Solicitation Method for Competitive Verbal Quotes and Proposals.

Solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, or facsimile or e-mail if authorized by the Purchasing Administrator. A good faith effort shall be made to contact at least three potential providers. If three potential providers are not reasonably available, fewer will suffice, provided the reasons three potential providers are not reasonably available is documented as part of the procurement file.

PCR 3.4: Solicitation Method for Informal Written Solicitations.

(a) Informal written solicitations shall be made by a solicitation document sent to not less than three prospective providers. The solicitation document shall request competitive price quotes or competitive proposals, and include:

- (1) The date, time and place that price quotes or proposals are due;
- (2) A description or quantity of the good or service required;
- (3) Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be 30 days;
- (4) Any required contract terms or conditions; and
- (5) Any required bid form or proposal format.

(b) Price quotes or proposals shall be received by the Purchasing Administrator at the date, time and place established in the solicitation document. The Purchasing Administrator shall keep a written record of the sources of the quotes or proposals. If

three quotes or proposals are not reasonably available, fewer will suffice, but the Purchasing Administrator shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

IV. ALTERNATIVE SOURCE SELECTION METHODS FOR GOODS OR SERVICES, PERSONAL SERVICES AND PROFESSIONAL SERVICES

PCR 4.1: Sole-Source Procurements.

(a) **Generally.** A contract may be awarded as a sole-source procurement without competition pursuant to this rule.

(b) **Determination of Sole Source.** Before a sole-source contract may be awarded, the Purchasing Administrator must make written findings that the goods or services, personal services or professional services are available from only one source, based on one or more of the following criteria:

(1) The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one source;

(2) The goods or services, personal services or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;

(3) The goods or services, personal services or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or

(4) Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.

(c) **Negotiations.** To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole source provider.

(d) **Notice.** The Purchasing Administrator shall post notice of any determination that the sole source selection method will be used on the City website, not less than ten days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed. (Amendment by Resolution No. 2005-73)

PCR 4.2: Emergency Procurements.

(a) **Generally.** Contracts may be awarded as emergency procurements pursuant to this rule.

(b) Determination of Emergency.

(1) An emergency exists if a condition that could not have been reasonably foreseen creates either 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.

(2) The City Manager, a Department Head or, if the City Manager or Department Head cannot reasonably be reached, a Division Head have the authority to determine if circumstances exist justifying an emergency procurement with a contract price of less than \$25,000. The City Manager or, if the City Manager cannot reasonably be reached, a Department Head have the authority to determine if circumstances exist justifying an emergency procurement with a contract price of \$25,000 or more. The authority to make the determination an emergency exists may not be delegated.

(c) Competition. An emergency contract may be awarded after such competition as is practicable under the circumstances. If possible, competitive quotes should be sought from at least three providers.

(d) Award. The City Manager, a Department Head or, if the City Manager or Department Head cannot reasonably be reached, a Division Head may award an emergency contract with a contract price of less than \$25,000. The City Manager or, if the City Manager cannot reasonably be reached, a Department Head may award an emergency contract with a contract price of \$25,000 or greater, unless the emergency requires award of the contract before the City Manager can be reached, in which case a Department Head may award the contract.

(e) Record of Procurement. Whenever an emergency procurement is made, the City Manager, Department Head, or Division Head shall forward to the Purchasing Administrator documentation establishing the emergency and describing the method used for selection of the particular contractor. The Purchasing Administrator shall retain such documentation in the procurement file. (Amendment by Resolution No. 2005-73)

PCR 4.3: Special Procurements.

(a) Generally. The City Manager may authorize special procurements to enter into a series of contracts over time for either:

(1) the acquisition of a specified class of goods or services, personal services or professional services,

(2) a specific contract for goods or services, personal services or professional services, or

(3) a number of related specific contracts for acquisition of goods or services, personal services or professional services on a one-time basis for a single project.

(b) Procedure. To request a special procurement, a written request shall be submitted to the Purchasing Administrator, who shall forward a copy of the request to the City Manager. The request shall describe: (1) the proposed contracting procedure; (2) the goods or services, personal services, professional services, or a any specified class within any of those types of procurement; and (3) the circumstances that justify the special procurement. The City Manager may approve the special procurement upon a finding that the proposed special procurement:

(1) Will be unlikely to encourage favoritism in the awarding of contracts or to substantially diminish competition for contracts; and

(2) Either result in substantial cost savings to the City or to the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with competitive procurement requirements of these rules.

(c) Notice. Public notice of a proposed special procurement must be published not less than seven days prior to the approval of the special procurement. The notice shall describe the special procurement, and include the date and time when, and place where protests of the use of the special procurement source selection method must be filed.

(d) Award. If a special procurement contract is awarded, the contract shall be awarded to the offeror whose offer the Purchasing Administrator determines, in writing, to be the most advantageous to the City.

(e) Additional Procurement Under Special Procurement. When a special procurement has been approved for a specified class of goods or services, personal services or professional services, additional future procurements that fall within the specified class may be awarded according to the terms of the original special procurement, without a new request for, notice of, and approval of the special procurement. (Amendment by Resolution No. 2005-73)

V. FORMAL COMPETITIVE SOURCE SELECTION METHODS FOR GOODS OR SERVICES

PCR 5.1: Competitive Sealed Bidding.

(a) **Generally.** Competitive sealed bidding may be used as a source selection method for any contract for goods or services. Competitive sealed bidding is initiated by an invitation to bid.

(b) **Invitation to Bid.** The invitation to bid shall include:

(1) Notice of any pre-offer conference, including:

(A) The time, date and location;

(B) Whether pre-offer conference attendance will be mandatory or voluntary; and

(C) A notice that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by a written addendum.

(2) The form and instructions for the submission of bids, including the location where bids must be submitted, the date and time by which bids must be received and any other special information, i.e., whether bids may be submitted by electronic means;

(3) The name and title of the person designated for the receipt of bids and the person designated as the contact person for the procurement, if different;

(4) A date, time and place that prequalification applications, if any, must be filed and the classes of work, if any, for which bidders must be prequalified;

(5) A statement that the procurement may be cancelled, or any or all bids rejected, when the cancellation or rejection is in the best interests of the City, as determined by the City Manager;

(6) A statement that contractors and subcontractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract;

(7) A statement that the contractor and subcontractors must possess an asbestos abatement license, if required under ORS 468A.710;

(8) The date, time and place of opening;

- (9) The office where the invitation to bid may be reviewed;
- (10) A statement that each bidder must identify whether the bidder is a “resident bidder”;
- (11) A statement that bidders shall include in their offers the contractor’s certification of nondiscrimination in obtaining required subcontractors, as required by ORS 279A.110(4);
- (12) A description of any required insurance coverage;
- (13) A statement of how bidders will be notified of addenda and how the addenda will be made available;
- (14) A description of the goods or services to be purchased, including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements;
- (15) An outline of the bidding and evaluation process;
- (16) The anticipated schedule, deadlines, evaluation process and protest process;
- (17) The form and amount of any bid security determined reasonably necessary or prudent by the Purchasing Administrator to protect the City’s interests;
- (18) The criteria that will be used to evaluate the bids, which may include criteria related to inspection, testing, quality and suitability for intended use. Criteria that will affect price, such as discounts, transportation costs and total costs of ownership or operation of a product over its life shall be objectively measurable, but need not include predictors of actual future costs;
- (19) If the City intends to award contracts to more than one bidder, an identification of the manner in which it will determine the number of contracts to be awarded, or that the manner will be left to the City’s discretion at time of award;
- (20) All contract terms and conditions including:

 - (A) A provision indicating whether the contractor can assign the contract, delegate duties, or subcontract delivery of the goods or services, with or without prior written approval, and
 - (B) The statutorily required contract provisions set forth in ORS 279B.220, 270B.225, 279B.230 and 279B.235.

(c) **Public Notice.** The Purchasing Administrator shall provide public notice of a solicitation by competitive sealed bidding. Public notice shall be given not be less than fourteen days prior to closing, unless the Purchasing Administrator determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition. The Purchasing Administrator shall document the specific reasons for shorter notice period in the procurement file.

PCR 5.2: Multistep Competitive Sealed Bids.

(a) **Generally.** When it appears impractical to initially prepare specifications to support a contract award based on price, the City Manager may approve the use of multistep competitive sealed bids.

(b) **Phased Process.** Multistep bidding is a phased process that seeks unpriced technical bids in an initial phase and regular competitive sealed bidding in the final phase, that invites bidders who submitted technically eligible bids in the initial phase to submit competitive sealed price bids on the technical bids in the final phase. The contract shall be awarded to the lowest responsible bidder.

(c) **Procedure for the Initial Phase of Multistep Sealed Bids.**

(1) **Form of Invitation to Bid.** Multistep sealed bidding shall be initiated by an invitation to bid in the form and manner required for competitive sealed bids. The multistep invitation to bid shall also include:

(A) A statement that unpriced technical bids are requested;

(B) A statement that the solicitation is a multistep sealed bid procurement, and that priced bids will be considered only in subsequent phases and only from those bidders whose unpriced technical bids are found eligible in the first phase;

(C) The criteria to be used in the evaluation of unpriced technical bids;

(D) A statement that the City, to the extent that it finds necessary, may conduct oral or written discussions with any bidder for the purposes of clarification of unpriced technical bids;

(E) A statement that the goods or services shall be furnished generally in accordance with the bidder's unpriced technical bid, as found to be finally eligible, and shall meet all other requirements of the invitation to bid;

(F) A statement that bidders excluded from the final phase have a right to protest the exclusion.

(2) **Discussions of Unpriced Technical Bids.** The Purchasing Administrator may seek clarification of unpriced technical bids from any eligible or potentially eligible bidder. During the course of discussions, the Purchasing Administrator shall not disclose any information derived from one unpriced technical bidder to any other bidder. Once discussions have begun, bidders who have not been notified that their bids have been finally found ineligible may submit supplemental information amending their technical bids at any time prior to completion of the first phase. Submissions of supplemental information may be made at the request of the Purchasing Administrator or upon a bidder's own initiative.

(3) **Addenda to the Invitation to Bid.** After receipt of unpriced technical bids, addenda to the invitation to bid shall be distributed only to bidders who submitted unpriced technical bids.

(4) **Receipt and Handling of Unpriced Technical Bids.** Unpriced technical bids need not be opened publicly.

(5) **Evaluation of Unpriced Technical Bids.** Unpriced technical bids shall be evaluated solely in accordance with the criteria set forth in the invitation to bid. Unpriced technical bids shall be categorized as:

(A) Eligible;

(B) Potentially eligible, e.g. reasonably susceptible of being made eligible; or

(C) Ineligible.

(6) **Notice of Ineligible Unpriced Technical Bid.** A bidder whose unpriced technical bid is found ineligible shall not be afforded an additional opportunity to supplement its technical bid. The Purchasing Administrator shall record in writing the basis for determining a bid ineligible and make it part of the procurement file.

(7) **Mistakes During Multistep Sealed Bidding.** Mistakes may be corrected or bids may be withdrawn during the initial phase of a multistep sealed bidding:

(A) Before the unpriced technical bids are considered;

(B) After any discussions have commenced under subsection (c)(2) of this rule;

(C) When responding to any addenda of the invitation to bid; or

(D) In accordance with PCR 2.11.

(8) Public Notice. The Purchasing Administrator shall give public notice for the first phase of multistep sealed bidding. Public notice shall be given not be less than fourteen days prior to closing the initial phase of multistep sealed bidding.

(d) Procedure for Final Phase of Multistep Sealed Bids.

(1) Initiation of Final Phase. The final phase may be initiated if, in the Purchasing Administrator's opinion, there are sufficient eligible unpriced technical bids to assure effective price competition in the final phase without technical discussions. If the Purchasing Administrator finds that there are insufficient bids to initiate the final phase, an addendum to the invitation to bid or request to engage in discussions, as set forth in subsection (c)(2) of this rule, may be issued.

(2) Notice of Initiation of Final Phase. The Purchasing Administrator shall give notice of the final phase of multistep sealed bidding to all responsive bidders in the initial phase, and shall invite each eligible bidder to submit a price bid. The notice shall inform bidders of the right to protest addenda issued after initial closing and inform bidders excluded from the final phase of the right to protest such exclusion.

(3) Conduct; Public Notice. The final phase shall be conducted as a competitive sealed bid procurement under PCR 5.1, except no public notice need be given of the invitation to submit price bids.

PCR 5.3: Competitive Sealed Proposals.

(a) Generally. Competitive sealed proposals may be used as a procurement method for any contract for goods or services. A competitive sealed proposal is initiated by a request for proposal.

(b) Request for Proposal. The request for proposal shall include:

(1) Notice of any pre-offer conference, including:

(A) The date, time and location;

(B) Whether pre-offer conference attendance will be mandatory or voluntary; and

(C) A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by a written addendum.

- (2) The form and instructions for submission of proposals including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, i.e., whether proposals may be submitted by electronic means;
- (3) The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
- (4) A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
- (5) A statement that the City may cancel the procurement or reject any or all proposals;
- (6) A statement that “Contractors and subcontractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.”
- (7) A statement that the contractor and subcontractors must possess an asbestos abatement license, if required under ORS 468A.710;
- (8) The date, time and place of opening;
- (9) The office where the request for proposals may be reviewed;
- (10) A statement that proposers must include in their proposal the contractor’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
- (11) A statement of how proposers will be notified of addenda and how addenda will be made available;
- (12) A description of the goods or services to be purchased including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements;
- (13) The anticipated schedule, deadlines, evaluation process and protest process;
- (14) The form and amount of any proposal security determined reasonably necessary or prudent by the Purchasing Administrator to protect the City’s interests;
- (15) The evaluation criteria and a description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation

criteria used to rate proposals. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors should be reasonable estimates of actual future costs and performance based on information available to the City;

(16) If the City intends to award contracts to more than one proposer, an identification of the manner in which it will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;

(17) All contract terms and conditions including:

(A) A provision indicating whether the contractor can assign the contract, delegate duties, or subcontract delivery of the goods or services, with or without prior written approval, and

(B) The statutorily required contract provisions set forth in ORS 279B.220, 270B.225, 279B.230 and 279B.235;

(18) Any terms and conditions authorized for negotiation.

(c) **Public Notice.** The Purchasing Administrator shall provide public notice of a solicitation by competitive sealed proposal. Public notice shall be given not less than twenty-one days prior to closing for the request for proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition. The Purchasing Administrator shall document the specific reasons for shorter public notice period in the procurement file.

PCR 5.4: Competitive Range for Proposers, Discussions Leading to Best and Final Offers and Negotiations.

(a) **Competitive Range.** The Purchasing Administrator may authorize the establishment of a competitive range at any stage in the competitive sealed proposal procurement process.

(b) **Determining Competitive Range.** The Purchasing Administrator may establish a competitive range of proposers after evaluating all responsive proposals in accordance with the evaluation criteria set forth in the request for proposals. After evaluation, the Purchasing Administrator shall determine the competitive range and rank the proposers.

(1) Notwithstanding any criteria for, or limitation of, a competitive range in the request for proposals, the Purchasing Administrator may:

(A) Increase the number of proposers in the competitive range, if the evaluation of proposals establishes a natural break in the scores that

indicates a number of proposers greater than the initial competitive range are closely competitive, or have a reasonable chance of being determined the most advantageous proposer.

(B) Decrease the number of proposers in the competitive range, if the excluded proposers have no reasonable chance to be the most advantageous proposer or if the number of proposers in the competitive range would hinder efficient competition.

(2) Notice. The Purchasing Administrator shall provide written notice to all proposers, identifying those proposers falling within the competitive range, and the right to protest exclusion from the competitive range.

(c) Notice of Intent to Award, Enter into Discussions or Negotiate. After determination of the competitive range and after any protest period expires, or after any protest has been finally resolved, whichever is later, the Purchasing Administrator may:

(1) Provide written notice to all proposers in the competitive range of intent to award the contract to the highest-ranked proposer in the competitive range. An unsuccessful proposer in the competitive range may protest the intent to award the contract;

(2) Engage in simultaneous negotiations with some or all of proposers in the competitive range, as provided in subsection (e) of this rule; or

(3) Engage in discussions leading to revised proposals for best and final offers with; some or all proposers in the competitive range, as provided in subsection (d)(3) of this rule, and, after accepting revised proposals, evaluate the revised proposals and conduct negotiations as provided in subsection (e) of this rule.

(d) Discussions Leading to Revised Proposals for Best and Final Offers. The Purchasing Administrator may enter into discussions leading to revised proposals for best and final offers, which shall be conducted as follows:

(1) Initiating Discussions. Oral or written discussions may be initiated with all proposers in the competitive range for the following purposes:

(A) To notify proposers in the competitive range of parts of their proposals for which additional information is sought; or

(B) To allow proposers in the competitive range to develop revised proposals that will allow the City to obtain the best proposal based on the requirements and evaluation criteria set forth in the request for proposals.

(2) Conducting Discussions. All proposers in the competitive range shall be offered the opportunity to discuss their proposals before the proposers are notified of the date and time that best and final offers will be due. Discussions may be conducted with each proposer in the competitive range, but need not engage in the same amount of discussion with each proposer.

(A) In conducting discussions:

(i) All proposers fairly shall be treated fairly and one proposer shall not be favored over another proposer;

(ii) Other proposer's proposals shall not be discussed with any proposer;

(iii) The evaluation of a proposal may be adjusted as a result of a discussion. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions, provided the changes are within the scope of the request for proposals.

(B) At any time during the time allowed for discussions:

(i) Discussions may continue with any particular proposer;

(ii) Discussions may be terminated with a particular proposer and continued with other proposers; or

(iii) Discussions with all remaining proposers may be concluded and, after notice to all proposers, best and final offers may be requested from one or more proposers.

(3) Best and Final Offers.

(A) If best and final offers are sought, the Purchasing Administrator shall establish a date and time by which best and final offers must be submitted. Best and final offers shall be submitted only once by proposers; provided, however, the Purchasing Administrator may determine, in writing, that it is in the City's best interest to engage in additional discussions or negotiations or to change the contract requirements and require another submission of best and final offers. No other discussion of or changes in the best and final offers shall be allowed prior to award. Proposers shall be informed that, if they do not submit a notice of withdrawal or another best and final offer, their immediately previous offer shall be deemed their best and final offer.

(B) Best and final offers shall be evaluated according to the evaluation criteria set forth in the request for proposals, or as modified during discussions or negotiations. Evaluation factors or their relative importance shall not be modified after the date and time that best and final offers are due.

(e) **Negotiations.**

(1) **Initiating Negotiations.** Serial or simultaneous negotiations may be initiated with the proposers in the competitive range:

(A) After determination of the competitive range; or

(B) After conclusion of discussions leading to revised proposals.

(2) **Conducting Negotiations.**

(A) **Scope.** Negotiations may occur regarding:

(i) The statement of work;

(ii) The contract price, as it is affected by negotiations of the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the request for proposals, or any addenda thereto. Proposers shall not submit, and the City will not accept, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the request for proposals, or any addenda thereto.

(3) **Terminating Negotiations.** At any time during negotiations, negotiations may be terminated with any proposer with whom it is currently negotiating at any time, if the City reasonably believes that:

(A) The proposer is not negotiating in good faith; or

(B) Further negotiations with the proposer will not result in an agreement to terms and conditions for a final contract in a timely manner.

(4) **Continuing Serial Negotiations.** If serial negotiations are being conducted, negotiations may be terminated with one proposer in the competitive range and serial negotiations commenced with the next highest scoring proposer in the competitive range, until the City has either:

(A) Determined to award the contract to the proposer with whom it is currently negotiating; or

(B) Completed one round of serial negotiations with all proposers in the competitive range, unless more than one round of negotiations was provided in the request for proposals, in which case all rounds of negotiations have been completed.

(5) **Competitive Simultaneous Negotiations.** If competitive simultaneous negotiations are being engaged in with competing proposers:

(A) All proposers shall be treated fairly and one proposer shall not be favored over another;

(B) Other proposer's proposals may be disclosed to other proposers, or the substance of negotiations with other proposers may be disclosed to other proposers, but only if all of proposers with whom negotiations will occur have been notified of the intent to make such disclosures prior to commencing negotiations with any proposer.

(6) **Oral Modifications in Negotiations.** Any oral modification of a proposal resulting from negotiations shall be reduced to writing by the proposer and included in the procurement file.

PCR 5.5. Multistep Competitive Sealed Proposals.

(a) **Generally.** The City Manager may authorize the procurement of goods or services using multistep competitive sealed proposals.

(b) **Phased Process.** Multistep sealed proposals is a phased process that seeks unpriced technical proposals in an initial phase and regular competitive sealed proposals in the final phase which invites proposers who submitted technically eligible proposals in the initial phase to submit competitive sealed proposals on the technical proposal. The contract shall be awarded to the proposer submitting the most advantageous proposal to the City in accordance with the terms of the solicitation document issued for the final phase.

(c) **Procedure for Phase One of Multistep Sealed Proposals.**

(1) **Form of Request for Proposal.** Multistep sealed proposals shall be initiated by a request for proposal in the form and manner required for competitive sealed proposals. The multistep request for proposal shall also include:

(A) A statement that unpriced technical proposals are requested;

(B) A statement that the solicitation is a multistep sealed proposal, and that priced proposals will be considered only in subsequent phases and only from those proposers whose unpriced technical proposals are found qualified in the first phase;

(C) The criteria to be used in the evaluation of unpriced technical proposals;

(D) A statement that the City, to the extent that it finds necessary, may conduct oral or written discussions of the unpriced technical proposals with any proposer;

(E) A statement that the goods or services shall be furnished generally in accordance with the proposer's unpriced technical proposal, as found to be finally eligible, and shall meet all other requirements of the request for proposal.

(F) A statement that proposers excluded from subsequent phases have a right to protest the exclusion.

(2) **Discussion of Unpriced Technical Proposals.** The Purchasing Administrator may seek clarification of an unpriced technical proposal of any proposer who submits a qualified, or potentially qualified unpriced technical proposal. During the course of discussions, the Purchasing Administrator shall not disclose any information derived from one unpriced technical proposal to any other proposer. Once discussions are begun, proposers who have not been notified that their proposals have been finally found unqualified may submit supplemental information amending their unpriced technical proposal at any time prior to the completion of the first phase. Submissions of supplemental information may be made at the request of the Purchasing Administrator or upon the proposer's own initiative.

(3) **Addenda to the Request for Proposal.** After receipt of unpriced technical proposals, addenda to the request for proposal shall be distributed only to proposers who submitted unpriced technical proposals.

(4) **Receipt and Handling of Unpriced Technical Proposals.** Unpriced technical proposals need not be opened publicly.

(5) **Evaluation of UnPriced Technical Proposals.** Unpriced technical proposals shall be evaluated solely in accordance with the criteria set forth in the request for proposals. Unpriced technical proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified, e.g., reasonably susceptible of being made qualified; or

(C) Unqualified.

(6) Notice of Unqualified Unpriced Technical Proposal. A proposer whose unpriced technical proposal is found unqualified shall not be afforded an additional opportunity to supplement its technical proposal. The Purchasing Administrator shall record, in writing, the basis for determining the proposal unqualified and make it part of the procurement file.

(7) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or proposals may be withdrawn during the initial phase of a multistep sealed proposal:

(A) Before unpriced technical proposals are considered;

(B) After any discussions have commenced under subsection (c)(2) of this rule;

(C) When responding to any addenda to the request for proposal; or

(D) In accordance with PCR 2.11.

(8) Public Notice. The Purchasing Administrator shall give public notice for the first phase of multistep sealed proposals. Public notice shall be given not less than twenty-one days prior to closing for the first phase of multistep competitive sealed proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition. The Purchasing Administrator shall document the specific reasons for shorter public notice period in the procurement file.

(d) Procedure for Subsequent Phases.

(1) Initiation of Final Phase.

(A) The final phase may be initiated if, in the Purchasing Administrator's opinion, there are sufficient qualified or potentially qualified unpriced technical proposals to assure effective competition in the final phase without technical discussions. Upon the completion of initial phase:

(i) Each qualified proposer may be invited to submit price proposals; or

(ii) The City may proceed to the next phase, if the multistep request for proposals contemplated multiple phases.

(B) If the Purchasing Administrator finds that there are insufficient proposals to initiate the final phase, an addendum to the request for proposal as provided in subsection (c)(3) of this rule or request to engage in discussions as provided in subsection (c)(2) of this rule may be issued.

(2) **Notice of Initiation of Subsequent or Final Phases.** Public notice is not required for the subsequent phases. The Purchasing Administrator shall give notice of subsequent phases on a multistep sealed proposal to all responsive bidders determined to be eligible for the preceding phase. The notice shall inform proposers excluded from subsequent phases of the right to protest such exclusion.

(3) **Conduct; Notice to Submit proposals.** The final phase shall be conducted as any other competitive solicitation for sealed proposals under PCR 5.3, except no public notice need be given of the invitation to submit price proposals.

PCR 5.6: Amendments. Formal competitive procurement contracts may be amended, as provided in PCR 1.10, if the cumulative amendments do not increase the total contract price to more than twenty-five percent of the original contract price.

VI. PROCUREMENT METHODS FOR PERSONAL SERVICES CONTRACTS

PCR 6.1: Definition; Classification of Services as Personal Services.

(a) Personal services are services, other than the services of an architect, engineer or land surveyor, and related services, as defined by PCR 1.1, that require specialized skill, knowledge and resources in the application of technical or scientific expertise or in the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary. Personal services contracts include, but are not limited to, the following classes of contracts:

- (1)** Contracts for services performed in a professional capacity, including, but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, physician or broadcaster;
- (2)** 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;
- (3)** Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
- (4)** Contracts for services that are specialized, creative or research-oriented;
- (5)** Contracts for services as a consultant.

(b) In addition to the classes of personal services contracts identified under subsection (a) of this rule, the City Manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the City Manager shall consider:

- (1)** Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
- (2)** Whether the city intends to rely on the contractor's specialized skills, knowledge and expertise to accomplish the work; and
- (3)** Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the City's needs and result in obtaining satisfactory contract performance and optimal value.

(4) A service shall not be classified as personal services for the purposes of this rule if:

(A) The work has traditionally been performed by contractors selected primarily on the basis of price; or

(B) The services do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

(c) All personal services contracts shall be reviewed and approved by the City Attorney before the contract is executed.

PCR 6.2: Requests for Qualifications.

(a) A request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations or requests for proposals.

(b) A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance. A request for qualifications may require information, including, but not limited to, the contractor's particular capability to perform the required personal services; the number of experienced personnel available to perform the required personal services; the specific qualifications and experience of personnel; a list of similar personal services the contractor has completed; references concerning past performance; and any other information necessary to evaluate the contractor's qualifications.

(c) A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time, and place of the meeting.

(d) Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

PCR 6.3: Direct Negotiations.

(a) Personal services may be procured through direct negotiations if:

- (1) The contract price does not exceed \$25,000 and the work is within a budgetary appropriation;
- (2) The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
- (3) The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.

(b) **Amendments.** Personal services contracts procured by direct negotiation pursuant to this rule may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price to greater than twenty five percent over the original contract price.

(c) **Public Notice.** No public notice of personal services contracts procured by direct negotiations pursuant is required.

PCR 6.4: Informal Written Solicitations.

(a) **Generally.** An informal written solicitation process may be used for personal services when the contract price is less than \$100,000.

(b) An informal written solicitation shall solicit proposals from at least three qualified providers. If the Purchasing Administrator determines three qualified providers are not reasonably available, fewer will suffice, if the reasons three providers are not reasonably available are documented in the procurement file.

(c) The solicitation document shall include:

- (1) The date, time and place that proposals are due;
- (2) A description of personal services sought, or the project to be undertaken;
- (3) Any required contract terms or conditions; and
- (4) Any required bid form or proposal format.

(d) Selection and ranking of proposals may be based on the following criteria:

- (1) Particular capability to perform the personal services required;
- (2) Experienced staff available to perform the personal services required, including the proposer's recent, current, and projected workloads;

- (3) Performance history;
- (4) Approach and philosophy used in providing personal services;
- (5) Fees or costs;
- (6) Geographic proximity to the project or the area where the services are to be performed;
- (7) Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.

(e) The Purchasing Administrator shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.

(f) **Amendments.** Personal services contracts procured by informal written solicitations pursuant to this rule may be amended, provided:

(1) The amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty percent over the original contract price; or

(2) The amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

(g) **Public Notice.** No public notice of personal services contract procured by informal written solicitations pursuant to this rule is required.

PCR 6.5: Request for Proposals.

(a) **Generally.** A request for proposals shall be used to procure personal services when the contract price is \$100,000, or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the City.

(b) **Request for Proposal.** The request for proposal shall include:

(1) Notice of any pre-offer conference, including:

(A) The time, date and location;

(B) Whether attendance at the pre-offer conference is mandatory or voluntary;

(C) A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.

- (2) The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, i.e., whether proposals may be submitted by electronic means;
- (3) The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
- (4) A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
- (5) A statement that the City may cancel the procurement or reject any or all proposals;
- (6) The date, time and place of opening;
- (7) The office where the request for proposals may be reviewed;
- (8) A description of the personal services to be procured;
- (9) The evaluation criteria;
- (10) The anticipated schedule, deadlines, evaluation process and protest process;
- (11) The form and amount of any proposal security deemed reasonable and prudent by the Purchasing Administrator to protect the City's interests;
- (12) A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals. If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
- (13) If contracts will be awarded to more than one personal services contractor, an identification of the manner in which it will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;

(14) If contracts will be awarded to more than one personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;

(15) All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and

(16) Any terms and conditions authorized for negotiation.

(c) **Public Notice.** The Purchasing Administrator shall provide public notice of a request for proposals for personal services. Public notice shall be given not be less than twenty-one days prior to closing for the request for proposals, unless the City Manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition. The Purchasing Administrator shall document the specific reasons for shorter public notice period in the procurement file.

(d) **Amendments.** Personal services contracts procured by requests for proposals pursuant to this rule may be amended, provided:

(1) The amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty percent over the original contract price; or

(2) The amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider.

PCR 6.6: Contractors of Record.

(a) **Generally.** Consultants to provide personal services as contractors of record on a continuing "as-required" basis during periods when staff is unavailable due to workload may be selected pursuant to this rule. The purpose of contractors of record contracts is to quickly and efficiently obtain required professional services on a short-notice basis.

(b) The City Manager may establish categories of personal services to be procured as contractors of record contracts. The City Manager shall, as part of the approval process, establish a maximum annual contract price ("total fee") and the maximum fee for individual assignments ("assignment fee") for each category of contractors of record.

(c) **Selection Method.** Consultants shall be selected by requests for proposals, pursuant to PCR 6.5. In addition to the requirements set forth in PCR 7.5(b), the request for proposals shall:

(1) Identify the total fee and assignment fee;

(2) Identify the criteria which will be used to rank proposers, including the number of points applicable to each criterion. If the applicable number of points is not indicated, then each criterion shall be worth the same number of points; and

(3) Identify the method to establish the list of contractors of record, including but not limited to:

(A) Threshold scores;

(B) Pre-determined numbers of the highest scoring proposers; or

(C) Award only to those proposers with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the request for proposals.

(d) **Award.** The City Manager may award not less than two and no more than five contractor or record contracts for each category of personal services to the most qualified proposers whose proposals are the most advantageous to the City.

(e) **Contract Terms.** Contracts for contractor of record contracts shall:

(1) Be non-exclusive;

(2) Have a term of one year and may contain the opportunity for renewal terms for two additional one-year periods; and

(3) State the maximum total fee and maximum assignment fee.

(f) **Assignment of Projects.** Contractors fo record will be selected for individual assignments as follows:

(1) Consultants will be placed on a rotational list in descending order from the highest to the lowest proposers, as ranked during the request for proposal process.

(2) A general scope of work and a deadline for completion shall be provided to the first consultant on the rotational list. If the consultant declines the assignment, or fails to respond within forty-eight hours or such shorter time frame as specified in query, the assignment will be offered to the next consultant on the rotational list.

(3) Upon acceptance, the consultant will have five days from the date of acceptance, unless a shorter time frame was specified, to prepare and submit a

proposal with a specific plan for accomplishing the work and a proposed maximum not-to-exceed fee, based on the rates stated in their contract.

(4) The City may accept a consultant's proposal, negotiate further with the consultant, reject the proposal and terminate the assignment, reject the proposal and offer the assignment to the next consultant on the rotational list or reject the proposal and proceed with another selection procedure as provided by these rules.

(5) If a consultant declines an assignment or does not respond with an acceptable proposal within the specified time, the consultant shall be placed last on the rotational list, and must wait until all consultants have been offered an assignment before being offered another assignment.

(6) When a proposal is accepted, the City will issue a letter of assignment or other similar document, which shall incorporate the contract by reference and contain the agreed-upon proposal, including scope of work, completion date and the fee for the personal services to be performed.

(7) After a consultant has accepted an assignment, the next assignment will be offered to the next consultant on the rotational list.

PCR 6.7: Emergencies.

(a) **Generally.** Contracts for personal services may be awarded as emergency procurements pursuant to this rule.

(b) **Determination of Emergency.**

(1) An emergency exists if a condition that could not have been reasonably foreseen creates 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.

(2) The City Manager, a Department Head or, if the City Manager or Department Head cannot reasonably be reached, a Division Head may determine circumstances exist justifying an emergency procurement with a contract price of less than \$25,000. The City Manager or, if the City Manager cannot reasonably be reached, a Department Head may determine circumstances exist justifying an emergency procurement with a contract price of \$25,000 or more. The authority to make the determination an emergency exists may not be delegated.

(c) An emergency contract may be awarded after such competition as is practicable under the circumstances. If possible, competitive quotes should be sought from at least three providers.

(d) Award. A Department Head may award an emergency contract with a contract price of less than \$25,000. The City Manager may award an emergency contract with a contract price of \$25,000 or greater, unless the emergency requires award of the contract before the City Manager can be reached, in which case a Department Head may award the contract.

(e) Whenever an emergency procurement is made, the Purchasing Administrator shall document the nature of the emergency, describe the method used for selection of the particular contractor, and retain such documentation in the procurement file.

PCR 6.8: Award. A Department Head may award a personal services contract with a contract price of up to \$25,000. The City Manager shall award all personal services contracts with a contract price of \$25,000 and greater. Personal services contracts shall be awarded to responsible proposers submitting responsive proposals that are the most advantageous to the City.

VII. PROCUREMENT METHODS FOR ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

PCR 7.1 Definitions. As used in PCR 8.1-8.7, the following mean:

- (a) “Consultant” means an architect, engineer, land surveyor, or provider of related professional services. The term “consultant” includes a business entity that employs architects, engineers, land surveyors or providers of related services.
- (b) “Project” means all components of a planned undertaking that gives rise to the need for a consultant’s services.
- (c) “Professional services” means architectural, engineering, land surveying or related services, or any combination of these services, provided by a consultant.

PCR 7.2: List of Interested Consultants. Consultants who are engaged in the lawful practice of their profession and who are interested in providing professional services may submit a statement describing their qualifications and related performance information to the Purchasing Administrator. The Purchasing Administrator shall use this information to create a list of interested consultants and may add or delete consultants for the list as the Purchasing Administrator deems appropriate.

PCR 7.3: Applicable Selection Procedures; Pricing Information.

(a) When selecting the most qualified consultants to perform professional services, other than related services, as defined by PCR 1.1(xx), the City shall not solicit or use pricing policies and proposals or other pricing information to determine a consultant’s compensation until after the most qualified consultant has been selected in accordance with the applicable selection procedure if:

(1) The City received moneys from the State Highway Fund under ORS 366.762 or ORS 366.800 or a grant from the State of Oregon that will be used to pay for a portion of the design and construction of the project; the total amount of any grants, loans or moneys from the State Highway Fund or State of Oregon for the project exceeds thirty-five percent of the value of the project, and the value of the project exceeds \$400,000.

(b) Except as provided in subsection (a) of this rule, when selecting consultants, a proposer’s pricing policies, proposals and other pricing information submitted with a proposal may be used.

PCR 7.4: Direct Appointment.

(a) The City Manager may authorize direct appointment of a consultant if:

- (1) An emergency exists;
 - (2) The fee to be paid is not reasonably anticipated to exceed \$25,000, excluding reimbursable or other non-professional fees or expenses; or
 - (3) The professional services are related to, architectural, engineering, or land surveying services, or related services for a project that has been substantially described, planned or otherwise previously studied in an earlier contract with the same consultant, and the earlier contract was awarded under PCR 7.5 or PCR 7.6, and the opportunity to provide additional services was included in the solicitation document; or
 - (4) The professional services consist of analysis, testing services, testimony or similar services for a project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other action.
- (b) Sources.** Consultants may be selected for direct appointment from the following sources:
- (1) The list of interested consultants that is created pursuant to PCR 7.2;
 - (2) Another contracting agency's list of consultants created under OAR 137-048-0120 or other similar rule;
 - (3) All consultants the City reasonably can locate that offer the desired professional services; or
 - (4) Any combination of the foregoing.
- (c)** Negotiations with consultants selected under this rule shall result in a agreement on:
- (1) The consultant's performance obligations and performance schedule;
 - (2) Payment methodology and a maximum amount payable for the professional services, that is fair and reasonable to the City, as determined solely by the City, taking into account the value, scope, complexity and nature of the professional services; and
 - (3) Any other provisions that are in the best interest of the City.
- (d)** Contracts entered into by direct appointment shall be in writing, and awarded as follows:

(1) The City Manager shall award any contract with contract price which is greater than \$25,000;

(2) A Department Head may award any contract if the contract price is \$25,000 or less.

PCR 7.5: Informal Written Solicitations.

(a) Informal written solicitations may be used to procure professional services if the fee reasonably projected to be paid will not exceed \$150,000, excluding reimbursable or other non-professional fees or expenses.

(b) **Contents.** An informal written solicitation shall include, at a minimum:

(1) A description of the project for which the professional services are needed and a description of the professional services that will be required;

(2) Anticipated performance schedule;

(3) Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including construction services;

(4) Date and time proposals are due and directions for submitting proposals;

(5) Selection criteria, including weights or points applicable to each criterion. If applicable number of points is not indicated, then each criterion shall carry the same weight or be worth the same number of points. Selection criteria may include, but are not limited to, the following:

(A) The amount and type of resources and number of experienced staff the consultant has available to perform the professional services within the applicable time limits, including the current and projected workloads and the proportion of time such staff would have available to perform the professional services;

(B) The proposed management techniques for the professional services;

(C) The consultant's capability, experience and past performance history and record in providing similar professional services, including, but not limited to, quality of work, ability to meet schedules, cost control methods and contract administration practices;

(D) An approach to the professional services, and design philosophy, if applicable;

(E) The consultant's geographic proximity to and familiarity with the physical location of the project;

(F) Volume of work, if any, previously awarded to the consultant, with the objective of effecting equitable distribution of contracts among highly qualified consultants, and provided such distribution results in the selection of the most qualified consultant for the specific type of professional service;

(G) Pricing policies, proposals and other pricing information when the conditions under ORS 279C.110(2) do not exist;

(H) A statement that persons responding to the informal written solicitation do so solely at their expense, and that the City is not responsible for any expenses incurred by the person in responding to the informal written solicitation;

(I) A statement of the applicable protest procedures; and

(J) A sample form of contract.

(c) The Purchasing Administrator shall provide an informal written solicitation to a minimum of five prospective consultants drawn from:

(1) The list of interested consultants that is created pursuant to PCR 7.2;

(2) Another contracting agency's list of consultants created under OAR 137-048-0120 or other similar rule;

(3) All consultants the City reasonably can locate that offer the desired professional services; or

(4) Any combination of the foregoing.

(d) The Purchasing Administrator shall review and rank all proposals received according to the criteria set forth in the informal written solicitation.

(e) **Contract Negotiations.**

(1) If the procurement is not cancelled after review and ranking, the City will begin negotiating a contract with the highest ranked proposer. Negotiations with consultants selected under this rule shall result in an agreement on:

(A) The consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable for the professional services that is fair and reasonable to the City, as determined solely by the City, taking into account the value, scope, complexity and nature of the professional services; and

(C) Any other provisions the deemed to be in the best interest of the City.

(2) The City shall, either orally or in writing, formally terminate negotiations if the City and proposer are unable for any reason to reach agreement within a reasonable amount of time. The City may thereafter negotiate with the next highest ranked proposer, and each next ranked proposer, until negotiations result in a contract. If negotiations do not result in a contract within a reasonable amount of time, or if the City Manager deems it to be in the public interest, the informal solicitation may be cancelled. Nothing in this rule precludes the City from proceeding with a new solicitation for the same professional services that failed to result in a contract.

(3) The City shall terminate the informal written solicitation and proceed with a request for proposals if the scope of the anticipated contract is revised during negotiations, such that the fee estimated to be paid will exceed \$150,000, excluding reimbursable or other non-professional fees or expenses. Notwithstanding the foregoing, the negotiations may continue with the proposer selected under the informal written solicitation if the Purchasing Administrator makes written determinations that contracting with that proposer will:

(A) Promote efficient use of City's resources and result in substantial cost savings to City; and

(B) Protect the integrity of the process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract.

(f) **Award.** Contracts entered into by informal written solicitation shall be in writing, and awarded as follows:

(1) The City Manager shall award any contract with a contract price which is greater than \$25,000,

(2) A Department Head may award any professional services contract if the contract price is \$25,000 or less.

PCR 7.6: Requests for Qualifications and Requests for Proposals.

(a) A request for proposals shall be used to select consultants if the contract price is \$150,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular consultant can deliver the professional services in the manner that is most advantageous to the City.

(b) When procuring professional services under this rule, the City may issue a request for proposals, or first issue a request for qualifications followed by a request for proposals.

(c) **Request for Qualifications.** A request for qualifications may be used to evaluate potential consultants and establish a short list of qualified consultants to whom the City may issue a request for proposals for some or all of the professional services described in the request for qualifications.

(1) **Required Contents of Request for Qualifications.** Each request for qualifications shall include, at a minimum:

(A) A brief description of the project for which the City is seeking consultants;

(B) A description of the required professional services;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including construction services;

(D) The deadline for submitting a response;

(E) A description of required qualifications for the professional services;

(F) The evaluation criteria, including weights or points applicable to each criterion. If the applicable number of points is not indicated, then each criterion shall carry the same weight or shall be worth the same number of points;

(G) A statement whether or not the City will hold a pre-qualification meeting for all interested consultants to discuss the project and the professional services and, if a pre-qualification meeting will be held, the location of the meeting and whether attendance is mandatory; and

(H) A statement that persons responding to the request for qualifications do so solely at their expense and that the City is not

responsible for any expenses incurred by the person in responding to the request for qualifications.

(2) Optional Requests. The City may request for any or all of the following in a request for qualifications;

(A) A statement describing consultant's general qualifications and related performance information;

(B) A description of consultant's specific qualifications to perform the professional services, including the consultant's available resources and recent, current and projected workloads;

(C) A list of similar projects for which professional services were provided in the past, and references concerning past performance, and a copy of all records, if any, of consultant's performance under contracts with any other public body;

(D) The number of consultant's experienced staff available to perform the professional services, including specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on the professional services;

(E) An approach to professional services, and design philosophy, if applicable;

(F) Proposer's geographic proximity to and familiarity with the physical location of the project;

(G) Pricing policies, proposals and other pricing information if conditions under PCR 7.3(a) do not exist; and

(H) Any other information the City deems reasonably necessary to evaluate consultants' qualifications.

(3) Evaluation Committee. The Purchasing Administrator shall approve an evaluation committee of at least two individuals to review, score and rank the responding consultants according to the evaluation criteria. The must have at least one City employee and may include employees of other public agencies or individuals with experience in construction or contracting with consultants providing the required professional services.

(4) Screening Criteria. Any reasonable screening or evaluation method may be used to establish a short list of qualified consultants, including but not limited to:

(A) Requiring consultants achieve a threshold score before qualifying for the short list;

(B) Limiting the short list to a pre-determined number of highest scoring consultants; or

(C) Placing on a short list only those consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the request for qualifications.

(5) Short List of Consultants.

(A) After the evaluation committee reviews, scores and ranks the responding consultants, the Purchasing Administrator may establish a short list of qualified consultants or cancel the request for qualifications and issue a request for proposals.

(B) No consultant will be eligible for the short list if the consultant or any of consultant's principals, partners or associates are members of the evaluation committee.

(C) Except when the request for qualifications is cancelled, the City shall provide a copy of the subsequent request for proposals to each consultant on the short list.

(d) Request for Proposals.

(1) Required Contents of Request for Proposals. Each request for proposals shall include:

(A) General background information, including a description of the project and the professional services sought, estimated project cost, estimated time for project completion, and the estimated time within which the professional services must be performed.

(B) The evaluation process and criteria which will be used to select the most qualified proposer, including the number of points applicable to each criterion. If the applicable number of points is not indicated, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to:

- (i)** Proposer's availability and capability to perform the professional services;
- (ii)** Experience of proposer's key staff in providing professional services on similar or comparable projects;
- (iii)** The amount and type of resources, and number of experienced staff the proposer has available to perform the professional services;
- (iv)** The recent, current and projected workloads of staff who will perform the professional services;
- (v)** The proportion of time proposer estimates the staff would spend on the professional services;
- (vi)** The proposer's demonstrated ability to complete successfully similar professional services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii)** References and recommendations from past clients;
- (viii)** The proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;
- (ix)** Status and quality of any required license or certification;
- (x)** The proposer's knowledge and understanding of the project and the professional services as shown in the proposer's approach to staffing and scheduling needs for the professional services, and proposed solutions to any perceived design and constructability issues;
- (xi)** Results from interviews, if conducted;
- (xii)** Design philosophy, if applicable, and approach to the provision of the professional services;
- (xiii)** Pricing policies, proposals and other pricing information if the conditions under PCR 7.3(a) do not exist; and
- (xiv)** Any other criteria that the City deems relevant to the project and the provision of the professional services, including,

where the nature and budget of the project so warrant, design competition between competing proposers.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including construction services;

(D) Any insurance requirements;

(E) Whether interviews are possible and, if so, the weight or points applicable to the interview;

(F) The date and time when proposals are due and the delivery location for proposals;

(G) Reservation of the right to seek clarifications of each proposal;

(H) Reservation of the right to negotiate a final contract that is in the best interest of the City;

(I) Reservation of the right to reject any or all proposals and of the right to cancel the request for proposals at any time, if doing so would be in the public interest, as determined by the City;

(J) A statement that persons responding to the request for proposals do so solely at their expense and the City is not responsible for any expenses incurred by the person in responding to the request for proposals.

(K) A statement of the applicable protest procedures;

(L) A statement whether or not the City will hold a pre-proposal meeting to discuss the project and, if a pre-proposal meeting will be held, the location of the meeting and whether attendance is mandatory;

(M) A request for any information the City deems reasonably necessary to evaluate, rank and select the most qualified proposer; and

(N) A sample form of contract.

(2) Evaluation Committee.

(A) The City Manager shall appoint a committee of at least three individuals to review, score and rank proposals. If the request for proposals follows a request for qualifications, the evaluation committee may, but is not required to, include the same members. The evaluation

committee shall include at least two City employees and may include at least one employee of another public agency with experience in construction or contracting with consultants providing the required professional services, or a private practitioner of one of the professional services. A selection committee of less than three members or that contains only City employees may be approved if the City Manager determines the public interest would not be harmed.

(B) No proposer will be eligible for award of the contract if the proposer or any of proposer's principals, partners or associates are members of the evaluation committee.

(C) If the request for proposals provides for the possibility of interviews, the evaluation committee may interview proposers if it considers interviews necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the request for proposal for the interview.

(3) If the solicitation is not cancelled after review and ranking of the proposals, the City will begin negotiating a contract with the highest ranked proposer. Negotiations with consultants selected under this rule shall result in a agreement on:

(A) The consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable for the professional services that is fair and reasonable to the City, as determined solely by the City, taking into account the value, scope, complexity and nature of the professional services; and

(C) Any other provisions the deemed to be in the best interest of the City.

(4) The City shall, either orally or in writing, formally terminate negotiations if the City and proposer are unable for any reason to reach agreement within a reasonable amount of time. The City may thereafter negotiate with the next highest ranked proposer and each next ranked proposer until negotiations result in a contract. If negotiations do not result in a contract within a reasonable amount of time, or if the City Manager deems it to be in the public interest, the informal solicitation may be cancelled. Nothing in this rule precludes the City from proceeding with a new solicitation for the same professional services that failed to result in a contract.

(5) Following successful negotiation, the Purchasing Administrator shall send written notice to all proposers of intent to award to a contract.

(6) After the protest period expires or after any protest has been finally resolved, whichever date is later, the City Manager may make final award of the contract.

(e) **Public Notice.**

(1) Except as otherwise provided in this subsection, the Purchasing Administrator shall provide public notice of each request for qualifications or request for proposals. Public notice shall be given not be less than twenty-one days prior to closing, unless the Purchasing Administrator determines that a shorter interval is in the public's interest or a shorter interval will not substantially affect competition. The Purchasing Administrator shall document the specific reasons for shorter public notice period in the procurement file.

(2) The notice shall contain:

(A) A brief description of the project;

(B) A description of the professional services sought;

(C) How and where to obtain a copy of the request for qualifications or request for proposals; and

(D) The deadline for submitting a response to the request for qualifications or proposal.

(3) In lieu of public notice by newspaper publication, the notice of a request for qualifications directly to all consultants on the list of interested consultants.

PCR 7.7: Two-Tiered Selection Procedure for Public Improvement Projects Where State Agency is Lead Contracting Agency.

If the City requires professional services for a public improvement owned and maintained by the City, but a state agency will serve as the lead contracting agency and enter into contracts for professional services for the design and construction of the public improvement, the two-tiered selection process established by this rule applies.

(a) **Tier One.** The state agency shall identify the most qualified proposers responding to a solicitation that was issued under OAR 137-048-0210, "Informal Selection Procedure," OAR 137-048-0220, "Formal Selection Procedure," or OAR 137-048-0200, "Direct Appointment Procedure," and notify the City of the consultants selected.

(b) **Tier Two.** Upon notification, the City shall either:

- (1) Select a consultant from the list provided by the state agency; or
- (2) Select a consultant to perform the professional services through the source selection process provided in PCR 7.8 or PCR 7.9, and notify the state agency of the selection. The state agency may thereafter begin contract negotiations with the consultant selected by the City in accordance with state contracting procedures.

PCR 7.8: Primary and Alternate Consultants of Record.

- (a) Primary and alternate consultants of record may be selected to provide services on a continuing or “as required” basis. The purpose of primary and alternate consultants of record is to quickly and efficiently obtain required professional services of consultants.
- (b) The City Manager may approve the selection of primary and alternate consultants of record, and may establish categories of professional services to be procured, including the maximum annual contract price (“total fee”) and the maximum fee for individual assignments (“assignment fee”) for each category.
- (c) **Selection Method.** Primary and alternate consultants of record shall be selected by requests for proposals, pursuant to PCR 7.6(d). In addition to the requirements set forth in PCR 7.6(d)(1), the request for proposals shall:
 - (1) Identify the maximum total fee and maximum assignment fee; and
 - (2) Identify the criteria which will be used to award a contract to the primary and alternate consultants of record, including the number of points applicable to each criterion. If the applicable number of points is not indicated, then each criterion shall be worth the same number of points.
- (d) The City Manager may award one primary and one alternate consultant contract for each category of professional services designated pursuant to subsection (f) of this rule. The contracts shall be awarded to the most qualified primary and alternate proposers whose proposals are the most advantageous to the City.
- (e) **Contract Terms.** Contracts for primary and alternate consultants of record shall:
 - (1) Be non-exclusive;
 - (2) Have a term of one year, and may contain the opportunity for renewal terms for four additional one-year periods; and
 - (3) State the maximum total fee and maximum assignment fee.

(f) Assignment of Projects. Primary and alternate consultants of record will be selected for individual assignments as follows:

(1) The primary consultant shall be contacted first, and shall be provided a general scope of work and deadline for completion. If the primary consultant declines the assignment or fails to respond within the time frame specified in the query, the assignment will be offered to the alternate consultant.

(2) Upon acceptance, the consultant will have five days from the date of acceptance, unless a shorter time frame was specified, to prepare and submit a proposal, with a specific plan for accomplishing the work and a proposed maximum not-to-exceed fee, based on hourly rates stated in their contract.

(3) The City may accept the primary consultant's proposal, negotiate further with the primary consultant, reject the proposal and terminate the assignment, reject the proposal and offer the assignment to the alternate consultant, or reject the proposal and proceed with another selection procedure as provided by these rules.

(4) When a proposal is accepted, the City will issue a letter of assignment or other similar document, which shall incorporate the contract by reference and contain the agreed-upon proposal, including scope of work, completion date and the fee for professional services to be performed.

PCR 7.9: General Civil Consultants of Record.

(a) Consultants for general civil engineering services for projects listed in the City of Salem Capital Improvement Plan may be selected pursuant to this rule.

(b) Selection Method. Consultants for general civil engineering services for CIP projects shall be selected by requests for proposals, pursuant to PCR 7.6(d). In addition to the requirements set forth in PCR 7.6(d)(1), the request for proposals shall:

(1) Identify the maximum annual contract price ("total fee") as \$2,000,000 and the maximum fee for individual assignments ("assignment fee") as \$500,000;

(2) Identify the criteria which will be used to rank proposers, including the number of points applicable to each criterion. If the applicable number of points is not indicated, then each criterion shall be worth the same number of points; and

(3) Identify the method to establish the list of CIP consultants of record, including but not limited to:

(A) Requiring consultants to achieve a threshold score;

(B) Awarding contracts to a pre-determined number of the highest scoring consultants; or

(C) Awarding contracts only to those consultants with certain essential qualifications or experience whose practice is limited to a particular subject area or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition and were announced as dispositive in the request for proposals.

(c) **Award.** The City Manager may award contracts with selected qualified proposers.

(d) **Contract Terms.** Contracts with CIP consultants of record shall:

(1) Be non-exclusive;

(2) Have a term of one year, and may contain the opportunity for renewal terms for four additional one-year periods; and

(3) State the maximum total fee and maximum assignment fee.

(e) **Assignment of Projects.** CIP consultants of record will be selected for individual assignments as follows:

(1) For assignments with total fees of less than \$250,000, one or more of the highest ranked consultants who “best fit” the individual assignment will be invited to submit written proposals.

(A) The Department Head shall provide to the Purchasing Administrator, written documentation of the selection process. The Department Head may authorize a purchase order to be released against the contract.

(2) For assignments with total fees between \$250,000 and \$500,000, the top three ranked consultants who “best fit” the individual assignment will be invited to submit written proposals. The proposals shall be evaluated using the criteria for selection set forth in subsection (3) of this rule.

(A) The Department Head shall provide to the Purchasing Administrator a written recommendation for selection and if less than three consultants were invited to submit proposals, the written recommendation shall include a justification for inviting less than three. The City Manager must approve the selection of a consultant under this paragraph before a purchase order may be released against the contract.

(3) As used in this rule, “best fit” means the consultant or consultants are considered in the order in which they were ranked under the evaluation criteria, and score highest when applying the following criteria for selection .

(A) **Criteria for Selection.** Due to the variable nature of assignments, the applicability of specific criteria and the relative weight will vary. Consultants invited to submit proposals will be apprised of the relative weight given specific criteria at the time proposals for specific assignments are requested. Criteria for selection may be specifically developed to address project needs. The following criteria for selection may be used to assist in consultant selection:

(i) **Experience.** Has the consultant or the consultant’s assignment team successfully designed projects, done studies, or received awards for work:

- a Within the same technological fields;
- b With an equivalent level of technical complexity; or
- c With a similar magnitude.

(ii) **Project Type.** Is the nature, type, or size of the project a good fit for the consultant or the consultant’s design team?

(iii) **Performance History.** Has the consultant demonstrated an ability to perform the kind of high-level project management, technical competence, and quality control required? Has the consultant demonstrated strong customer service and responsiveness to City staff requests and requirements? Has consultant met schedule requirements? Other jurisdictions may be contacted for references for performance history.

(iv) **Resources.** Does the consultant and the consultant’s assignment team have or have access to the specific skills and equipment required for the performance of this specific assignment? Examples include engineers licensed in the appropriate disciplines; scientists; licensed land surveyors; architects; CAD and GIS systems; surveying equipment; soils and materials laboratory and technicians; and administrative expertise in permits and federal (FHWA) or state contract procedures

(v) **Project Knowledge.** Does the consultant or the consultant’s assignment team have specific knowledge of the

project which makes it advantageous to hire the consultant?
Examples include:

- a** Successful performance of work on the same or an adjacent section of road or land area within the last five years; and
- b** Performed designs to special or unique standards that are also required on the specific project.

(vi) Availability. Can the consultant deliver the work product within expected time frames? Are key members of the consultant's design team available for on-site or local meetings in a timely manner?

(vii) Cost. Are the proposed consultant hours (each job classification, plus total project hours) and costs reasonable in order to successfully complete the specific assignment?

(B) Consultant Ranking. If, after reviewing the proposals, two, or more consultants are considered equally qualified, the consultant with the highest ranking from the initial request for proposals will be selected for the assignment.

PCR 7.10: Ties Among Proposers for Professional Services.

(a) If a consultant is selected on the basis of qualifications alone and after ranking the proposers, two or more proposals are determined to be equally qualified, a proposer may be selected through any process that the Purchasing Administrator determines will result in the best value for the City, taking into account the scope, complexity and nature of the professional services.

(b) If a consultant is selected on the basis of price alone or on the basis of price and qualifications, and after ranking the proposers two or more proposals are determined to be identical in price or identical in price and qualifications, then the contract shall be awarded according to the preferences and method set forth in PCR 2.24.

PCR 7.11: Prohibited Payment Methodology; Purchase Restrictions.

(a) Except as otherwise allowed by law, the City shall not enter into any professional services contract which includes provisions that expressly provide for payment of:

- (1)** Consultant's costs under the contract plus a percentage of those costs; or
- (2)** A percentage of the project construction costs or total project costs.

(b) Except as otherwise allowed by law, the City shall not enter into any professional services contract in which the compensation paid under the contract is solely based on or limited to the consultant's hourly rates for the consultant's personnel working on the project and reimbursable expenses incurred during the performance of work on the project, sometimes referred to as a "time and materials" contract; and the contract does not include a maximum amount payable to the consultant.

(c) Except in cases of emergency, no building materials, supplies or equipment for any building, structure or facility constructed by or for the City shall be purchased from any consultant under contract for professional services for the building, structure or facility. This prohibition does not apply if:

(1) The consultant is providing professional services under a design-build contract or energy savings performance contract with the City; or

(2) The acquisition of building materials, supplies or equipment was included within the contract awarded to the consultant, and the consultant made the purchases pursuant to applicable law governing the purchase of building material, supplies or equipment.

PCR 7.12: Effect of Material Alteration or Delay of Project. If the City delays, or delays and then materially alters, a project for which the City has entered into a professional services contract, and the contract has expired or been terminated, the Purchasing Administrator may authorize entering into a contract with the same consultant to perform either the same professional services set forth in the expired or terminated contract, and additional professional services to reflect the material alteration of the project, if no more than one year has passed since expiration or termination of the contract, and the Purchasing Administrator makes written findings that entering into the contract:

(a) Will promote efficient use of public funds and resources and result in substantial cost savings to the City;

(b) Will not encourage favoritism in the contracting process; and

(c) Will not substantially diminish competition for future contracts with consultants.

VIII. PROCUREMENT PROCEDURES FOR PUBLIC IMPROVEMENTS

PCR 8.1: Public Notice.

(a) Advertising.

(1) Every formal solicitation for a public improvement contract shall be advertised as provided in PCR 1.7, unless the solicitation is a member of a class of contracts which has been exempted from competitive bidding under ORS 279C.335 and PCR 9.7.

(2) In lieu of publication required under PCR 1.7, the Purchasing Administrator shall publish an advertisement for offers in at least one trade newspaper of general statewide circulation if the public improvement contract is for a public improvement with an estimated cost in excess of \$125,000.

(b) **Additional Notice.** The Purchasing Administrator may also furnish notice of formal solicitations using any method the Purchasing Administrator deems appropriate to foster and promote competition, including:

(1) Mailing notice of the availability of solicitation documents to persons that have expressed an interest in the City's procurements; or

(2) Placing notice on the City's website.

(c) **Content of Advertisement.** All advertisements for offers shall contain:

(1) The public improvement project;

(2) The office where public improvement contract terms, conditions and specifications may be reviewed;

(3) The date that persons must file applications for prequalification, if prequalification is a requirement, and the class or classes of work for which persons must be prequalified;

(4) The scheduled closing, which shall not be less than five days after the date of the last publication of the advertisement;

(5) The name, title and address of the person authorized to receive offers;

(6) The scheduled opening; and

(7) If applicable, that the public improvement contract is for a public work subject to ORS 279C.800-279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(d) **Fees.** The City Manager may, by administrative rule, establish a fee for a copy of the solicitation document.

PCR 8.2: Prequalification of Offerors.

(a) **Prequalification.** Two types of prequalification are authorized for formal solicitations under these rules. Applications for prequalification shall be made on forms prescribed by the Purchasing Administrator.

(1) **Mandatory Prequalification.**

(A) Mandatory prequalification is when a person's submission of an offer is conditioned upon the person's prequalification.

(B) Mandatory prequalification of offerors may be required when the project is of a size, scope or complexity that prequalification is necessary or such other circumstances exist that prequalification would be of assistance in selection of qualified contractors. If mandatory prequalification is required, the solicitation document shall so indicate, and an offer shall not be considered from a person that is not prequalified.

(2) **Permissive Prequalification.** Permissive prequalification is when a solicitation is not limited to persons who are on the prequalified list. A person on the City's solicitation list may also be prequalified.

(3) **Prequalification Presumed.** If an offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services for public improvement contracts, there shall be a rebuttable presumption that the offeror is prequalified to perform similar work for the City.

(b) **Standards for Prequalification.** A person may prequalify by demonstrating to the Purchasing Administrator's satisfaction that the person meets the standards of responsibility, including whether:

(1) The person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the person is capable of meeting all contractual responsibilities;

(2) The person has a satisfactory record of performance;

(3) The person has a record of integrity; and

(4) The person is qualified to contract with the City.

(c) The Purchasing Administrator shall make the determination no more than thirty days after receipt of the person's prequalification application or in less than thirty days, if practical, if the person requests an early decision to allow the person as much time as possible to bid on a public improvement contract that has been advertised.

(d) **Notice Of Prequalification.** If the Purchasing Administrator finds the person is prequalified, the person shall be promptly notified of the nature and types of public improvement contracts upon which the person is qualified to bid and the period of time for which the prequalification is valid.

(e) **Notice Of Denial.** If a person fails to prequalify for a mandatory prequalification, the Purchasing Administrator shall notify the person, specify the reasons therefor and inform the person of the person's right to a hearing as provided in subsection (f) of this rule.

(f) **Appeal Hearing.** An appeal of the denial of a prequalification must be made within three business days after receipt of the notice of the Purchasing Administrator's decision.

(1) Notice shall be given to the City Manager that the person has appealed the decision and notice to the City Manager shall be considered notice to the Local Contract Review Board as required by ORS 279C.445. Upon receipt of the notice, the City Manager shall cause the person to be notified of the time and place of the hearing to consider the appeal within thirty days.

(2) The City Manager is delegated the authority to conduct the hearing as described in ORS 279C.450(3).

(g) **Judicial Review.** Judicial review of the prequalification decisions shall be made according to ORS 279C.450, and not otherwise.

PCR 8.3: Eligibility to Bid or Propose; Registration or License.

(a) **Construction Contracts.** The City shall not consider a person's offer to do work as a contractor as defined in ORS 701.005(2), unless the person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the offer is made.

(b) **Landscape Contracts.** The City shall not consider a person's offer to do work as a landscape contractor as defined in ORS 671.520(2), unless the person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the offer is made.

(c) **Effect of Noncompliance.** The City shall deem an offer received from a person that fails to comply with this rule non-responsive and shall reject the offer, unless such

rejection is contrary to federal law or subject to different requirements set by federal funding agencies.

PCR 8.4: Pre-Offer Conferences.

- (a) **Purpose.** Pre-offer conferences may be held with prospective offerors prior to closing to explain procurement requirements, to obtain information, or to conduct site inspections.
- (b) **Mandatory Attendance.** Attendance at the pre-offer conference may be required as a condition for making an offer. An offer made by a person who fails to attend a mandatory pre-offer conference shall be rejected as non-responsive.
- (c) **Scheduled Time.** If a pre-offer conference is held, the pre-offer conference shall occur within a reasonable time after the solicitation document is issued, but sufficiently prior to closing to allow offerors to consider information provided at that pre-offer conference.
- (d) **Statements Not Binding.** Statements made by a City representative at the pre-offer conference do not modify or change the solicitation document, unless the City confirms such statements with a written addendum.
- (e) **Notice to be Included in Solicitation Document.** The Purchasing Administrator shall ensure notice of any pre-offer conference is included in the solicitation document.

PCR 8.5: Addenda to Solicitation Documents.

- (a) **Issuance.** A solicitation document may only be changed by written addenda. The solicitation document shall specify how notice of addenda will be provided and how the addenda will be made available. The following is an example of how notice of addenda may be specified: "The City will mail or send by facsimile a notice of addenda to all prospective offerors who have received a copy of the solicitation documents and who also attended any mandatory pre-offer conference."
- (b) **Notice and Distribution.** The Purchasing Administrator shall notify prospective offerors of addenda.
- (c) **Time lines; Extensions.** The Purchasing Administrator shall issue all addenda and do so within a reasonable time to allow prospective offerors to consider the addenda in preparing their offers. The Purchasing Administrator may extend the closing if the Purchasing Administrator determines prospective offerors need additional time to review and respond to addenda. Except to the extent required by public interest, the City shall not issue addenda less than seventy-two hours before the closing unless the addenda also extends the closing.

(d) **Receipt.** An offeror shall provide written acknowledgment of receipt of all issued addenda with its offer, unless the City otherwise specifies in the addenda or in the solicitation document.

PCR 8.6: Request for Clarification or Change to Solicitation Document or Addenda; Protests.

(a) **Request for Clarification.** Prior to the deadline for submitting a written request for change or protest, an offeror may request clarification of any provision in a solicitation document. Clarification to an offeror, whether orally or in writing, does not change the solicitation document and is not binding on the City unless the solicitation document is amended by an addenda.

(b) **Request for Change to Solicitation Document or Addenda.**

(1) **Delivery.** An offeror may request, in writing, a change to the specifications or public improvement contract terms and conditions. Unless otherwise specified in the solicitation document, an offeror must deliver the written request for change in the solicitation document to the Purchasing Administrator not less than ten days prior to closing. Unless a different deadline is set forth in the addenda, an offeror may submit a written request for change to the addenda by the close of the next business day after issuance of the addenda, or not less than ten days prior to closing, whichever date is later.

(2) **Content of Request for Change.**

(A) A request for change shall include a statement of the requested change or changes, together with the reason for the requested change.

(B) An offeror shall mark the request for change as follows:

(i) “Contract Provision Request for Change”; and

(ii) Solicitation document number, or other identification as specified in the solicitation document.

(3) **City Response.** The City may, but is not required to, consider an offeror’s request for change after the deadline established for submitting such request.

(4) **Extension of Closing.** If a written request for change from an offeror is received in accordance with this subsection, closing may be extended if the Purchasing Administrator determines an extension is necessary to consider the request and issue an addendum, if any, to the solicitation document.

PCR 8.7: Cancellation of Procurement.

(a) **Cancellation in the Public Interest.** The City may cancel a procurement for good cause if the Purchasing Administrator finds that cancellation is in the public interest. The Purchasing Administrator's reasons for cancellation shall be made part of the procurement file.

(b) **Notice of Cancellation.** If the City cancels a solicitation prior to opening, the Purchasing Administrator shall provide notice of cancellation to persons receiving the solicitation document and to persons who also attended any mandatory pre-offer conference. The notice of cancellation shall:

- (1) Identify the solicitation;
- (2) Briefly explain the reason for cancellation; and
- (3) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

(c) **Disposition of Offers.**

(1) **Prior to Offer Opening.** If a solicitation is cancelled prior to offer opening, the Purchasing Administrator shall return all offers received to offerors unopened, provided the offeror submitted its offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Purchasing Administrator shall open the offer to determine the source and then return it to the offeror.

(2) **After Offer Opening.** If all offers are rejected, the Purchasing Administrator shall retain all such offers as part of the procurement file.

PCR 8.8: Bids or Proposals are Offers.

(a) **Offer and Acceptance.** The bid or proposal is the bidder's or proposer's offer to enter into a public improvement contract.

(1) In competitive bidding, the offer is always a "firm offer," i.e., the offer shall be held open by the offeror for the City's acceptance for the period specified in the solicitation document, or if no period is specified in the solicitation document, then for thirty days following closing. The City's award of the public improvement contract to a bidder constitutes acceptance of the offer and binds the offeror to the public improvement contract.

(2) In competitive proposals, the solicitation document shall describe whether offers are to be made and considered as "firm offers" that may be accepted

without negotiation, as in the case of competitive bidding, or whether offers are subject to discussion, negotiation or otherwise are not to be considered as final offers.

(b) Contract Award. The City may award a public improvement contract only to a responsible offeror with a responsive offer.

(c) Contingent Offers. Except to the extent that an offeror is authorized to propose certain terms and conditions pursuant the terms of a request for proposals, an offeror shall not make an offer contingent upon the acceptance of any terms or conditions, including specifications, other than those contained in a solicitation document.

(d) Offeror's Acknowledgment. By signing and returning the offer, the offeror acknowledges the offeror has read, understands, and agrees to be bound by, the terms and conditions contained in the solicitation document. If a request for proposals permits proposal of alternative terms, the offer shall include, in addition to all nonnegotiable terms and conditions, any alternative terms and conditions offered for negotiation.

PCR 8.9: Offer Preparation and Submission.

(a) Instructions. Each offeror shall submit and sign the offer in accordance with the solicitation document. An offeror shall initial and submit any correction or erasure to its offer prior to the opening, in accordance with the instructions for submitting an offer under the solicitation document.

(b) Forms. An offeror shall submit the offer on the form or forms provided in the solicitation document, unless the solicitation document otherwise instructs.

(c) Documents. Each offeror shall provide all documents and descriptive literature required under the solicitation document. If the solicitation document instructs offerors not to include documents or literature, those documents may be disregarded.

(d) DBE Certification. Each offeror shall certify in the documents accompanying the offer that the offeror has not discriminated, and will not discriminate, in the award of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

(e) Facsimile Submissions. Facsimile offers shall not be considered submitted, unless facsimile or electronic submissions have been authorized by the Purchasing Administrator, and notice of such authorization was included in the solicitation document.

(f) Product Samples and Descriptive Literature. The City may require product samples or descriptive literature necessary or desirable to evaluate the quality, features or characteristics of an offer, and may dispose of the product samples or the descriptive

literature, or make them available to the offeror in accordance with instructions in the solicitation document.

(g) Identification of Offers. Offers shall be submitted in a sealed envelope appropriately and prominently marked to ensure proper identification and handling, or in an envelope provided by the City along with the solicitation document, whichever is applicable. If facsimile offers are authorized, the offeror must submit and identify facsimile offers in accordance with the instructions set forth in the solicitation document.

(h) Receipt of Offers. An offeror is responsible for ensuring the City receives the offer at the required delivery point prior to the closing, regardless of the method used to submit the offer.

(i) Offers Must Conform with Requirements of Solicitation Document. The City shall not consider, and is not responsible for, offers submitted in any manner other than that required by or permitted in the solicitation document.

PCR 8.10: Bid or Proposal Security.

(a) Security Amount. Bid or proposal security may be required in an amount deemed appropriate by the Purchasing Administrator to protect the City's interest; provided, however, that any required bid or proposal security shall be not more than 10% or less than 5% of the offeror's bid or proposal, consisting of the base bid or proposal together with all additive alternates. Bid or proposal security shall not be used to discourage competition. The solicitation document shall clearly identify any bid or proposal security requirements. The offeror shall forfeit bid or proposal security after award if the offeror fails to execute the public improvement contract and promptly return the contract along with any required performance bond and payment bond and with any required proof of insurance.

(b) Requirement. Unless the City Manager has exempted a specific solicitation or class of solicitations from bid security, the Purchasing Administrator shall require bid security for all solicitations for public improvements. The Purchasing Administrator may, if the Purchasing Administrator deems it in the best interests of the City, require bid security for a specific solicitation even if the solicitation is a member of an exempted class of solicitations from bid security. The Purchasing Administrator may require proposal security in requests for proposals when award of a public improvement contract may be made without negotiation following receipt of a "firm offer."

(c) Form of Bid or Proposal Security. The Purchasing Administrator shall accept only the following forms of bid or proposal security:

(1) A surety bond from a surety company authorized to do business in the State of Oregon;

(2) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(3) A cashier's check or offeror's certified check.

(d) **Return of Security.** The Purchasing Administrator shall return or release the bid or proposal security of all unsuccessful offerors after a public improvement contract has been fully executed and all bonds and insurance required at execution have been provided, or after all offers have been rejected. The Purchasing Administrator may return the bid or proposal security of unsuccessful offerors prior to award, if the return does not prejudice public improvement contract award and the security of at least the three bidders with the lowest bids, or the three proposers with the highest scoring proposals, is retained pending execution of the public improvement contract.

PCR 8.11: Facsimile Bids and Proposals.

(a) **Authorization.** The Purchasing Administrator may authorize the submission of facsimile offers, provided, however, the City's equipment and personnel are capable of receiving the size and volume of anticipated offers. If authorized, the Purchasing Administrator shall establish administrative procedures and controls:

(1) To receive, identify, record, and safeguard facsimile offers;

(2) To ensure timely delivery of facsimile offers to the location of opening;
and

(3) To preserve the facsimile offers as sealed.

(b) **Provisions to be Included in Solicitation Document Allowing for Facsimile Offers.** In addition to all other requirements, a solicitation document allowing for facsimile offers shall include:

(1) A statement in substantially the following form:

“A ‘facsimile offer,’ as used in this solicitation document, means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the City via a facsimile machine. Offerors may submit facsimile offers in response to this solicitation document. The entire response must arrive at the place and by the time specified in this solicitation document. The City reserves the right to award the contract solely on the basis of a facsimile offer. However, upon the Purchasing Administrator's request the apparent successful offeror shall promptly submit its complete original signed offer.”;

(2) A statement that offerors must sign their facsimile offers;

(3) The telephone number of the facsimile machine, and data and compatibility characteristics of the facsimile machine, including, but not limited to, make and model number, receiving speed, communications protocol;

(4) A provision substantially in the form of the following: “The City reserves the right to award the public improvement contract solely on the basis of the facsimile offer. However, upon the City's request the apparent successful offeror shall promptly submit its complete original signed offer”; and

(5) A statement that the City is not responsible for any failure attributable to the transmission or receipt of the facsimile offer, including, but not limited to:

- (A) Receipt of garbled or incomplete documents;
- (B) Availability or condition of the receiving facsimile machine;
- (C) Incompatibility between the sending and receiving facsimile machine;
- (D) Delay in transmission or receipt of documents;
- (E) Failure of the offeror to properly identify the offer documents;
- (F) Illegibility of offer documents; and
- (G) Security and confidentiality of data.

(c) **Bid or Proposal Security.** If bid or proposal security is required for a procurement, the Purchasing Administrator shall not authorize the use of facsimile offers.

PCR 8.12: Pre-Closing Modification or Withdrawal of Offers.

(a) **Modifications.** An offeror may modify an offer, in writing, prior to closing. An offeror shall submit any modification of its offer to the City in accordance with PCR 8.9, unless otherwise specified in the solicitation document. Any modification must include the offeror's statement that the modification amends and supersedes the offeror's prior offer. The offeror shall mark the submitted modification with the following:

- (1) “Bid Modification” or “Proposal Modification;” and
- (2) The solicitation document number, or such other identification as specified in the solicitation document.

(b) **Withdrawals.** An offeror may withdraw an offer, by written notice submitted on the offeror's letterhead, signed by the offeror's authorized representative, delivered to the

individual and location specified in the solicitation document for the receipt of offers or to the Purchasing Administrator, at the Purchasing Administrator's office if no person or place of closing is specified. To be effective, the withdrawal must be received prior to closing. The offeror or offeror's authorized representative may withdraw an offer by appearing in person before the Purchasing Administrator prior to closing, with presentation of appropriate identification and evidence of authority to make the withdrawal satisfactory to the Purchasing Administrator. The offeror shall mark a written request to withdraw an offer as follows:

- (1) "Bid Withdrawn" or "Proposal Withdrawal;" and
- (2) The solicitation document number, or such other identification as specified in the solicitation document.
- (3) The Purchasing Administrator may release an unopened offer that has been withdrawn to the offeror or the offeror's authorized representative, after voiding any date and time stamp mark.

(c) **Documentation.** The Purchasing Administrator shall include all documents relating to a modification or withdrawal of offers in the procurement file.

PCR 8.13: Receipt, Opening and Recording of Offers; Confidentiality of Offers.

(a) **Receipt.** The person authorized to receive offers shall, upon receipt, electronically or mechanically time-stamp or hand-mark each offer and any modification. No offer or modification shall be opened, and each offer and modification shall be maintained as confidential and secure until opening. If an offer or a modification is inadvertently opened prior to opening, the offer or modification shall be resealed, returned to a confidential and secure state, and maintained in such state until opening. The Purchasing Administrator shall document the fact of, and reasons for, the resealing in the procurement file, i.e., "City inadvertently opened the offer due to improper identification of the offer."

(b) **Opening and Recording.** Offers, including any modifications made to offers, shall be publically opened. In the case of invitations to bid, to the extent practicable, the name of each bidder shall be read along with the bid price or prices, and such other information as the Purchasing Administrator deems appropriate. In the case of requests for proposals or voluminous bids, if the solicitation document so provides, offers shall not be read aloud.

(c) **Availability.** After opening, bids shall be made available for public inspection. Proposals are not subject to disclosure after opening, until after notice of intent to award has been issued. The City may withhold from disclosure those portions that the offeror has designated as trade secrets or as confidential proprietary data in the offer, in accordance with ORS 192.501(2) and ORS 646.461 to 646.475. Prices, makes, model or

catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an offeror's designation to the contrary. To the extent a designation as trade secrets or confidential proprietary information is not in accordance with applicable law, the Purchasing Administrator shall make those portions available for public inspection.

PCR 8.14: Late Bids, Late Withdrawals and Late Modifications. Any offer received after closing is late. An offeror's requests for modification of an offer or withdrawals of an offer received after closing is late. The City shall not consider late offers, late requests for modifications or late requests for withdrawals, except as specifically provided by these rules.

PCR 8.15: Mistakes.

(a) **Generally.** To protect the integrity of the procurement process and to assure fair treatment of offerors, the Purchasing Administrator shall not permit waiver, correction or withdrawal of offers for mistakes, except as provided in this rule.

(b) **Treatment of Errors in Judgment.** The Purchasing Administrator shall not allow an offeror to correct or withdraw an offer for an error in judgment.

(c) **Treatment of Mistakes After Opening But Before Award.** If the Purchasing Administrator discovers mistakes in an offer after opening, but before award, the Purchasing Administrator:

(1) May waive, or permit an offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the offer, or an insignificant mistake that does not result in prejudice to other offerors. Examples of minor informalities include, but are not limited to:

(A) Failure to return the correct number of signed offers or other documents required by the solicitation document;

(B) Failure to sign the offer in the designated block; provided, however, that a signature evidencing an intent to be bound appears elsewhere in the offer; or

(C) Failure to acknowledge receipt of an addenda to the solicitation document, provided that it is clear on the face of the offer that the offeror received the addenda and intended to be bound by its terms, or provided the Purchasing Administrator determines the addenda did not affect price, quality or delivery.

(2) May allow the correction of a clerical error if the error is evident on the face of the offer or other documents submitted with the offer. A clerical error is an offeror's error in transcribing its offer. Examples of clerical errors include, but

are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. An example of a clerical error would be a missing unit price, which may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item which may be established by multiplying the unit price by the quantity when those figures are available in the offer. In the event of a discrepancy, unit prices shall prevail over extended prices unless the solicitation document otherwise provides.

(3) May permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror identifies the nature of the error and demonstrates by clear and convincing evidence:

(A) That the error is not a minor informality under this subsection or an error in judgment;

(B) That the error cannot be corrected or waived under subsection (c)(1) & (2) of this rule;

(C) That the offeror acted in good faith in submitting the offer and in claiming that the alleged error exists;

(D) That the offeror acted without gross negligence in submitting the offer;

(E) That the offeror will suffer substantial detriment if the City does not grant the offeror permission to withdraw the offer;

(F) That withdrawal of the offer will not work a substantial hardship on the City or the public; and

(G) That the offeror promptly gave notice of the claimed error to the City after discovery.

(4) The criteria in this subsection shall be used to determine whether an offeror may withdraw its offer without forfeiture of the bid bond or other security, or without liability to the City based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by the City, whether award should be made to the next lowest responsive and responsible bidder or the most advantageous responsive and responsible proposer, or whether the procurement should be made by a new solicitation.

(d) **Rejection for Mistakes.** The Purchasing Administrator shall reject any offer in which a mistake is evident on the face of the offer, and the intended offer is not evident or cannot be substantiated from other documents submitted with the offer.

(e) **Identification of Mistakes after Award.** Following award, an offeror is bound by its offer, and may not withdraw its offer or rescind a contract unless otherwise provided by law.

PCR 8.16: First-Tier Subcontractors; Disclosure and Substitution

(a) **Required Disclosure.** Within two working hours after the bid closing on an invitation to bid for a public improvement having a total contract price anticipated by the City to exceed \$100,000, all bidders shall submit to the City a first-tier subcontractor disclosure on a form prescribed by the Purchasing Administrator, which shall be in substantially the form set forth under ORS 279C.370(2), identifying any first-tier subcontractors who are contracting directly with the prime contractor that will be furnishing labor or labor and materials on the public improvement contract, if awarded, and whose subcontract value would be equal to or greater than:

- (1) Five percent of the total contract price, but not less than \$15,000; or
- (2) \$350,000, regardless of the percentage of the total contract price.

(b) **Bid Closing, Disclosure Deadline and Bid Opening.** For each invitation to bid which this rule applies, the City shall:

- (1) Set the bid closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these bid closing restrictions do not apply to an invitation to bid for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
- (2) Open bids publicly immediately after the bid closing; and
- (3) Consider for public improvement contract award only those bids for which the required disclosure has been submitted on the prescribed forms by the announced deadline.

(c) **Bidder Instructions and Disclosure Form.** A solicitation document which is subject to this rule shall:

- (1) Include the disclosure form that must be utilized; and
- (2) Include instructions in a notice substantially similar to the following:

“Instructions for First-Tier Subcontractor Disclosure”

Pursuant to ORS 279C.370, bidders are required to disclose information about certain first-tier subcontractors when the City estimates public improvement contract value for a public improvement is greater than \$100,000. Specifically, when the public improvement contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the bidder must disclose the following information about that subcontract either in its bid submission, or within two hours after bid closing:

- (1) The subcontractor's name,*
- (2) The category of work that the subcontractor would be performing, and*
- (3) The dollar value of the subcontract.*

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the accompanying form.

THE CITY SHALL REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION WITH ITS BID OR WITHIN TWO HOURS AFTER BID CLOSING.

(d) Submission. A bidder shall submit the disclosure form required by this rule either in its bid submission, or within two working hours after bid closing in the manner specified by the invitation to bid.

(e) Responsiveness. Bids that are submitted by bid closing, but for which the disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for public improvement contract award.

(f) City's Role. The Purchasing Administrator shall obtain, and make available for public inspection, the disclosure forms required by this rule. The Purchasing Administrator shall also provide copies of disclosure forms to the Bureau of Labor and Industries, as required by ORS 279C.835. The City is not required to determine the accuracy or completeness of the information provided on disclosure forms.

(g) Substitution. A bidder may substitute a first-tier subcontractor, as provided in ORS 279C.585. The City shall accept written submissions filed under ORS 279C.585 as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the City does not have any duty to review, approve or resolve disputes concerning such substitutions of subcontractors.

PCR 8.17: Disqualification of Persons.

(a) **Authority.** The Purchasing Administrator may disqualify a person from consideration of award of the City's public improvement contracts for a period of no more than three years after providing the person with notice and a reasonable opportunity to be heard in accordance with this rule.

(b) **Reasons for Disqualification.**

(1) The Purchasing Administrator may disqualify a person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private public improvement contract or subcontract, or in the performance of such public improvement contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a public improvement contract provision that is regarded by the Purchasing Administrator to be so serious as to justify conduct disqualification. A violation may include, but is not limited to, material failure to perform the terms of a public improvement contract or an unsatisfactory performance in accordance with the terms of the public improvement contract. Failure to perform or unsatisfactory performance caused by acts beyond the person's control is not a basis for disqualification.

(E) Failure to carry workers' compensation or unemployment insurance as required by state law.

(c) **Form of Business.** For purposes of this rule, the Purchasing Administrator may investigate any person, including that person's officers, directors, owners, affiliates, or any other person acquiring ownership of the person to determine application of this rule.

(d) **Notice of Intent to Disqualify.** The Purchasing Administrator shall notify the person in writing of a proposed disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(1) State that the City intends to disqualify the person;

- (2) Set forth the reasons for the disqualification;
- (3) Include a statement of the person's right to submit information contesting the disqualification in writing within the time stated in the notice and that if the City does not receive the person's written information within the time stated, the person shall have waived its right to submit information contesting the disqualification;
- (4) Include a reference to the particular sections of the statutes and rules involved; and
- (5) State the proposed disqualification period.

(e) **Notice Of Disqualification.** If, after considering any information submitted by the person, the Purchasing Administrator determines the person should be disqualified, the person shall be immediately notified. The notice shall contain:

- (1) The effective date and period of disqualification;
- (2) The grounds for disqualification; and
- (3) A statement of the person's appeal rights under ORS 279C.445-279C.450 and this rule, and applicable appeal deadlines.

(f) **Appeal Hearing.** An appeal of a decision to disqualify a person must be made within three business days after receipt of notice of the Purchasing Administrator's decision.

(1) Notice must be given to the City Manager that the person has appealed the decision and notice to the City Manager shall be considered notice to the Local Contract Review Board as required under ORS 279C.445. Upon receipt of the notice, the City Manager shall cause the person to be notified of the time and place of the hearing to consider the appeal within thirty days.

(2) The City Manager is delegated the authority to conduct the hearing as described in ORS 279C.450(3).

(g) **Judicial Review.** Judicial review of the City Manager's decision shall be made pursuant to ORS 279C.450, and not otherwise.

PCR 8.18: Offer Evaluation and Award; Determination of Responsibility.

(a) **Generally.** The City shall evaluate an offer only as set forth in the solicitation document and in accordance with applicable law. The City shall not evaluate an offer using any other requirement or criterion.

(b) Evaluation of Bids. An invitation to bid shall contain only objective criteria to be used in the evaluation of bids. Bids shall be evaluated using such objective criteria to determine which responsible offeror offers the lowest responsive bid.

(1) Calculation Methods. The solicitation document shall set forth the calculation method to be used to evaluate bid prices. Invitations to bid may solicit lump-sum offers, unit-price offers or a combination of the two.

(A) Lump Sum. If the invitation to bid requires a lump sum bid, without additive or deductive alternates, bids may be compared on the basis of lump sum prices. If the invitation to bid calls for a lump sum base bid, plus additive or deductive alternates, bids may be compared on the basis of lump sum bid prices if the City elects not to award additive or deductive alternates, or by adding to or deducting from the base bid those alternates selected by the City, or any other basis identified in the solicitation document.

(B) Unit Price. If the bid includes unit pricing for estimated quantities, the total bid price for the purpose of comparing bids may be calculated by multiplying the estimated quantities by the unit prices submitted by the bidder, or by adjusting for any additive or deductive alternates selected by the City, or any other calculation method identified in the solicitation document. The solicitation document must identify the estimated quantity of the procurement to be used for determination of the low bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the bidder, the unit price shall govern.

(2) Nonresident Bidders. In determining the lowest responsive bid, the City shall add a percentage increase to the bid of a nonresident bidder equal to the percentage, if any, of the preference given to that bidder in the state in which the bidder resides.

(3) Negotiation Prohibited. The City shall not negotiate scope of work or other terms or conditions prior to award under an invitation to bid.

(4) Clarifications. In evaluating bids, the City may seek information from a bidder only to clarify the bidder's bid. Such clarification shall not vary, contradict or supplement the bid. A bidder must submit written and signed clarifications and such clarifications shall become part of the bidder's bid.

(c) Evaluation of Proposals. The City shall set forth in a request for proposals the evaluation criteria to be used.

(d) Offeror Submissions.

(1) The City may require an offeror to submit product samples, descriptive literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to specifications.

(2) The City shall evaluate product acceptability only in accordance with the criteria disclosed in the solicitation document to determine that a product is acceptable. The City shall reject an offer providing any product that does not meet the solicitation document requirements. The City's rejection of an offer because it offers nonconforming work or materials is not disqualification and is not appealable under ORS 279C.445.

(e) Award.

(1) A public improvement contract, if awarded, shall be awarded to the responsible bidder submitting the lowest responsive bid, or to the responsible proposer submitting the best responsive proposal, provided that such person is not listed by the Construction Contractors Board as disqualified to hold a public improvement contract. [See ORS 279C.375(2)(a)]. Award may be by item, groups of items or the entire offer provided such award is consistent with the solicitation document, and in the public interest.

(2) Unless otherwise provided in these rules, the City Manager shall award all public improvement contracts. The City Manager may not delegate this authority.

(3) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a public improvement contract. Before the City Manager awards a public improvement contract, the Purchasing Administrator must have information which established that the offeror:

(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the offeror to meet all contractual responsibilities;

(B) Has a satisfactory record of public improvement contract performance. The Purchasing Administrator should carefully scrutinize an offeror's record of public improvement contract performance if the Purchasing Administrator is aware that the offeror is or recently has been materially deficient in public improvement contract performance. In reviewing the offeror's performance, the Purchasing Administrator should determine whether the offeror's deficient performance was expressly excused under the terms of the public improvement contract, or whether the offeror took appropriate corrective action. The Purchasing Administrator may review the offeror's performance on both private and public improvement contracts in determining the offeror's record of public improvement contract performance. The Purchasing Administrator shall make its basis for determining an offeror not responsible under this paragraph part of the procurement file;

(C) Has a satisfactory record of integrity. An offeror may lack integrity if the Purchasing Administrator determines the offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a public improvement contracting agency. The Purchasing Administrator may find an offeror not responsible based on the lack of integrity of any person having influence or control over the offeror (such as a key employee of the offeror that has the authority to significantly influence the offeror's performance of the public improvement contract or a parent company, predecessor or successor person). The standards for disqualification under PCR 8.17 may be used to determine an offeror's integrity. The Purchasing Administrator shall make its basis for determining that an offeror is not responsible under this paragraph part of the procurement file;

(D) Is qualified legally to contract with the City; and

(E) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the offeror fails to promptly supply information requested by the City concerning responsibility, the Purchasing Administrator shall base the determination of responsibility upon any available information, or may find the offeror not responsible.

PCR 8.19: Documentation of Award; Availability of Award Decisions

(a) **Basis of Award.** After award, the Purchasing Administrator shall make a record documenting the basis for determining the successful offeror part of the procurement file. The documentation shall include:

(1) For solicitations made by invitation to bid:

- (A) All submitted bids;
 - (B) The completed bid tabulation sheet; and
 - (C) A written justification for any rejection of lower bids.
- (2) For solicitations made by requests for proposals:
- (A) All submitted proposals.
 - (B) The completed evaluation of the proposals;
 - (C) A written justification for any rejection of higher scoring proposals or for failing to meet mandatory requirements of the request for proposal; and
 - (D) If negotiations were permitted, summaries of the evaluation of the initial proposals and the evaluation of final proposals.

(b) Bid Tabulations and Award Summaries. Upon request of any person, the Purchasing Administrator shall provide tabulations of awarded bids or evaluation summaries of proposals for a nominal charge which may be payable in advance. Requests shall contain the solicitation document number and, if requested, be accompanied by a self-addressed, stamped envelope. The Purchasing Administrator may also provide tabulations of bids and proposals awarded on the City's website.

(c) Availability of Procurement Files. The Purchasing Administrator shall make completed procurement files available for public review at the City.

(d) Copies from Procurement Files. Any person may obtain copies of material from procurement files upon payment of the established charge for copies under the City's public records policy.

PCR 8.20: Time for City Acceptance; Extension.

(a) Time for Offer Acceptance. An offeror's submitted bid or proposal is a "firm offer," and is irrevocable, valid and binding on the offeror for not less than thirty days from closing unless otherwise specified in the solicitation document.

(b) Extension of Acceptance Time. The Purchasing Administrator may request, orally or in writing, that offerors extend, in writing, the time during which the City may consider and accept offers. If an offeror agrees to such extension, the offer shall continue as a "firm offer," irrevocable, valid and binding on the offeror for the agreed upon extension period.

PCR 8.21: Negotiation With Bidders Prohibited.

(a) **Bids.** Except as permitted by ORS 279C.340 and PCR 9.6 when all bids exceed the cost estimate, the City shall not negotiate with any bidder prior to public improvement contract award. After award of the public improvement contract, the City and contractor may modify the public improvement contract only by change order or amendment to the public improvement contract in accordance with PCR 8.25.

(b) **Requests for Proposals.** The City may conduct discussions or negotiations with proposers only in accordance with PCR 9.8.

PCR 8.22: Rejection of an Offer.

(a) **Grounds for Rejection.**

(1) Any offer may be rejected upon the Purchasing Administrator's finding that to accept the offer may impair the integrity of the procurement process or that rejecting the offer is in the public interest.

(2) An offer shall be rejected by the Purchasing Administrator upon finding that the offer:

(A) Is contingent upon the City's acceptance of terms and conditions, including specifications, that differ from the solicitation document;

(B) Takes exception to terms and conditions, including specifications;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or in contravention of applicable law;

(D) Offers work or goods that fail to meet the specifications of the solicitation document;

(E) Is late;

(F) Is not in substantial compliance with the solicitation documents;

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(3) An offer shall be rejected by the Purchasing Administrator upon finding that the offeror:

- (A) Has not been prequalified, if mandatory prequalification was required;
- (B) Has been disqualified;
- (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of the Bureau of Labor and Industries and the public improvement contract is for a public work;
- (D) Is listed as not qualified by the Construction Contractors Board, if the public improvement contract is for a public improvement;
- (E) Has not met the requirements of ORS 279A.105, "Subcontracting to emerging small businesses," if required by the solicitation document;
- (F) Has not submitted properly executed bid or proposal security as required by the solicitation document;
- (G) Has failed to provide the certification of non-discrimination against any minority, women or emerging small business enterprise required under PCR 8.9(d); or
- (H) Is not responsible.

(b) **Form of Business.** For purposes of making any determination under this rule, the Purchasing Administrator may investigate any person submitting an offer, which may include an investigation of the person's officers, directors, owners, affiliates, or any other person acquiring ownership of the person.

(c) The Purchasing Administrator shall document the reasons for rejection in the procurement file.

PCR 8.23: Rejection of All Offers.

(a) **Rejection.** The Purchasing Administrator may reject all offers for good cause upon the Administrator's written finding it is in the public interest to do so. The Purchasing Administrator shall notify all offerors of the rejection of all offers, along with the good cause justification and finding.

(b) **Criteria.** Whether rejection is in the best interest of the City shall be based on the following criteria:

- (1) The content of or an error in the solicitation document, or the solicitation process unnecessarily restricted competition for the public improvement contract;

- (2) The price, quality or performance presented by the offerors is too costly or of insufficient quality to justify acceptance of the offer;
 - (3) Misconduct, error, or ambiguous or misleading provisions in the solicitation document threaten the fairness and integrity of the competitive process;
 - (4) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the solicitation document;
 - (5) The City cancels the solicitation; or
 - (6) Any other circumstance indicating that awarding the public improvement contract would not be in the public interest.
- (c) The Purchasing Administrator shall document the reasons for rejection in the procurement file.

PCR 8.24: Performance and Payment Security; Waiver.

(a) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless a public improvement contract or classes of public improvement contracts have been exempted from the required performance bond and payment bond pursuant to ORS 279C.390, the contractor shall execute and deliver to the City a performance bond and a payment bond each in a sum equal to the public improvement contract price.

(b) **Other Construction Contracts.** The Purchasing Administrator may require performance security for other construction contracts that are not public improvement contracts. Such requirements shall be expressly set forth in the solicitation document.

(c) **Requirement for Surety Bond.** The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the solicitation document. The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full public improvement contract price.

(d) **Time for Submission.** The apparent successful offeror must promptly furnish the required performance security upon request by the Purchasing Administrator. If the offeror fails to furnish the performance security as requested, the Purchasing Administrator may reject the offer and award the public improvement contract to the

responsible bidder with the next lowest responsive bid or the responsible proposer with the next highest-scoring responsive proposal, and, at the Purchasing Administrator's discretion, the offeror shall forfeit its bid or proposal security.

PCR 8.25: Contract Amendments.

(a) Definitions. As used in this section:

(1) "Amendment" means a written modification to the terms and conditions of a public improvement contract, other than by change orders, within the general scope of the original procurement that requires mutual agreement between the City and the contractor.

(2) "Change Order" means a mutually agreed upon change order or other written order issued by the City or its authorized representatives to the contractor requiring a change in the work within the general scope of a public improvement contract and issued under its changes provisions in administering the contract and, if applicable, adjusting the contract price or contract time for the changed work.

(b) Change Order Authority. The City Manager may establish limitations and delegations for authorizing change orders, including dollar limitations. Dollar limitations on change orders are not set by these rules, but such changes are limited by the definition of that term as defined by this rule.

(c) Amendments and change orders to a public improvement contract may be made only when:

(1) They are within the general scope of the original procurement;

(2) The field of competition and contractor selection would not likely have been affected by the contract modification. Factors to be considered in making that determination include similarities in work, project site, relative dollar values, differences in risk allocation and whether the original procurement was accomplished through competitive bidding, competitive proposals, competitive quotes, sole source or emergency contract;

(3) In the case of a public improvement contract obtained through an alternative contracting method, any additional work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(4) The amendment or change order are made consistent with applicable legal requirements.

IX. SOURCE SELECTION METHODS FOR PUBLIC IMPROVEMENTS

PCR 9.1: Contracts for Minor Alteration, Ordinary Repair or Maintenance of Public Improvements.

- (a) Contracts for minor alteration, ordinary repair or maintenance of a public improvement shall be procured as “goods or services” pursuant to PCR 2.1-5.9.
- (b) **Application of ORS Chapter 279C.** Provisions of ORS Chapter 279C and these rules, other than source selection, may still be applicable to contracts for construction for other than public improvements, including, but not limited to, ORS 279C.440-279C.450, “Disqualification”; ORS 279C.460-279C.465, “Legal Actions”; ORS 279C.505-279C.530, “Required Contract Conditions”; ORS 279C.540-279C.545, “Hours of Labor”; ORS 279C.550-279C.565, “Retainage”; ORS 279C.580, “Subcontracts”; ORS 279C.600-279C.625, “Action on Payment Bonds”; ORS 279C.650-279C.670, “Termination”; and ORS 279C.800-279C.870, “Prevailing Wage Rates.”
- (c) A project for the construction, reconstruction or major repair of a public improvement shall not be divided into smaller contracts, in order to characterize such activity as minor alteration, ordinary repair or maintenance for purposes of this rule.

PCR 9.2: Emergency Procurements.

(a) Emergency Declaration.

(1) The existence of emergency circumstances may be declared requiring prompt execution of a contract for emergency construction or repair work. Declaration of emergency shall exempt the contract from the competitive bidding requirements.

(2) A Department Head or City Manager may declare the existence of an emergency and authorize construction or repair work of a public improvement up to \$100,000. The City Manager may declare the existence of an emergency and authorize construction or repair work of a public improvement of \$100,000 or more.

(b) **Documentation.** The declaration shall be documented in writing, which shall describe the circumstances creating the emergency and the anticipated harm from failure to enter into an emergency contract, and shall be forwarded to the Purchasing Administrator to be kept in the procurement file.

(c) **Competition for Contracts.** The City shall encourage such competition for an emergency contract as reasonable and appropriate under the circumstances. Source selection may include written requests for offers, oral requests for offers or direct

appointment without competition in cases of necessity, in whatever time periods the person making the declaration considers reasonable to respond to the emergency.

(d) Contract Award. A Department Head may award an emergency contract with a contract price of less than \$100,000. The City Manager must award emergency contracts with a contract price of \$100,000 or greater, unless an emergency has been declared and the emergency requires award or execution of a contract before the City Manager can make the award, in which case, a Department Head may award the contract. The Department Head shall document the award and reasons why award by the Department Head was necessary, which shall be included in the procurement file. Emergency contracts under this rule must be awarded within sixty days after declaration of the emergency, unless the City Manager authorizes a longer time. The City Manager may grant an extension not to exceed thirty days, if circumstances surrounding the emergency made it unreasonable to award the contract within thirty days and the emergency continues.

(e) Contract Scope. Although no dollar limitation applies to emergency contracts, the scope of the contract must be limited to work that is necessary and appropriate to remedy the conditions creating the emergency, including any restoration and associated work, as described in the declaration.

(f) Excusing Bonds. The declaration of emergency may state that the requirement of furnishing a performance bond and payment bond is waived for the emergency contract, and after such declaration the bonding requirements are excused for the procurement.

PCR 9.3: Intermediate Procurements; Competitive Quotes and Amendments.

(a) General. Public Improvement contracts with an estimated contract price that will not exceed \$100,000, or not exceed \$50,000 in the case of contracts for highways, bridges and other transportation projects, are intermediate procurements, and may be awarded by competitive quotes.

(b) Selection Criteria. Selection criteria for an intermediate procurement may be limited to price, or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(c) Competitive Quotes.

(1) Written Requests for Competitive Quotes. Written requests for competitive quotes shall be used whenever reasonably practicable. Written request for competitive quotes shall include the selection criteria to be utilized in selecting a contractor and, if the selection criteria are not of equal value, the relative value or ranking of the criteria.

(2) **Oral Requests for Competitive Quotes.** If the use of written requests for competitive quotes is not reasonably practicable, the Purchasing Administrator may authorize oral requests for competitive quotes. Prior to requesting a price quote, the City shall state any additional selection criteria and, if the criteria are not of equal value, the relative value or ranking of the criteria. Oral quotes may be utilized only if written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(d) **Number of Quotes; Record Required.** Quotes shall be received by the Purchasing Administrator at the date, time and place established as part of the solicitation. The Purchasing Administrator shall keep a written record of the sources of the quotes or proposals. At least three competitive quotes should be sought and a record of the sources and amounts of the quotes received shall be kept in the procurement file. If three quotes are not reasonably available, fewer will suffice, but a written record of the effort shall be made part of the procurement file.

(e) **Award.** The Purchasing Administrator may award all intermediate procurements for public improvements with a contract price of up to \$50,000. The City Manager shall award all intermediate procurements with a contract price of \$50,000 or greater. If a contract is awarded, the award shall be made to the offeror whose quote will best serve the interests of the City, taking into account the announced selection criteria. If award is not made to the offeror offering the lowest price, the procurement file shall contain a written record of the basis for award.

PCR 9.4: Public Improvement Contracts in Connection with Land Use Approvals and Construction by Other Governmental Entities

(a) The City Manager may authorize direct negotiation of public improvement contracts with the contractor of a developer responsible for carrying out conditions of approval of a land use decision as defined by ORS 197.015, or with the contractor of another governmental entity constructing a public improvement, upon finding that:

(1) The public improvement is an off-site or oversized street, water line, sewer line, storm drainage and other similar improvement which the City would otherwise have to construct, or which would have to be constructed at a later time, and, if the need for the contract arises out of a condition of approval, shall not qualify as an exaction because the requirement of construction could not be made a part of the land use decision; and

(2) The particular public improvement contract will be unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for such contracts, and will either result in substantial cost savings to the City or to the public.

(b) Any contract entered into pursuant to this rule shall include all warranties, insurance and bonding requirements that the City Manager considers appropriate for the project, as well as all applicable statutorily required contract provisions, including but not limited to: ORS 279.505(1), ORS 279C.505(2), ORS 279C.510(1), ORS 279C.510(2), ORS 279C.515, ORS 279C.520, 279C.525, ORS 279C.530, ORS 279C.540, ORS 279C.545, ORS 279C.830 and ORS 279C.840.

(c) Written findings justifying the selection of the contractor shall be made part of the procurement file.

PCR 9.5: Formal Competitive Bids.

(a) **Generally.** Unless exempted pursuant to ORS 279C.335 and PCR 9.9 or these rules, formal competitive bids shall be used for all contracts with an estimated contract price that will exceed \$100,000, or exceed \$50,000 in the case of contracts for highways, bridges and other transportation projects, and may be used for any contract, where the use of formal competitive bids would result in the least cost to the City. Formal competitive bids are initiated by an invitation to bid.

(b) **Solicitation Document.** An invitation to bid shall include:

(1) **General Information.**

(A) Identification of the public improvement project, including the character of the work, applicable plans, specifications and other contract documents;

(B) Notice of any pre-offer conference including:

(i) The date, time and location;

(ii) Whether pre-offer conference attendance will be mandatory or voluntary; and

(iii) A notice that statements made by representatives of the City at the pre-offer conference are not binding upon the City unless confirmed by written addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of work for which offerors must be prequalified, if prequalification is a requirement;

(D) The name and title of the person designated for receipt of offers and the contact person, if different;

(E) Instructions and information concerning the form and submission of offers, including the address of the office where offers must be delivered, any bid or proposal security requirements, and any other required information or special information, i.e., whether offers may be submitted by facsimile;

(F) The date, time and place of opening;

(G) The date and time of closing, after which the City will not accept offers. This time shall be not less than five days after the date of the last publication of the advertisement and if feasible, a fourteen day solicitation period should be used. If the invitation to bid may result in a contract with contract price greater than \$100,000, the City shall designate a time of closing consistent with first-tier subcontractor disclosure requirements of PCR 8.16;

(H) The office where the specifications for the work may be reviewed;

(I) A statement that each bidder submitting a bid in response to an invitation to bid must identify whether the bidder is a "resident bidder," as defined in PCR 1.1;

(J) If the contract is for a public work subject to ORS 279C.800-279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no offer will be received or considered unless the offer contains a statement by the offeror as a part of its offer that: "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a";

(K) A statement that an offer for a contract will not be received or considered unless the offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board;

(L) A statement of whether a contractor or a subcontractor under the contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification that all subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract;

(N) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);

(O) How offerors will be notified of addenda and how addenda will be made available; and

(P) When applicable, instructions and forms regarding first-tier subcontractor disclosure requirements for bidders, as set forth in PCR 8.16.

(2) The Evaluation Process.

(A) A statement that the City may reject any offer not in compliance with all prescribed contracting procedures and requirements, and may reject for good cause all offers upon the finding that it is in the public interest to do so;

(B) The anticipated solicitation schedule, deadlines, evaluation process, and protest process;

(C) Evaluation criteria, including the relative value applicable to each criterion, will be used to determine the responsible bidder with the lowest responsive bid if award is based solely on price. Any special price evaluation factors shall be set forth in the solicitation document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;

(D) Contract Provisions. All contract terms and conditions, including

(i) All warranties, insurance and bonding requirements, that the Purchasing Administrator deems appropriate for the project;

(ii) All applicable statutorily required contract provisions, including but not limited to, ORS 279.505(1), ORS 279C.505(2), ORS 279C.510(1), ORS 279C.510(2), ORS 279C.515, ORS 279C.520, 279C.525, ORS 279C.530, ORS 279C.540, ORS 279C.545, ORS 279C.830 and ORS 279C.840; and

(iii) A provision indicating whether the contractor can assign, sell, dispose or otherwise transfer its rights or can delegate its

duties under the contract without prior written approval from the City.

PCR 9.6: Negotiation When Bids Exceed Cost Estimate.

(a) **Definitions.** For the purposes of this rule, the following mean:

- (1) **“Cost Estimate”** means the City's most recent pre-bid, good faith assessment of anticipated contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
- (2) **“Other Options”** means those items generally considered appropriate for negotiation and relating to the details of contract performance, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.
- (3) **“Project”** means a public improvement.
- (4) **“Value Engineering”** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, specifications, or other contract requirements which may be made, consistent with industry practice, in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the public improvement. Cost savings include those savings resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(b) **Generally.** If all responsive bids from responsible bidders on a formal competitive bid exceed the City's cost estimate, prior to rejecting all bids, the City may negotiate value engineering and other options with the responsible bidder submitting the lowest, responsive bid, in an attempt to bring the project within the City's cost estimate. Subcontractor disclosure and substitution requirements of PCR 8.16 do not apply to negotiations under this rule.

(c) **Rejection of Bids.** In determining whether all responsive bids from responsible bidders exceed the cost estimate, only those bids that have been formally rejected, or bids from bidders who have been formally disqualified by the City, shall be excluded from consideration.

(d) **Limitation.** Negotiations may be undertaken only with the lowest responsive, responsible bidder, and shall not be undertaken with any bidder who is next in line for contract award.

(e) **Change in Project Scope.** The City shall not proceed with contract award if, as a result of the negotiations, the scope of the project would be significantly changed. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other bidders would have been expected to participate in the bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(f) **Discontinuing Negotiations.** The City may discontinue negotiations at any time, and shall do so if it appears that the low bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(g) **Public Records.** To the extent that a bidder's records used in contract negotiations are public records, the records are exempt from disclosure until after the negotiated contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410-192.505.

PCR 9.7: Exemptions from Requirement of Competitive Bidding.

(a) The Local Contract Review Board may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements if the exemption:

(1) Is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(2) Will result in substantial cost savings to the contracting agency or the public. In determining whether the exemption will result in substantial cost savings, the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate may be considered.

(b) In granting exemptions under this section, the Local Contract Review Board shall:

(1) Adopt written findings that support the exemption of a particular public improvement contract or a class of public improvement contracts without the competitive bidding requirement; and

(2) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(c) Before final adoption of the findings, the Local Contract Review Board shall hold a public hearing. Notice of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. 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 competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the City, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment. At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment. If the City is required to act promptly due to circumstances beyond the City's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the City's solicitation of contractors for an alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(d) In addition to other provisions in these rules, public improvement contracts procured pursuant to this rules shall comply with ORS 279C.400-279C.410, relating to competitive proposals.

PCR 9.8: Definitions of Alternative Contracting Methods.

(a) **“Construction Manager/General Contractor” (CM/GC).** A CM/CG Contract is an alternative form of procurement that results in a contract with a construction manager/general contractor who undertakes project team involvement with design development; provides constructability reviews; provides value engineering, scheduling, estimating and subcontracting services; establishes a “Guaranteed Maximum Price” (GMP) to complete the work; acts as general contractor; holds all subcontracts, self-performs portions of the work as may be allowed under the contract; coordinates and manages the building process; provides general contractor expertise; and acts as a member of the project team along with City staff, architects, engineers and other consultants. CM/GC also refers to a contractor under this form of contract, sometimes known as the “construction manager at risk.” The GMP is the total maximum price provided to the City by the CM/GC, and accepted by the City, that includes all reimbursable costs of and fees for completion of the work, as defined by the contract, except for material changes in the scope of work. The GMP may also include particularly identified contingency amounts.

(b) **Design-Build Contract.** A Design-Build Contract is an alternative form of procurement that results in a contract that provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In a design-build contract, a single person provides all of the services necessary to both design and construct the project.

PCR 9.9: Alternative Contracting Source Selection Method and Process.

(a) Authorization.

(1) CM/CG Contract. A CM/GC Contract may be authorized, if the following types of benefits are reasonably demonstrated:

(A) Time Savings. The public improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. Operational and financial data may be considered that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(B) Cost Savings. Early contractor input during the design process is expected to contribute to significant cost savings. Value engineering, building systems analysis, life cycle costing analysis and construction planning may be considered that lead to cost savings. Any special factors influencing this analysis should be considered, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(C) Technical Complexity. The public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals and contractor, in which the contractor will assist in addressing specific project challenges through pre-construction services. The need for contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling may be considered.

(2) Design-Build Contract. A Design-Build Contract may be authorized, if the following types of benefits are reasonably demonstrated:

(A) Full Integration. Obtaining, through a design-build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(B) Value Engineering. Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team

early with design responsibilities under a team approach, with the potential of reducing contract changes;

(C) Risk Reduction. Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims;

(D) Project Time. Shortening project time as construction activity, including, but not limited to, early submittals, mobilization, subcontracting and advance work, commences prior to completion of a "biddable" design, or where a design solution is still required, as in complex or phased projects; or

(E) Collaborative Problem Solving. Obtaining innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

(b) Request for Proposals. Source selection by an alternative contracting method shall be by a request for proposals. A request for proposals shall contain:

(1) General Information.

(A) Identification of the public improvement project, including the character of the work, applicable plans, specifications and other contract documents;

(B) Notice of any pre-offer conference including:

(i) The date, time and location;

(ii) Whether pre-offer conference attendance will be mandatory or voluntary; and

(iii) A notice that statements made by representatives of the City at the pre-offer conference are not binding upon the City unless confirmed by written addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of work for which offerors must be prequalified, if prequalification is a requirement;

(D) The name and title of the person designated for receipt of offers and the contact person, if different;

(E) Instructions and information concerning the form and submission of offers, including the address of the office where offers must be delivered, any bid or proposal security requirements, and any other required information or special information, i.e., whether offers may be submitted by facsimile;

(F) The date, time and place of opening;

(G) The date and time of closing, after which the City will not accept offers. This time shall be not less than five days after the date of the last publication of the advertisement and if feasible, a fourteen day solicitation period should be used. If the invitation to bid may result in a contract with contract price greater than \$100,000, the City shall designate a time of closing consistent with first-tier subcontractor disclosure requirements of PCR 8.16;

(H) The office where the specifications for the work may be reviewed;

(I) A statement that each bidder submitting a bid in response to an invitation to bid must identify whether the bidder is a "resident bidder," as defined in PCR 1.1;

(J) If the contract is for a public work subject to ORS 279C.800-279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no offer will be received or considered unless the offer contains a statement by the offeror as a part of its offer that: "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a";

(K) A statement that an offer for a contract will not be received or considered unless the offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board;

(L) A statement of whether a contractor or a subcontractor under the contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification that all subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract;

(N) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);

(O) How offerors will be notified of addenda and how addenda will be made available; and

(P) When applicable, instructions and forms regarding first-tier subcontractor disclosure requirements for bidders, as set forth in PCR 8.16.

(2) The Evaluation Process.

(A) A statement that the City may reject any offer not in compliance with all prescribed contracting procedures and requirements, and may reject for good cause all offers upon the finding that it is in the public interest to do so;

(B) The anticipated solicitation schedule, deadlines, evaluation process, and protest process;

(C) Evaluation criteria, including the relative value applicable to each criterion, will be used to determine the responsible proposer or proposers with the best responsive proposal or proposals, along with the process that will be used to determine acceptability of the work. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience and availability of key personnel, adequacy of equipment or physical plant, safety record, financial wherewithal, project understanding, proposed milestone dates, proposed methods of construction, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City; treat all proposals equitably and recognize that public policy requires that public improvements be constructed at the least overall cost to the City.

(i) In CM/GC Contract, factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(ii) In a Design-Build Contract, factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Provisions.** All contract terms and conditions, including

(A) All warranties, insurance and bonding requirements, that the Purchasing Administrator deems appropriate for the project;

(B) All applicable statutorily required contract provisions, including but not limited to, ORS 279.505(1), ORS 279C.505(2), ORS 279C.510(1), ORS 279C.510(2), ORS 279C.515, ORS 279C.520, 279C.525, ORS 279C.530, ORS 279C.540, ORS 279C.545, ORS 279C.830 and ORS 279C.840; and

(C) A provision indicating whether the contractor can assign, sell, dispose or otherwise transfer its rights or can delegate its duties under the contract without prior written approval from the City.

(D) Whether the City is willing to negotiate terms and conditions or allow submission of revised proposals following discussions, provided that the specific terms and conditions that are subject to negotiation or discussion shall be identified, and offerors shall be authorized to propose alternative terms and conditions in lieu of the terms and conditions identified as authorized for negotiation or discussion. The evaluation and discussion or negotiation process must be described, including how any competitive range will be established.

(c) **Alternative Contracting Pricing Mechanisms.**

(1) A request for proposals may result in a lump sum contract price, as in the case of competitive bidding. Alternatively, a cost reimbursement contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total contract price is provided in the design phase in order to assist the City in determining whether the project scope is within the City's budget, and allowing for design changes during preliminary design rather than after final design work has been completed.

(A) If this collaborative process is successful, the contractor shall propose a final GMP, which may be accepted by the City and included within the contract.

(B) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the contractor, then the City shall terminate the contract. The City may then proceed to negotiate a new contract and GMP with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

(d) **Evaluation of Proposals.**

(1) **Evaluation.** The City shall evaluate proposals only in accordance with criteria set forth in the request for proposals. The City shall evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(A) **Clarifications.** In evaluating proposals, the City may seek information from a proposer to clarify the proposal. A proposer must submit written and signed clarifications and such clarifications shall become part of the proposal.

(B) **Limited Negotiation.** If the request for proposals did not permit negotiation, the City may nonetheless negotiate with the highest-ranked proposer, but only:

(i) The statement of work; or

(ii) The contract price as it is affected by negotiating the statement of work.

(2) **Discussions and Negotiations.** If the request for proposals permitted discussions or negotiations, the City shall evaluate proposals and establish a competitive range, as provided in this rule.

(A) If the request for proposals provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all proposals in accordance with this rule.

(B) If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition.

(3) **Cancellation.** Nothing in this subsection shall restrict or prohibit the cancellation of the procurement at any time.

(e) **Competitive Range; Award.**

(1) **Determining Competitive Range.**

(A) If the procurement is not cancelled, after opening the City will evaluate all proposals in accordance with the evaluation criteria set forth in the request for proposals. After evaluation, the City will determine and rank the proposers in the competitive range.

(B) The City may increase the number of proposers in the competitive range if the evaluation of proposals establishes a natural break in the scores of proposers indicating a number of proposers greater than the initial competitive range are closely competitive, or have a reasonable chance of being determined the best proposer after the evaluation of revised proposals submitted in accordance with the process described in this rule.

(2) **Protesting Competitive Range.** The Purchasing Administrator shall provide written notice to all proposers identifying proposers in the competitive range. A proposer that is not within the competitive range shall be given notice of that proposer's right to protest the City's evaluation and determination of the competitive range in accordance with these rules.

(3) **Intent to Award; Discuss or Negotiate.** After the protest period provided in accordance with these rules expires, or after the City Manager has provided a final response to any protest, whichever date is later, the City may either:

(A) **Intent to Award.** Provide written notice to all proposers in the competitive range of its intent to award the contract to the highest-ranked proposer in the competitive range.

(i) An unsuccessful proposer may protest the City's intent to award in accordance with these rules.

(ii) After the protest period provided in accordance with these rules expires, or after the City Manager has provided a final response to any protest, whichever date is later, final contract negotiations with the highest-ranked proposer in the competitive range shall be commenced.

(B) Discussions. Engage in discussions with proposers in the competitive range and accept revised proposals from them, and, following such discussions and receipt and evaluation of revised proposals, conduct negotiations with all proposers in the competitive range.

(i) If the City chooses to enter into discussions with and receive revised proposals from the proposers in the competitive range, the City shall proceed as follows:

- a Initiating Discussions.** The City shall initiate oral or written discussions with all of the proposers in the competitive range regarding their proposals with respect to the provisions of the Request for proposals that the City identified in the Request for proposals as the subject of discussions. The City may conduct discussions for the following purposes:
 - b** Informing proposers of deficiencies in their initial proposals;
 - c** Notifying proposers of parts of their proposals for which the City would like additional information; and
 - d** Otherwise allowing proposers to develop revised proposals that will allow the City to obtain the best proposal based on the requirements and evaluation criteria set forth in the request for proposals.

(ii) Conducting Discussions. The City may conduct discussions with each proposer in the competitive range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each proposer. The City may terminate discussions with any proposer in the competitive range at any time. However, the City shall offer all proposers in the competitive range the opportunity to discuss their proposals with City before the Purchasing Administrator notifies proposers of the date and time pursuant to this section that revised proposals will be due.

- a** In conducting discussions, the City:
- b** Shall treat all proposers fairly and shall not favor any proposer over another;

- c** Shall not discuss other proposers' proposals;
- d** Shall not suggest specific revisions that a proposer should make to its proposal, and shall not otherwise direct the proposer to make any specific revisions to its proposal.

(iii) At any time during the time allowed for discussions, the City may:

- a** Continue discussions with a particular proposer;
- b** Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range; or
- c** Conclude discussions with all remaining proposers in the competitive range and provide notice to the proposers in the competitive range to submit revised proposals.

(iv) Revised Proposals. If the City does not cancel the solicitation at the conclusion of discussions with all remaining proposers in the competitive range, the Purchasing Administrator shall give all remaining proposers in the competitive range notice of the date and time by which they must submit revised proposals. This notice constitutes the City's termination of discussions, and proposers must submit revised proposals by the date and time set forth in the City's notice.

(v) Upon receipt of the revised proposals, the City shall score the revised proposals based upon the evaluation criteria set forth in the request for proposals, and rank the revised proposals based on the City's scoring.

(vi) The City may conduct discussions with and accept only one revised proposal from each proposer in the competitive range unless otherwise set forth in the request for proposals.

(vii) Intent to Award; Protest. The Purchasing Administrator shall provide written notice to all proposers in the competitive range of the City's intent to award the contract. An unsuccessful proposer may protest the City's intent to award in accordance with these rules. After the protest period provided in accordance with that rule expires, or after the City Manager has provided a final

response to any protest, whichever date is later, the City shall commence final contract negotiations.

(C) Negotiations.

(i) Initiating Negotiations. The City may determine to commence negotiations with the highest-ranked proposer in the competitive range following the:

- a** Initial determination of the competitive range; or
- b** Conclusion of discussions with all proposers in the competitive range and evaluation of revised proposals.

(ii) Conducting Negotiations. The City may negotiate:

- a** The statement of work;
- b** The contract price as it is affected by negotiating the statement of work; and
- c** Any other terms and conditions reasonably related to those expressly authorized for negotiation in the request for proposals. Accordingly, proposers shall not submit, and City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the request for proposals. contract terms may be negotiated to the extent allowed by the Request for proposals and provided that the general work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the solicitation document. Contract terms that may be negotiated if allowed by the Request for proposals consist of details of contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

(iii) Terminating Negotiations. At any time during discussions or negotiations that the City conducts in accordance with this rule, the City may terminate discussions or negotiations with the

highest-ranked proposer, or the proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:

- a** The proposer is not discussing or negotiating in good faith;
- b** Further discussions or negotiations with the proposer will not result in the parties agreeing to the terms and conditions of a final contract in a timely manner; or
- c** Other circumstances exist that indicate it is in the best interests of the City to terminate negotiations.

(iv) Continuing Negotiations. If the City terminates discussions or negotiations with a proposer, the City may then commence negotiations with the next highest scoring proposer in the competitive range, and continue the process described in this rule until the City has either:

- a** Determined to award the contract to the proposer with whom it is currently discussing or negotiating; or
- b** Completed one round of discussions or negotiations with all proposers in the competitive range, unless the City provided for more than one round of discussions or negotiations in the request for proposals.

PCR 9.10: Notice of Competitive Range and Intent to Award.

(a) Notice of Competitive Range. Unless otherwise provided in the Request for proposals, when the competitive proposal process is used, the Purchasing Administrator shall provide written notice to all proposers of the City's determination of the proposers included in the competitive range. The Purchasing Administrator's notice of the proposers included in the competitive range shall not be final until the later of the following:

- (1)** Ten days after the date of the notice, unless otherwise provided therein; or
- (2)** Until the City Manager provides a written response to all timely-filed protests that denies the protest and affirms the notice of the proposers included in the competitive range.

(b) Notice of Intent to Award. Unless otherwise provided in the solicitation document, the Purchasing Administrator shall provide written notice to all offerors of the City's intent to award the public improvement contract. The award shall not be made until the later of the following:

(1) Seven days after the date of the notice, unless the solicitation document provided a different period for protest; or

(2) The City Manager provides a written response to all timely-filed protests that denies the protest and affirms the award.

PCR 9.11: Additional Requirements for Design-Build Contracts.

(a) Licensing. If a design-build contractor is not an Oregon licensed design professional, the City shall require that the design-build contractor disclose in its written offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional or professionals who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(b) Performance Security. The surety's obligation on performance bonds, or the offeror's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective work and associated costs prior to final completion of the contract, or for such longer time as may be defined in the contract. The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(c) Contract Requirements.

(1) Design Services. The level or type of design services required must be clearly defined within the procurement documents and contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards, and performance measurements must be identified.

(2) Professional Liability. The contract shall clearly identify the liability of design professionals with respect to the design-build contractor and the City, as well as requirements for professional liability insurance.

(3) Risk Allocation. The contract shall clearly identify the extent to which the City requires an express indemnification from the design-build contractor for any

failure to perform, including professional errors and omissions, design warranties, construction operations and faulty work claims.

(4) **Warranties.** The contract shall clearly identify any express warranties made to the City regarding characteristics or capabilities of the completed project, regardless of whether errors occur as the result of improper design, construction, or both, including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(5) **Incentives.** The contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the contract.

(6) **Honoraria.** If allowed by the requests for proposals, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the City is benefitted from such deliverables.

PCR 9.12: Additional Requirements for CM/GC Contracts.

(a) **Basis for Payment.** The CM/GC process adds specified Construction Manager services to traditional general contractor services, requiring full contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.

(b) **Setting the GMP.** The GMP shall be set at an identified time, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and specifications shall be produced establishing the GMP scope.

(c) **Adjustments to the GMP.** The contract shall clearly identify the standards or factors under which changes or additional work will be considered outside of the work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.

(d) **Cost Savings.** The contract shall clearly identify the disposition of any cost savings resulting from completion of the work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the City's benefit. Unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the City.

(e) **Cost Reimbursement.** The contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any

category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(f) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the contract shall establish an audit process to ensure that contract costs are allowable, properly allocated and reasonable.

(g) Fee. Compensation for the CM/GC's services shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

(h) Incentives. The contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the contract (including the GMP).

(i) Controlled Insurance Programs. For projects anticipated to exceed \$75 million, the contract shall clearly identify whether an owner controlled or contractor controlled insurance program is anticipated or allowable. If so, the contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities and/or incentives.

(j) Early Work. The Request for proposals shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

- (1)** Early procurement of materials and supplies;
- (2)** Early release of bid packages for such things as site development; and
- (3)** Other advance work related to critical components of the contract.

(k) Subcontractor Selection. The contract shall clearly describe the methods by which the CM/GC shall receive, open and record bids or price quotations, and competitively select subcontractors to perform the contract work based upon price, as well as the mechanisms by which the City may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the work, including, at a minimum, advance notice of the CM/GC's intent to compete and a public opening of bids or quotations by an independent party.

(l) Subcontractor Approvals and Protests. The contract shall clearly establish whether the City must approve subcontract awards, and to what extent, if any, the City will resolve procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms should be established with certainty, including whether the CM/GC acts as the City's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City shall retain the right to monitor the subcontracting process in order to protect City's interests.

(m) CM/GC Self-Performance. Whenever feasible, the contract shall establish the elements of work the CM/GC may self-perform without competition, including, for example, the work of the job-site general conditions. In the alternative, the contract shall include a provision for City approval of CM/GC self-performance.

(n) Socio-Economic Programs. The contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

PCR 9.13: Substitution of Contractors by Sureties. If a contractor provided a performance bond, the City may allow the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the contract. A substitute contractor may perform all remaining work in compliance with all terms and conditions of the contract. Substitution of a contractor does not involve the award of a new contract and is not subject to the competitive procurement provisions of ORS Chapter 279C or these rules.

PCR 9.14: Waiver of Delay Damages Against Public Policy. The City shall not place any provision in a contract purporting to waive, release, or extinguish the rights of a contractor to damages resulting from the City's unreasonable delay in performing the contract. However, contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

PCR 9.15: Retainage.

(a) Withholding of Retainage. The City shall not retain an amount in excess of five percent of the contract price for work completed. If the contractor has performed at least fifty percent of the contract work and is progressing satisfactorily, upon the Contractor's submission of written application containing the surety's written approval, the City may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The City shall respond in writing to all such applications within a reasonable time. When the contract work is ninety-seven and one-half percent completed, the City may, at its discretion and without application by the contractor, reduce the retained amount to one hundred percent of the value of the remaining unperformed contract work. The City may

at any time reinstate retainage. Retainage shall be included in the final payment of the contract price.

(b) Deposit in interest-bearing accounts. Upon request of the contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the contractor. State contracting Agencies shall establish the account through the State Treasurer.

(c) Alternatives to cash retainage. In lieu of cash retainage to be held by the City, the contractor may substitute one of the following:

(1) Deposit of securities.

(A) The contractor may deposit bonds or securities with the City or in any bank or trust company to be held for the benefit of the City. In such event, the City shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the City Attorney, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or its contracting agencies.

(iii) Obligations of any corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the City's determination that all requirements for the protection of the City's interests have been fulfilled, it shall release to the contractor all bonds and securities deposited in lieu of retainage.

(2) Deposit of surety bond. The City, at its discretion, may allow the contractor to deposit a surety bond in a form acceptable to the City in lieu of all or a portion of funds retained or to be retained. A contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(d) **Recovery of costs.** The City may recover from the contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

PCR 9.16: Contractor Progress Payments.

(a) **Request for progress payments.** Each month the contractor shall submit to the City its written request for a progress payment based upon an estimated value of work completed and approved by the City. At the City's discretion, this request may also include the value of material to be incorporated in the completed work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed work." With these estimates as a base, the City will make a progress payment to the contractor, which shall be equal to: (i) the value of completed work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the City for any cause; and (iv) less the appropriate amount of retainage.

(b) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the work, and shall not relieve the contractor of responsibility for defective workmanship or material.

PCR 9.17: Interest

(a) **Prompt payment policy.** The City shall pay promptly all payments due and owing to the contractor on contracts for public improvements.

(b) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of thirty days after receipt of invoice or fifteen days after City approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on ninety-day commercial paper in effect on the progress payment due date at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, up to a maximum rate of thirty percent.

(c) **Interest on final payment.** Final payment on the contract price, including retainage, shall be due and owing no later than thirty days after contract completion and acceptance of the work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(d) **Settlement or judgment interest.** In the event of a dispute as to compensation due a contractor for work performed, upon settlement or judgment in favor of the contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the progress payment due date, or thirty days after the contractor submitted a claim for payment to the City in writing or otherwise in accordance with the contract requirements.

PCR 9.18: Final Inspection.

- (a) **Notification of Completion; inspection.** The contractor shall notify the City in writing as provided in the contract when the contractor considers the contract work completed. Within fifteen days of receiving Contractor's notice, the City will inspect the project and project records, and will either accept the work or notify the contractor of remaining work to be performed.
- (b) **Acknowledgment of acceptance.** When the City finds that all work required under the contract has been completed satisfactorily, the City shall acknowledge acceptance of the work in writing.

PCR 9.19: Post-Project Evaluation. The Purchasing Administrator shall prepare a formal post-project evaluation of public improvement projects in excess of \$100,000 that was exempted from competitive bidding. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an alternative contracting method. The evaluation must be delivered to the Local Contract Review Board within thirty days of the date the City "accepts" the public improvement project, as defined in the contract. In the absence of such definition, acceptance of the project occurs on the later of the date of final payment or the date of final completion of the work. The evaluation shall contain:

- (a) Financial information, consisting of cost estimates, any guaranteed maximum price, changes and actual costs;
- (b) A narrative description of successes and failures during design, engineering and construction; and
- (c) An objective assessment of the use of the alternative contracting method as compared to the exemption Findings.

PCR 9.20: Required Contract Clauses. All formal solicitations for contracts shall include all of the ORS Chapter 279C required contract clauses. The following subsections provide further guidance regarding particular contract provisions.

- (a) **Generally.** ORS 279C.800 to 279C.870 regulates public works contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.
- (b) **Required Contract Conditions.** As detailed in the above statutes and rules, every public works contract must contain the following provisions:
 - (1) City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

- (2) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
- (3) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
- (4) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
- (5) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
- (6) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(c) **Requirements for Specifications.** The specifications for every public works contract, consisting of the procurement package (such as the project manual, bid or proposal booklets, request for quotes or similar procurement specifications), must contain the following provisions:

- (1) The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement specifications.
- (2) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

PCR 9.21: Specifications; Brand Name Products

- (a) **Generally.** Solicitation documents shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).
- (b) **Equivalents.** Products may be identified by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the solicitation document. The City shall determine, in its sole discretion, whether an offeror's alternate product is "equal" or "equivalent."

PCR 9.22: Records Maintenance; Right to Audit Records

- (a) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a contract (the books, fiscal records and all other records, hereafter referred to as "records")

accessible to the City at reasonable times and places, whether or not litigation has been filed as to such claims.

(b) Inspection and Audit. The City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records of any person that has submitted cost or pricing data according to the terms of a contract to the extent that the records relate to such cost or pricing data. If the person must provide cost or pricing data under a contract, the person shall maintain such records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(c) Records Inspection; Contract Audit. The City, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's records. The contractor and subcontractor shall maintain the records and keep the records accessible and available at reasonable times and places for a minimum period of three years from the date of final payment under the contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the contract, whichever date is later, unless a shorter period is otherwise authorized in writing.

PCR 9.23: Payment for Unpaid Labor or Supplies.

(a) Contract incomplete. If the contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the person furnishing the labor or services, and charge the amount against payments due or to become due to the contractor under the contract. If the City chooses to make such a payment as provided in ORS 279C.515(1), the contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(b) Contract completed. If the contract has been completed and all funds disbursed to the prime contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to subcontractors or suppliers for work already paid for by the City.

PCR 9.24: Contract Suspension; Termination Procedures.

(a) Suspension of Work. In the event the City suspends performance of work for any reason considered by the City to be in the public interest other than a labor dispute, the contractor shall be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the contractor as a result of the suspension.

(b) Termination of Contract by mutual agreement for reasons other than default.

(1) **Reasons for termination.** The parties may agree to terminate the contract or a divisible portion thereof if:

(A) The City suspends work under the contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work.

(2) **Payment.** When a contract, or any divisible portion thereof, is terminated, the City shall pay the contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. The City shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the contract, payment shall be calculated based on percent of contract completed. No claim for loss of anticipated profits will be allowed.

(c) **Public interest termination by City.** The City may include in its contracts terms detailing the circumstances under which the contractor shall be entitled to compensation as a matter of right in the event the City unilaterally terminates the contract for any reason considered by the City to be in the public interest.

(d) **Responsibility for completed Work.** Termination of the contract or a divisible portion thereof pursuant to this rule shall not relieve either the contractor or its surety of liability for claims arising out of the work performed.

(e) **Remedies cumulative.** The City may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the contract, or available at law or in equity.

PCR 9.25: Foreign Contractor; Final Payment. If the contract price exceeds \$10,000 and the contractor is not domiciled in or registered to do business in the State of Oregon, the contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the contract price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the contract. A copy of the report shall be forwarded to the City's contract administrator. The City's contract administrator shall determine that the above requirements have been complied with before the City issues final payment on the contract.

NOTE: The following rule, PCR 9.26 applies to URA Only

PCR 9.26: Disposition of Development Agreements

(a) General. The disposition of real property often involves a partnership where a disposition and development agreement may involve the direct or indirect expenditure of public funds or incidental construction of public improvements. Competitive bidding is not appropriate under these circumstances because resulting public improvements are incidental to the overall private development on the real property. A request for proposal process allows for selection of a developer considering factors other than the cost of any public improvement. This rule applies to the disposition of real property through a disposition and development agreement that may include the direct or indirect expenditure of public funds and incidental construction public improvements.

(b) Advertising. The solicitation for proposals shall be advertised in at least one newspaper of general circulation in the area where the development is to occur, in at least one trade newspaper of general statewide circulation and in as many additional issues and publications as the Purchasing Administrator determines necessary or desirable to foster and promote competition.

(c) Licensing. No proposal shall be received or considered unless the proposal identifies at least one contractor or subcontractor licensed by the Construction Contractors Board or licensed by the State Landscape Contractors Board under ORS 671.530 who will be performing work on the development.

(d) Proposal Security. This class of contracts is exempted from the requirement of proposal security. Notwithstanding this exemption, the Purchasing Administrator may require a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check as proposal security.

(e) Performance Security. Prior to execution of the disposition and development agreement, the successful proposer shall execute and deliver a good and sufficient bond, approved by the Purchasing Administrator, in a sum equal to the cost of all construction pursuant to the disposition and development agreement for the faithful performance of the disposition and development agreement. In lieu of a surety bond, the Purchasing Administrator may permit the submission of a cashier's check or certified check in an amount equal to one hundred percent of the construction costs. The obligation for the faithful performance of the disposition and development agreement, shall be also for the preparation and completion of the design and related services covered under the disposition and development agreement.

(f) Proposal Requirements. All proposals must contain the following, and any proposal not containing any of the following shall be rejected:

- (1) The estimated total cost of construction for the proposed development;
- (2) A purchase price for the real property to be acquired by the proposer or and any leasehold proposals and proposed leasehold payments; and
- (3) Any public assistance desired for the proposed development.

(g) Proposal Evaluation. Proposals shall be evaluated by a evaluation committee approved by the Purchasing Administrator. The evaluation committee will recommend for award the best responsive proposal based upon the selection criteria established in the solicitation document. However, the City Manager shall make the final determination of the best responsive proposal and will make the award.

(h) Contract Terms.

- (1) Immediately after award, the selected proposer must negotiate the terms of a memorandum of understanding that will set the broad parameters for subsequent negotiations of a disposition and development agreement.
- (2) If any negotiation time line set forth in the solicitation documents to measure progress of negotiations for the memorandum of understanding and the disposition and development agreement is not met, the City Manager may authorize negotiations with the next highest ranked proposer.
- (3) Prevailing wage, as defined by ORS 279C.800-279C.870 shall be paid for development under the disposition and development agreement.
- (4) The disposition and development agreement shall establish the maximum amount of public participation.
- (5) The disposition and development agreement shall require the developer to use the land for the purposes designated in the applicable urban renewal plan and to begin development within a period of time which the City Manager fixes as reasonable.

X. COOPERATIVE PROCUREMENTS

PCR 10.1. Authority and Cooperative Procurements Generally.

(a) The City may participate in, sponsor, conduct, use or administer the following cooperative procurements:

(1) Joint cooperative procurements used to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085.

(2) Permissive cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(3) Interstate cooperative procurements to establish contracts or price agreements for the acquisition of goods or services or personal services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(b) Source selection methods are substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 if the solicitation and award process:

(1) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals;

(2) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120 (2); and

(3) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(c) When the City uses a cooperative procurement, contracts or price agreements entered into as a result of a cooperative procurement may have no material change in the terms, conditions or prices of the contract between the contractor and the City from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

(d) When the City is the administering agency, then:

(1) The Purchasing Administrator may establish conditions under which persons may participate in the cooperative procurement and any other matters related to the administration of the cooperative procurement and the resulting original contract, and

(2) The City Manager may enter into agreements establishing conditions under which persons may participate in the cooperative procurement, including payment of an administrative fee to the City, and addressing any other matters related to the administration of the cooperative procurement and the resulting original contract.

(e) Protests by an offeror regarding the cooperative procurement process, the contents of the solicitation document or the award or proposed award of an original contract may be filed with the City only if the City is the administering agency. If the administering agency is not the City, then offerors shall make such protests to the administering agency in accordance with the processes and procedures applicable to and established by the administering agency.

(f) Any other protests related to the use of a cooperative procurement by the City after execution of an original contract are limited in scope to the City's authority to enter into the cooperative procurement.

(g) The failure of the City to exercise any rights or remedies it has under a contract or price agreement entered into through a cooperative procurement shall not affect the rights or remedies of any other contracting agency that participates in the cooperative procurement and shall not prevent any other purchasing contracting agency from exercising any rights or seeking any remedies that may be available to it under its own contract or price agreement arising out of the cooperative procurement.

PCR 10.2: Joint Cooperative Procurements.

(a) Joint cooperative procurement is a cooperative procurement in which the participating agencies or the cooperative procurement group and the agencies' or group's contract requirements or estimated contract requirements for price agreements are identified. A joint cooperative procurement may not be a permissive cooperative procurement.

(b) The City may participate in a joint cooperative procurement if the administering agency's solicitation and the original contract or price agreement identifies the cooperative procurement group or each of the participating agencies and specifies the estimated contract requirements.

PCR 10.3: Permissive Cooperative Procurements.

(a) A permissive cooperative procurement is a cooperative procurement in which the purchasing contracting agencies are not identified.

(b) The City may participate in a permissive cooperative procurement if the administering agency's solicitation and the original contract or price agreement allows other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract and if the City is a purchasing contracting agency, the contractor agrees to extend the terms, conditions and prices of the original contract to the City.

(c) If the City intends to participate as a purchasing contracting agency in a permissive cooperative procurement and the City estimates that it will spend more than \$50,000 on goods or services or personal services acquired under the contract or price agreement, the City must publish a notice of its intent to do so.

(1) For purposes of this rule, the Purchasing Administrator will estimate that more than \$50,000 will be spent on a cooperative procurement if:

(A) The City's contract or price agreement arising out of the permissive cooperative procurement expressly provides that the City will make payments over the term of the contract or price agreement that will, in aggregate, exceed \$50,000, whether or not the total amount or value of the payments is expressly stated;

(B) The City's contract or price agreement arising out of the permissive cooperative procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed an amount in excess of \$50,000; or

(C) The Purchasing Administrator determines at the time the City enters into the contract or price agreement, based on historical or other data available, that the total payments the City may make for goods or services or personal services under the contract or price agreement will, in aggregate, exceed \$50,000 over the anticipated duration of the contract or price agreement.

(d) If notice is required, it shall be given as follows:

(1) The notice shall be published no less than seven days before the deadline established by the Purchasing Administrator for submitting comments regarding City's intent to enter into a contract or price agreement through a permissive cooperative procurement;

(2) The notice shall be published at least once in one newspaper of general circulation within Salem; and shall contain the following:

(A) A description of the procurement;

(B) An estimated amount of the procurement;

(C) The name of the administering agency; and

(D) A time, place and date by which comments must be submitted to the Purchasing Administrator regarding the intent to enter into a contract or price agreement through a permissive cooperative procurement.

(e) If the City is the administering agency of the permissive cooperative procurement the notice requirements may be satisfied by including the information required by subsection (d) of this rule in the solicitation document and including instructions in the solicitation document to potential offerors describing how they may submit comments regarding the intent to establish a contract or price agreement through the permissive cooperative procurement.

(f) Comments regarding the notice of intent to establish a contract or price agreement through a permissive cooperative procurement may be submitted by any person who would otherwise be a prospective bidder or proposer and must be submitted in writing to the Purchasing Administrator. The Purchasing Administrator shall respond to any comments as set forth in ORS 279A.215(3)(c).

PCR 10.4: Interstate Cooperative Procurements.

(a) An interstate cooperative procurement is a permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into contracts and in which one or more of the participating agencies are located outside Oregon.

(b) The City may participate in an interstate cooperative procurement if the administering agency's solicitation and the original contract or price agreement allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract and if the City is a purchasing agency, the administering agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the City.

(c) **Notice.** In order to participate in an interstate cooperative procurement, one of the following must occur:

(1) The solicitation document for the interstate cooperative procurement lists the City or a cooperative procurement group of which the City is a member as a party that may enter into contracts or price agreements under the terms and conditions of the original contract, and the solicitation document is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by either:

(A) The City; or

(B) The cooperative procurement group, or a member of the cooperative procurement group, of which the City is a member; or

(C) Another purchasing agency that is subject to the Public Contracting Code, so long as such advertisement would, if given by the City, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the City; or

(2) If the solicitation document issued by the administering agency was not advertised in accordance subsection (c)(1) of this rule, the City gives notice of its intent to enter into a contract or price agreement based on the terms of the interstate cooperative procurement as follows:

(A) The notice of intent shall be given no less than seven days before the deadline established by the Purchasing Administrator for submitting comments regarding City's intent to enter into a contract or price agreement through an interstate cooperative procurement;

(B) The notice shall be published at least once in one newspaper of general circulation within Salem; and shall contain the following:

(i) A description of the procurement;

(ii) An estimated amount of the procurement;

(iii) The name of the administering agency; and

(iv) A time, place and date by which comments must be submitted to the Purchasing Administrator regarding intent to enter into a contract or price agreement through an interstate cooperative procurement.

(d) Comments regarding the notice of intent to establish a contract or price agreement through an interstate cooperative procurement may be submitted by any person who would otherwise be a prospective bidder or proposer and must be submitted in writing to the Purchasing Administrator. The Purchasing Administrator shall respond to any comments as set forth in ORS 279A.220(3)(c).

PCR 10.5: Cooperative Procurements for Public Works.

(a) Authority. The City may approve, participate in, sponsor, conduct or administer joint cooperative procurements for the acquisition of public improvements if the solicitation and award process for the original contract was open and impartial and used a competitive source selection process substantially equivalent to those identified in ORS chapter 279C.

(1) A solicitation and award process uses competitive source selection methods substantially equivalent to those identified in ORS 279C if the solicitation and award process:

(A) Called for award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals;

(B) Did not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and

(2) Used reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(b) Protests regarding the procurement process, the contents of the solicitation document or the award or proposed award of an original contract may be filed with the City only if the City is the administering contracting agency. If the administering contracting agency is not the City, protests must be made to the administering contracting agency in accordance with the processes and procedures applicable to and established by the administering contracting agency.

(c) Conditions. If the City is the administering contracting agency, then:

(1) The Purchasing Administrator may establish conditions under which persons may participate in the cooperative procurements and any other matters related to the administration of the cooperative procurement; and

(2) The City Manager is authorized to enter into agreements establishing conditions under which persons may participate in the cooperative procurements, including payment of an administrative fee to the City, and addressing any other matters related to the administration of the cooperative procurement and the resulting original contract.

XI. PROTEST PROCEDURES

PCR 11.1: Protests and Judicial Review of Special Procurements.

- (a) **Generally.** An affected person may protest the request for approval of a special procurement as provided in this rule.
- (b) **Delivery; Late Protests.** An affected person must deliver a written protest to the City Manager within seven days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest. A protest submitted after the time line established under this subsection is untimely, and shall not be considered.
- (c) **Content of Protest.** The written protest shall include:
- (1) Identification of the requested special procurement;
 - (2) A detailed statement of the legal and factual grounds for the protest;
 - (3) Evidence or documentation supporting the grounds on which the protest is based;
 - (4) A description of the resulting harm to the affected person; and
 - (5) The relief requested.
- (d) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate, by giving such persons written notice of the time and manner whereby any response must be delivered.
- (e) **City Response.** The City Manager shall issue a written disposition of the protest in a timely manner. If the City Manager upholds the protest, in whole or in part, the City Manager may, in the City Manager's sole discretion, require the Purchasing Administrator to implement the protest in the approval of the special procurement, deny the request for approval of the special procurement or revoke any approval of the special procurement. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
- (f) **Judicial Review.** An affected person may not seek judicial review of a denial of a request for a special procurement. Before seeking judicial review of the approval of a special procurement, an affected person must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.400.

PCR 11.2: Protests and Judicial Review of Sole-Source Procurements.

- (a) **Generally.** An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this rule.
- (b) **Delivery; Late Protests.** An affected person must deliver a written protest to the City Manager within seven days after the first date of public notice of a proposed sole source procurement is placed on the City’s website, unless a different period is provided in the public notice. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest. A protest submitted after the time line established under this subsection is untimely, and shall not be considered.
- (c) **Content of Protest.** The written protest must include:
- (1) A detailed statement of the legal and factual grounds for the protest;
 - (2) Evidence or documentation supporting the grounds on which the protest is based;
 - (3) A description of the resulting harm to the affected person; and
 - (4) The relief requested.
- (d) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response must be delivered.
- (e) **City Manager Response.** The City Manager shall issue a written disposition of the protest in a timely manner. If the City Manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
- (f) **Judicial Review.** An affected person may not seek judicial review of an election not to make a sole-source procurement. Before seeking judicial review of the approval of a sole-source procurement, an affected person must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.400.

PCR 11.3: Protests and Judicial Review of Personal Services Procurements.

- (a) **Generally.** An affected person may protest the procurement of a personal services contracts as provided in this rule.

(b) Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City Manager. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing. Protests to the award or an intent to award a personal services contract shall be made within seven days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight hours after award. Protests submitted after the time lines established under this subsection is untimely, and shall not be considered.

(c) Contents of Protest. The written protest shall:

(1) Specify all legal or factual grounds for the protest as follows:

(A) A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of this rule or applicable law. The protest shall identify the specific provision of these rules or applicable law was violated.

(B) A person may protest award or intent to award for the reason that:

(i) All proposals ranked higher than the affected person's are non-responsive;

(ii) The City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;

(iii) The City abused its discretion in rejecting the affected person's proposal as non-responsive; or

(iv) The evaluation of proposals or the subsequent determination of award is otherwise in violation of these rules or applicable law. The protest shall identify the specific provision of these rules or applicable law that was violated by the City's evaluation or award.

(2) Include evidence or supporting documentation that supports the grounds on which the protest is based;

(3) A description of the resulting harm to the affected person; and

(4) The relief requested.

(d) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response must be delivered.

(e) **City Manager Response.** The City Manager shall issue a written disposition of the protest in a timely manner. If the City Manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(f) **Judicial Review.** Before seeking judicial review, an affected person must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

PCR 11.4: Protests and Judicial Review of Multi-Tiered and Multistep Solicitations.

(a) **Generally.** An affected person may protest actions taken during a multi-tiered or multistep solicitation as follows:

(1) **Solicitation Protest.** Protests to the solicitation process, specifications or the contract terms or conditions must be made prior to the closing of the initial phase.

(2) **Award Protest.** An affected offeror who participated in the final phase may protest intent to award a contract.

(3) **Addenda Protest.**

(A) An offeror or prospective offeror may protest any addenda issued in the initial phase. Only an offeror who submitted an offer in the initial phase and whose ability to participate in any subsequent phase was adversely affected by an addenda issued after the close of the initial phase may protest addenda issued in subsequent phases.

(B) **Delivery.** Unless otherwise specified in the solicitation document or addenda, a prospective offeror must deliver a written protest to the City Manager not less than ten days prior to closing of the phase in which the addenda being protested is issued.

(4) **Exclusion Protest.**

(A) An offeror may protest exclusion from subsequent phases of a multi-tier or multistep procurement only if:

- (i) The offeror is responsible, as defined by these rules;
- (ii) The offeror submitted a responsive offer; and
- (iii) But for the City's mistake in evaluating the offeror's or other offerors' offers, the affected offeror would have been eligible to participate in the next tier or step of competition.

(B) Delivery. Unless otherwise specified in the solicitation document, an affected offeror must deliver a written protest of exclusion to the City Manager within seven days after issuance of the notice of the competitive range or notice of exclusion from subsequent phases of a multi-tier or multistep competition. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(b) Content of Protest. The written protest must include:

- (1) A detailed statement of the legal and factual grounds for the protest;
- (2) Evidence or documentation supporting the grounds on which the protest is based;
- (3) A description of the resulting harm to the affected person; and
- (4) The relief requested.

(c) Additional Information. The Purchasing Administrator shall mail a copy of the protest, or provide a copy of the protest by facsimile, to all offerors included in the tier or step of competition from which the protestor has been excluded. These offerors shall be given a reasonable opportunity within the time and manner specified by the City Manager to provide written material relevant to the determination of the protest.

(d) Late Protests. The City Manager shall not consider a protest submitted after the time period established for submitting protests under this rule, or after such different time period as may be provided in the solicitation document.

(e) City Response. The City Manager shall issue a written disposition of the protest in a timely manner. If the City Manager upholds the protest, in whole or in part, the offeror shall be allowed to participate in the next phase of the procurement. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(f) **Judicial Review.** Before seeking judicial review, an affected person must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

PCR 11.5: Protests and Judicial Review of Solicitation Documents and the Procurement Process.

(a) **Generally.**

(1) A prospective offeror may protest the procurement process or the solicitation document for a contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a).

(2) **Contract-Specific Special Procurements.** Notwithstanding subsection (a) of this rule, a person may not protest, challenge, or review a contract-specific special procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).

(b) **Delivery.** Unless otherwise specified in the solicitation document, a prospective offeror must deliver a written protest to the City Manager not less than ten (10) days prior to closing. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(c) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective offeror's written protest shall include a statement of the desired changes to the procurement process or the solicitation document that the prospective offeror believes will remedy the conditions upon which the prospective offeror based its protest.

(d) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner in which any response must be delivered.

(e) **City Response.** The City Manager shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The City Manager may, but is not required, to consider a prospective offeror's solicitation protest submitted after the time line established for submitting such protest under this rule, or such different time period as may be provided in the solicitation document, if the City Manager determines in the Manager's sole discretion it is in the public interest to consider the protest. The City Manager shall issue a written disposition of the protest in accordance with the time line set forth in ORS 279B.405(6). If the City Manager upholds the protest, in whole or in part, the City Manager may in the Manager's sole discretion either cause to be issued an addendum reflecting the Manager's disposition or cancel the procurement or solicitation. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(f) **Extension of Closing.** If the City Manager receives a protest from a prospective offeror in accordance with this rule, the City may extend closing if the City Manager determines an extension is necessary to consider and respond to the protest.

(g) **Clarification.** Prior to the deadline for submitting a protest, a prospective offeror may request that the City clarify any provision of the solicitation document. The City's clarification to an offeror, whether orally or in writing, does not change the solicitation document and is not binding on the City unless the City amends the solicitation document by addendum.

(h) **Judicial Review.** Before seeking judicial review, a prospective offeror must file a written protest with the City Manager and exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.405.

PCR 11.6: Protests and Judicial Review of Addenda to Contracts of Goods or Services, Personal Services or Professional Services.

(a) **Generally.** Unless a different deadline is set forth in the addendum, an offeror may submit a written protest to an addendum within forty-eight hours by the close of the City's next business day after issuance of the addendum. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest. Notwithstanding any provision of this rule, the City is not required to provide a protest period for addenda issued after initial closing during a multi-tier or multistep procurement process conducted pursuant to these rules.

(b) **Content of Protest.** The written protest shall:

(1) Sufficiently identify the addendum being protested;

(2) Identify the specific grounds that demonstrate how the addenda is contrary to law, unnecessarily restrictive, legally flawed or improperly specifies a brand name;

(3) Include evidence or supporting documentation that supports the grounds on which the protest is based;

(4) Identify the relief sought; and

(5) Include a statement of the desired changes to the addendum that the prospective offeror believes will remedy the conditions upon which the prospective offeror based its protest.

(c) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner in which any response must be delivered.

(d) City Response. The City Manager shall consider the protest if it is timely filed and meets the conditions set forth in this rule. The City Manager may, but is not required, to consider a prospective offeror's solicitation protest submitted after the time line established for submitting such protest under this rule, or such different time period as may be provided in the solicitation document, if the City Manager determines in the Manager's sole discretion it is in the public interest to consider the protest. The City Manager shall issue a written disposition of the protest in accordance with the time line set forth in ORS 279B.405(6). If the City Manager upholds the protest, in whole or in part, the City Manager may in the Manager's sole discretion either cause to be issued an addendum reflecting its disposition or cancel the procurement or solicitation. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(e) Extension of Closing. If the City Manager receives a protest from a prospective offeror in accordance with this rule, the City may extend closing if the City Manager determines an extension is necessary to consider and respond to the protest.

(f) Late Protests. The City shall not consider a protest to matters not added or modified by the protested addendum.

(g) Judicial Review. An offeror must file a written protest with the City Manager and exhaust all administrative remedies before seeking judicial review of the City's decisions decision regarding addenda. Judicial review shall be in accordance with ORS 279B.405.

PCR 11.7: Protests of and Judicial Review of Addenda to Public Improvement Contracts.

(a) Filing Deadlines; Delivery. An offeror may protest specifications or public improvement contract terms and conditions in a solicitation document only if the offeror made a request for change as provided in this rule. Unless otherwise specified in the solicitation document, an offeror must deliver a written protest of a solicitation document to the City Manager not less than five days prior to closing. Unless a otherwise specified in the addenda, an offeror must deliver a written protest of an addenda to the City Manager by the close of the next business day after issuance of the addenda, or not less than five days prior to closing, whichever date is later. The City Manager, in the City Manager's sole discretion, may, consider a protest made after the deadline established for submitting such protest.

(1) Fee. The written protest shall include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(2) Content of Protest.

(A) An offeror's written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the offeror; and
- (iii) A statement of the desired changes to the public improvement contract terms and conditions, including any specifications.

(B) An offeror shall mark its protest as follows:

- (i) “Contract Provision Protest”; and
- (ii) Solicitation document number, or other identification as specified in the solicitation document.

(3) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate, by giving such person written notice of the time and manner in which any response must be delivered.

(b) **City Response.** The City Manager shall provide notice to the applicable person if it entirely rejects a protest. If the City Manager agrees with the protest, in whole or in part, the City Manager shall either direct the Purchasing Administrator to issue an addendum reflecting the City Manager’s determination or to cancel the solicitation.

(c) **Extension of Closing.** If the City Manager receives a protest from a prospective offeror in accordance with this rule, the City may extend closing if the City Manager determines an extension is necessary to consider and respond to the protest.

(d) **Late Protests.** The City shall not consider a protest to matters not added or modified by the protested addendum.

(e) **Judicial Review.** An offeror must file a written protest with the City Manager and exhaust all administrative remedies before seeking judicial review of the City's decisions decision regarding addenda. Judicial review shall be in accordance with ORS 279B.405.

PCR 11.8: Protests and Judicial Review of Public Improvement Contract Award.

(a) **Generally.** An offeror may protest award of a contract for goods or services, or the intent to award such a contract, whichever occurs first, if the following conditions are satisfied:

- (1) The offeror must be adversely affected because the offeror would be eligible to be awarded the contract in the event the protest is successful; and
- (2) The reason for the protest is that:
 - (A) All lower bids or higher ranked proposals are non-responsive;
 - (B) The City has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation documents;
 - (C) The City has abused its discretion in rejecting the protestor's bid or proposal as non-responsive; or
 - (D) The City's evaluation of the bids or proposals or the subsequent determination of award is otherwise in violation of ORS Chapter 279A or 279C.

(b) Delivery. Unless otherwise specified in the solicitation document, an offeror must deliver a written protest to the City Manager within seven days after issuance of the notice of intent to award the contract or if no notice of intent to award is issued, within forty-eight hours after award. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(c) Content of Protest. An offeror's written protest shall specify the grounds for the protest to be considered by the City pursuant to ORS 279B.410(2).

(d) Additional Information. The City Manager shall cause a copy of the protest to be mailed or sent by facsimile to the offeror whose offer is recommended for award or who has been awarded the contract and to any other offeror who may be affected by the City Manager's determination of the protest. These offerors shall be given a reasonable opportunity within the time and manner specified by the City Manager to provide written material relevant to the determination of the protest.

(e) City Response. The City Manager shall not consider an offeror's contract award protest submitted after the time line established for submitting such protest under this rule, or such different time period as may be provided in the solicitation document. The City Manager shall issue a written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the City Manager upholds the protest, in whole or in part, the City Manager may in the Managers sole discretion either award the contract to the successful protestor or cancel the procurement or solicitation. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(f) **Judicial Review.** An offeror must file a written protest with the City Manager and exhaust all administrative remedies before seeking judicial review of the City's contract award decision. Judicial review shall be in accordance with ORS 279B.415.

PCR 11.9: Protests and Judicial Review of Qualified Products List Decisions.

(a) **Purpose.** A prospective offeror may protest the City's decision to exclude the prospective offeror's goods from the City's qualified products list under ORS 279B.115.

(b) **Delivery.** Unless otherwise stated in the City's notice to prospective offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective offeror must deliver a written protest to the City Manager within seven days after issuance of the City's decision to exclude the prospective offeror's goods from the qualified products list. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(c) **Content of Protest.** The prospective offeror's protest shall be in writing and must specify the grounds upon which the protest is based.

(d) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner in which any response must be delivered.

(e) **City Response.** The City Manager shall not consider a prospective offeror's qualified products list protest submitted after the time line established for submitting such protest under this rule, or such different time period as may be provided in the City's notice to prospective offerors of the opportunity to submit goods for inclusion on the qualified products list. The City Manager shall issue a written disposition of the protest in a timely manner. If the City Manager upholds the protest, the successful protestor's goods shall be included on the qualified products list. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(f) **Judicial Review.** A prospective offeror must file a written protest with the City Manager and exhaust all administrative remedies before seeking judicial review of the City's decision to exclude the prospective offeror's goods from the City's qualified products. Judicial review shall be in accordance with ORS 279B.425.

PCR 11.10: Protest of Prequalification and Debarment Decisions.

(a) The denial, revocation or revision of a prequalification decision or a decision to debar a prospective offeror must be made within three City business days after receipt of the City's notice regarding the City's decision.

(b) Notice must be given to the City Manager that the person has appealed the decision and notice to the City Manager shall be considered notice to the City as required under ORS 279B.425. Upon receipt of the notice, the City Manager shall cause the person to be notified of the time within 30 days and place of the hearing to consider the appeal.

(c) The City Manager is delegated the authority to conduct the hearing.

(d) Judicial Review of the City's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

PCR 11.11: Protests of Award of Professional Services Contracts.

(a) Request for Proposal (Request for proposals) Protest and Request for Change. Consultants may submit a written protest of anything contained in an Request for proposals and may request a change to any provision, specification or contract term contained in an Request for proposals, no later than ten calendar days prior to the date proposals are due unless a different deadline is indicated in the Request for proposals. Each protest and request for change must include the reasons for the protest or request and any proposed changes to the Request for proposals provisions, specifications or contract terms. The Purchasing Administrator shall consider the protest or request for change if it is timely filed. The Purchasing Administrator may, but is not required to, consider a protest submitted after the deadline if the Purchasing Administrator determines in the Administrator's sole discretion that it would be in the public interest to consider the protest. If the Purchasing Administrator upholds the protest in whole or part, the Purchasing Administrator may in the Administrator's sole discretion either issue an addendum reflecting the disposition or cancel the Request for proposals.

(b) **Protest of Consultant Selection.** A proposer who claims to have been adversely affected or aggrieved by the selection of a proposer may submit a written protest of the selection to the City Manager. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest. Unless a different deadline is indicated in the Request for proposals, the protest must be submitted no later than seven days after the date of the notice of intent to award or if there is no such notice no later than three days after the notice of award to the successful proposer.

(1) **Content of Protests.** A proposer submitting a protest must claim that the protesting proposer is the highest ranked proposer because the proposals of all higher ranked proposers failed to meet the requirements of the Request for proposals or because the higher ranked proposers otherwise are not qualified to perform the architectural, engineering, or land surveying services, or related services described in the Request for proposals or other invitation to submit proposals.

(2) **Late Protests.** The City Manager will not consider any protest that is submitted after the submission deadline.

(3) **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner in which any response must be delivered.

(4) **City Manager Response.** The City Manager shall resolve all timely submitted protests within a reasonable time following the City's receipt of the protest and once resolved, shall promptly issue a written decision on the protest. If the protest results in a change to the Request for proposals, the City shall revise the Request for proposals accordingly and shall re-advertise the Request for proposals in accordance with these rules. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(c) **Judicial Review.** Proposers may be able to obtain judicial review of the City's protest disposition through a writ of review under ORS Chapter 34 in the Circuit Court for Marion County.

PCR 11.12: Protest of Contractor Selection for Public Improvement Contract

(a) **Purpose.** An adversely affected or aggrieved offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the City's contractor selection or public improvement contract award decision.

(b) **Right to Protest Award.**

(1) An adversely affected or aggrieved offeror may submit to the City Manager a written protest of the City's intent to award within seven days after issuance of the notice of intent to award the public improvement contract, unless a different protest period is provided under the solicitation document.

(2) The offeror's protest must be in writing and must specify the grounds upon which the protest is based.

(3) The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(4) An offeror is adversely affected or aggrieved only if the offeror is eligible for award of the public improvement contract as the responsible bidder submitting the lowest responsive bid or the responsible proposer submitting the best responsive proposal and is next in line for award, i.e., the protesting offeror must claim that all lower bidders or higher-scored proposers are ineligible for award:

(A) Because their offers were non-responsive; or

(B) The City committed a substantial violation of a provision in the solicitation document or of an applicable statute or rule, and the protesting offeror was unfairly evaluated and would have, but for such substantial violation, been the responsible bidder offering the lowest bid or the responsible proposer offering the highest-ranked proposal.

(5) The City Manager shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the solicitation document.

(c) **Right to Protest Competitive Range.**

(1) An adversely affected or aggrieved proposer may submit to the City Manager a written protest of the City's decision to exclude the proposer from the competitive range within seven days after issuance of the notice of the competitive range, unless a different protest period is provided under the solicitation document.

(2) The proposer's protest shall be in writing and must specify the grounds upon which the protest is based. The written protest must include a fee in an amount established in a schedule adopted by the City Manager to cover the costs of processing the protest.

(3) A proposer is adversely affected only if the proposer is responsible and submitted a responsive proposal and is eligible for inclusion in the competitive range, i.e., the protesting proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring proposers are removed from consideration, and that those ineligible proposers are ineligible for inclusion in the competitive range because:

(A) Their proposals were not responsive; or

(B) The City committed a substantial violation of a provision in the Request for proposals or of an applicable procurement statute or administrative rule, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.

(4) The City Manager shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the solicitation document. A proposer may not protest a decision not to increase the size of the competitive range above the size of the competitive range set forth in the Request for proposals.

(d) City Manager's Consideration of Protests. The City Manager shall cause a copy of any protest filed under this rule to be mailed or sent by facsimile to the offeror whose offer is recommended for award and to any other offeror who may be affected by the City Manager's determination of the protest. These offerors may be given a reasonable opportunity within the time and manner specified by the City Manager to provide written material relevant to the determination of the protest. The City Manager shall issue a written disposition of the protest. If the City Manager upholds the protest, in whole or in part, the City Manager may, in the Manager's sole discretion, and as applicable, either permit the offeror to be included in the competitive range, direct award of the public improvement contract to the successful protestor or cancel the procurement or solicitation. If the City Manager upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.

(e) Judicial Review. Judicial review of the City Manager's decision is available if provided by statute.

PCR 11.13: Protests of Cooperative Procurements. Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the City only if the City is the administering agency. Protests shall be made in accordance with, and are subject to, PCR 11.1 - PCR 11.13 of these rules.

XII. SALE, TRANSFER AND DISPOSAL OF PUBLIC PROPERTY

PCR 12.1: Surplus Personal Property. Personal property owned by the City and estimated by a Department Head to be worth less than \$500 may be transferred or disposed of in any manner with the approval of any Department Head. Personal property owned by the City and estimated by the City Manager to be worth \$500 or more may be sold, transferred or disposed of only after being declared surplus by the City Manager. Personal property may be declared surplus by the City Manager if it is scheduled for replacement in an adopted budget, it is no longer necessary to provide City services or it can no longer be used by the City. The method of sale, transfer or disposal of property estimated to be worth \$500 or more will be determined by the Purchasing Administrator as provided in this rule.

PCR 12.2: Lost, Abandoned or Unclaimed Property. The Purchasing Administrator shall determine whether lost, abandoned or unclaimed property that comes into the possession of the City may be sold, transferred or disposed of as provided by state law, the SRC or these rules.

PCR 12.3: Auction Sale. Personal property may be sold at auction if the Purchasing Administrator determines that an auction will probably result in the best net return for the City.

PCR 12.4: Competitive Sales of Personal Property. When the current market value per item is estimated to be more than \$25,000, the Purchasing Administrator may dispose of personal property using competitive sealed bidding after advertising in a newspaper of general circulation in the City. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the City may negotiate a sale subject to the following conditions:

- (a) An appraisal of the market value of the property is obtained and documented, and the negotiated sale price exceeds the market value; or
- (b) The sale amount exceeds the highest bid received through the bidding or auction process.

PCR 12.5: Negotiated Sales of Personal Property. The Purchasing Administrator may sell personal property by a negotiated sale if the value of the property is estimated to be less than \$25,000 and the City has determined that a sale without competitive bidding will result in at least as much net revenue as would a competitive bidding process. The City shall endeavor to get as many quotes as is reasonable under the circumstances (normally, at least three) and shall negotiate to maximize the proceeds for the City.

PCR 12.6 Liquidation Sales of Personal Property. The Purchasing Administrator may sell personal property through a commercially recognized third party liquidator if the Purchasing Administrator has determined that a liquidation sale will result in increased net revenue and the selection of the liquidator was conducted by the competitive request for proposal process under these Rules.

PCR 12.7: Transfers of Personal Property. The City may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids as follows:

- (a) To another public agency; or
- (b) To individuals pursuant to any community program approved by the City Manager. Examples of programs include the fire and police department's bicycle helmet and car seat programs, the fire department's smoke detector programs and various city toy drives.

PCR 12.8: Transfers of Surplus Property. The City may donate or sell, without competitive bids, surplus personal property to recognized private, non-profit social or health service activities, subject to the following conditions:

- (a) A determination has been made that the property is not needed for other public purposes; and
- (b) If the property has a current market value of \$500 or more, the donation or sale shall:
 - (1) Be approved by the City Manager or designee;
 - (2) Be documented by the City to be clearly in the public interest; and
 - (3) The Purchasing Administrator shall maintain a record of all transfers, donations, or sales authorized by this subsection.