

# **PUBLIC CONTRACTING RULES**

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Amended on June 11, 2018, Resolution No. 18-66

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## I. GENERAL PROVISIONS

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

- (a) "Addendum" or "addenda" means written addition to or deletion from, including material changes in, a solicitation document.
- (b) "Administering contracting agency" means a governmental body in this state or in another jurisdiction that solicits and establishes the original contract for the procurement of goods, services, personal services, professional services, or public improvements in a cooperative procurement.
- (c) "Amendment" means a written modification to the terms and conditions of a contract, other than by change orders, as defined under subsection PCR 1.9, that requires mutual agreement between the City and the contractor.
- (d) "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 Oregon Revised Statute (ORS) 671.010 to 671.220 and includes without limitation the terms "architect," "licensed architect," and "registered architect."
- (e) "Architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services" means professional services that are required to be performed by an architect, engineer, photogrammetrist, transportation planner, or land surveyor.
- (f) "Bid" means a written response to an invitation to bid.
- (g) "Bidder" means a person who submits a bid in response to an invitation to bid.
- (h) "Brand name or approved equal specification" means a specification that uses one or more manufacturers' names, makes, catalog numbers, or similar identifying characteristics to describe the standard of quality, performance, functionality, or other characteristics needed to meet the City's requirements and that authorizes bidder or proposers to offer goods or services that are approved equals to those named or described in the specification prior to the closing date and approved by the City.
- (i) "Brand name specification" means a specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers, or similar identifying characteristics which must be approved by the Contracts & Procurement Manager prior to release of the solicitation document.

- (j) “Change order” means a mutually agreed upon, written change in the work within the scope of a public improvement contract and, if applicable, adjusting the contract price or contract time for the changed work.
- (k) “City” means the City of Salem, Oregon.
- (l) “City Manager” means the City Manager of the City, or the City Manager’s designee.
- (m) “Closing” means the date and time specified in a solicitation document as the deadline for submitting offers.
- (n) “Construction manager/general contractor (CM/GC)” definition in PCR 10.1.
- (o) “Contractor” means the person with whom the City enters into a public contract.
- (p) “Contract price” means the maximum monetary obligation that the City either will or including bonuses, incentives, and contingency amounts, if the contractor fully performs under the contract.
- (q) “Contracts & Procurement Manager” means the person serving as the manager of procurements for the City, and the Contracts & Procurement Manager’s designee.
- (r) “Cooperative procurement” means a procurement conducted by, or on behalf of, one or more government entities, as provided in PCR 11.
- (s) “Cost estimate” means the City’s most recent pre-bid, good faith assessment of anticipated contract costs, consisting of an estimate by an architect, engineer or other qualified professional; cost calculation worksheets; and formal planning or budgetary documents.
- (t) “Days” means calendar days.
- (u) “Department” means the organization structure outlined in the City Manager’s organization chart.
- (v) “Department head” means the chief manager for a City department.
- (w) “Descriptive literature” means written information submitted with the offer that addresses the goods and services included in the offer.
- (x) “Design-build contract” definition in PCR 10.
- (y) “Electronic advertisement” means the City’s solicitation document or other document inviting participation in the City’s procurements made available over the internet via:



- (1) The world wide web or some other internet protocol; or
- (2) The electronic procurement system.

(z) “Electronic procurement system” means an information system that offerors may access through the internet using the world wide web or some other internet protocol, or that offerors otherwise remotely access using a computer, that enables offerors to send electronic offers and the City to post electronic advertisements, receive electronic offers, and conduct other activities related to a procurement.

(aa) “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.

(bb) “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).

(cc) “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 required;
- (5) Public safety;
- (6) Market conditions;
- (7) Technical complexity; and
- (8) Funding sources.

(dd) “Goods” means supplies, equipment, materials, personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and, any combination thereof.

(ee) “Goods and services” or “goods or services” means combinations of any of the items identified in the definitions of “goods” and “services.”

(ff) “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.

(gg) “Invitation to bid” means a solicitation document pursuant to either ORS 279B.055 or ORS 279C.335.

(hh) “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 (5).

(ii) “Material change” means a change made to a contract after the contract has been awarded which alters the terms and conditions of the contract substantially or offerors may have bid differently and more competitively.

(jj) “Non-resident bidder” means a bidder who is not a resident bidder.

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

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

(mm) “Opening” means the date, time and place specified in the solicitation document for the public opening of offers.

- (nn) “Oregon Revised Statutes (ORS)” means the codified laws of the State of Oregon.
- (oo) “Person” means any of the following with legal capacity to enter into a contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.
- (pp) “Personal services” means the services of a person other than an architect, engineer, land surveyor, or provider of related services, that the City has designated as personal services contracts pursuant to ORS 279A.055.
- (qq) “Price agreement” means a contract for a procurement 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, services, or public improvement with no guarantee of any minimum or maximum additional purchase.
- (rr) “Procurement” means the act of purchasing, leasing, renting, or otherwise acquiring goods, services, personal services, professional services, or a public improvement. 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, services, personal services, professional services, or a public improvement.
- (ss) “Product sample” means the exact good or a representative portion of the goods requested in the solicitation document as a sample.
- (tt) “Professional services” means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services and related services, or any combination thereof.
- (uu) “Proposal” means a written response to a request for proposals.
- (vv) “Proposer” means a person that submits a proposal.
- (ww) “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.
- (xx) “Public contracting” means procurement activities relating to obtaining, modifying, or administering public contracts or price agreements.

- (yy) “Public contracting code” means ORS chapters 279A, 279B, and 279C.
- (zz) “Public improvement” means a project for construction, reconstruction, or major renovation on real property, by or for the City. Public improvement does not include:
- (1) 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
  - (2) Emergency work, minor alteration, ordinary repair, or maintenance necessary to preserve a public improvement.
- (aaa) “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.
- (bbb) “Related services” means professional services, other than architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, that are related to planning, designing, engineering, or overseeing public improvement projects or components thereof, including but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing 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.
- (ccc) “Request for proposals” means a solicitation document used for soliciting proposals.
- (ddd) “Request for qualifications” means a solicitation document issued by the City to which prospective offerors respond in writing describing their experience with and qualifications for the professional services.
- (eee) “Request for quotes” means a written or oral request for prices, rates, or other conditions under which a prospective offeror would provide goods or perform services, personal services, professional services, or public improvements described in the request.
- (fff) “Resident bidder” means a bidder that has paid unemployment taxes or income taxes in the State of Oregon during the twelve (12) 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.”
- (ggg) “Responsible” means an offeror 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 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) Complied with the tax laws with the City, including ORS 305.620 and ORS chapters 316, 317, and 318;
- (6) Supplied all necessary information in connection with an inquiry concerning responsibility; and
- (7) Has not been debarred, pursuant to PCR 2.11, or disqualified pursuant to PCR 8.16.

(hhh) “Responsive” means being in compliance with all material requirements set forth in the solicitation document.

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

(jjj) “Scope” means the range and attributes described in a solicitation document.

(kkk) “Services” mean services other than personal or professional services.

(lll) “Solicitation” means:

- (1) A request for the purpose of inviting offers;
- (2) The process of notifying prospective offerors of a request for offers; or
- (3) The solicitation document.

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

(nnn) “Specification” means any description of the physical, performance or functional characteristics, or of the nature of a good, service, or construction item, including any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery, and the quantities or qualities of materials to be furnished under a contract.

(ooo) “Value engineering” means the identification of alternative methods, materials, or systems which provide for comparable function at reduced initial or life-time cost.

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

**PCR 1.2: Application; Exceptions.**

(a) Pursuant to ORS 279A.065, the City has elected to establish its own rules of procedures for public contracting. These Rules set forth the 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) Any contracts or agreements to which the Public Contracting Code does not apply.

(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) Contracts for items where the price is regulated or the rates are set by law or ordinance and available from a single source or a limited number of sources (e.g. franchise agreements, postage, utilities).

(6) Procurements from an Oregon Corrections Enterprises program.

(7) Energy savings performance contracts.

(8) 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.

(9) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of the City;

(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.

(10) Contracts for employee benefit plans as provided in ORS 243.105(1), ORS 243.125(4), ORS 243.221, ORS 243.275, ORS 243.291, ORS 243.303, ORS 243.565, and ORS 243.860 to 243.886.

(11) Contracts with newspapers and other publications for the placement of advertisements or public notices.

(12) Insurance contracts negotiated through a competitively procured broker.

(13) Revenue generating contracts or agreements.

(14) Membership dues, registration, and fees.

(15) Social services contracts.

(16) Non-profit organizations with prior City Manager review and approval.

(17) Equipment repair or overhaul, provided the services or parts are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

(18) Media services (e.g., television, radio, digital streaming services, or social media).

(19) Agreement entered into for mutual aid, emergency aid, or disaster preparedness.

(20) Sole Source procurement of future public improvements to be performed by Portland General Electric or Salem Electric.

(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 the applicable federal statutes or regulations conflict with any provision of, or

require additional conditions not otherwise authorized by, ORS Chapters 279A, 279B, and ORS 279C.005-279C.670 or these Rules.

(d) **Qualified Rehabilitation Facilities (QRF).**

(1) Pursuant to ORS 279.835 to 279.855, contracts with qualified rehabilitation facilities must be entered into in accordance with administrative rules promulgated by the Oregon Department of Administrative Services.

**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. Except as specifically provided in subsection (c) below, 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 Contracting 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.

(c) The Local Contract Review Board hereby retains all authority granted and duties conferred upon it by the Public Contracting Code and these Rules related to auditing services required under ORS 297.425.

**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 \$1,000,000, and any change order or contract amendment.

(b) The City Manager may adopt any administrative rules necessary to carry out the provisions of these Rules.

**PCR 1.5: Authority and Duties of Contracts & Procurement Manager.**

(a) Subject to the direction and control of the City Manager, and except as otherwise specifically provided by these Rules, the Contracts & Procurement Manager shall administer these Rules.



(b) The Contracts & Procurement Manager shall ensure that each contract contains the conditions statutorily required by the Public Contracting Code.

(c) The Contracts & Procurement Manager shall determine whether goods or services are available from a qualified rehabilitation facility 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.

(d) **Procurement Files.** Subject to the oversight of the City Recorder, the Contracts & Procurement Manager 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 Contracts & Procurement Manager shall maintain procurement files for:

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

(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 professional services; and the intermediate procurement threshold contract price for public improvements.

(2) Unless otherwise directed by the Contracts & Procurement Manager, Department Directors shall be responsible for maintaining procurement files for all procurements with a contract price of less than \$5,000.

(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 offerors notified of the solicitation;

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

(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 offeror was selected, including the basis for awarding the contract;
  - (I) A copy of the resulting contract and any amendments, if awarded;
  - (J) A copy of all purchase orders and any change orders;
  - (K) Documentation of the reasons for any cancellation of the solicitation or rejection of any part of any offer;
  - (L) If a request for proposals is canceled after proposals are received, a list of returned proposals; and
  - (M) 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 all 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: Purchasing From City Employees Prohibited.**

- (a) No contract shall be entered into with any City employee, or any business with which any City 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 the 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 a City employee is associated” means any business in which the City employee is a director, officer, owner or employee, or any corporation in which the City employee owns or has owned ten percent or more of any class of stock at any point in the preceding calendar year.

**PCR 1.8: Cancellation of Solicitation; Rejection of Bids or Proposals; Costs.**

- (a) The City may cancel any solicitation, reject all bids or proposals, terminate negotiations with any prospective offeror, or perform any combination of the foregoing, without liability to the City, if the City determines it is in the public interest to do so.
- (b) Offerors submitting responses to solicitations are solely responsible for any and all costs or expenses incurred in connection with submitting a response. The City shall not be liable for any costs arising out of or connected to an offeror's participation in a solicitation, including, but not limited to costs incurred by an offeror as a result of rejection of bids or proposals, cancellation of a solicitation, or delay or suspension of a solicitation.

**PCR 1.9: Amendments to Contracts.**

- (a) All contract amendments shall be in writing, shall be signed by the City Manager, or the City Manager's designee, and shall comply with all other rules regarding the specific type of contract being amended.
- (b) A contract may be amended if the amendment is within the scope of the original solicitation document or the contract and any one or more of the following apply:
  - (1) The total contract price is based on unit prices that were included in the original contract, and those prices do not increase except as permitted by an escalation clause in the contract; and
  - (2) If the total contract price is not based on unit prices, but on options that establish the cost basis which were included in the original contract; or
  - (3) If the cumulative amendments do not increase the original total contract price by more than twenty-five percent (25%); or
  - (4) 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; or
  - (5) The additions are required by reason of existing or new laws, rules, regulations, or ordinances that affect performance of the contract; or
  - (6) The field of competition and contractor selection would not likely have been affected by amendment. 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; or

(7) 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.

(c) **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.

(d) **Engineer's directive.** An engineer's directive may be used in the absence of total agreement on the terms of a change order. The contractor's signature on an engineer's directive signifies agreement with the terms therein. Upon receipt of any such document, the contractor shall promptly proceed with the work involved.

**PCR 1.10: Contract Renewal and Renegotiated Contracts.**

(a) **Renegotiated contracts.** The City Manager may authorize the renegotiation of any contract without additional competition upon finding the following requirements and criteria have been met:

(1) The Department Director responsible for the contract shall submit a written request to renegotiate the contract to the Contracts & Procurement Manager.

(2) The memorandum shall make facts and findings which shall address the following criteria:

(A) Is at least as favorable to the City as the contract; and

(B) The renegotiated contract will not have a total contract term longer than the term provided in the original solicitation document, and/or the original contract 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); and

(C) The renegotiated contract is within the scope of the original contract and may not materially change the terms, conditions, and prices of the original contract if the contract is a cooperative procurement.

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

**PCR 1.11: Contract Reinstatements.**

- (a) “Reinstatement of expired contracts” means the restoration of an expired contract that was properly executed.
- (b) **Authorization.** The City Manager may approve reinstatement of an expired contract upon finding that the requirements and criteria of PCR 1.11 (c) has been met.
- (c) **Criteria.** The Department Director responsible for the contract shall submit a written request for permission to reinstate the contract to the Contracts & Procurement Manager, which shall address the following criteria.
  - (1) 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 within ninety (90) days of the contract having expired.
  - (3) The contractor's completion of the work, 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.
- (d) No reinstatement may modify the expired contract in any manner, other than with respect to time for performance. 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 1.12: Retroactive Approval.**

- (a) Retroactive approval of a procurement means the award of a procurement where work was commenced before final award or execution.
- (b) The City Manager may make a retroactive approval of a procurement only if the contract administrator submits a copy of the resulting procurement to the Contracts & Procurement Manager, along with a written request for retroactive approval, that contains:

- (1) An explanation of why work was commenced before the procurement 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 the procurement, the contract administrator complied with all other steps required to properly select a contractor, or if the requirements of these Rules were not followed, documentation that the result would have been the same despite the City not following all steps required to properly select a contractor and negotiate a contract; and
- (4) Evidence that it is in the City's best interest to approve the retroactive contract for public policy reasons.

**PCR 1.13: Facsimile Bids and Proposals.** The Contracts & Procurement Manager 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.

**PCR 1.14: Electronic Procurement.**

- (a) **Authorization.** The Contracts & Procurement Manager may authorize all phases of a procurement, including, but not limited to, posting of advertisements and receipt of offers, by electronic methods. The Contracts & Procurement Manager shall specify in the solicitation document how to participate in the procurement.
- (b) **Submission.** The City shall open electronic offers in accordance with any electronic security measures in effect at the time the electronic offer is received. The offeror submitting the electronic offer assumes all risk of premature disclosure of the offer due to submission in electronic form.
- (c) **Signatures.** 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) **Date and Time for Receipt of Electronic Offers.**
  - (1) The solicitation document may specify that offerors must submit an electronic offer by a closing date and time, or that offerors may submit multiple electronic offers during a period of time established in the electronic advertisement.
  - (2) When the solicitation document specifies that offerors may submit multiple electronic offers during a specified period of time, the Contracts & Procurement Manager must designate a date and time on which offerors may begin to submit,

and closing date and time after which offerors may no longer submit, electronic offers.

(3) The Contracts & Procurement Manager must begin to accept real time electronic offers and shall continue to accept electronic offers until the end of the specified closing date and time, after which time electronic offers shall no longer be accepted.

(e) **Failure of the electronic procurement system.** In the event of a failure of the electronic procurement system that interferes with the ability to submit electronic offers, to protest, or to otherwise participate in the procurement, the Contracts & Procurement Manager may cancel the procurement, or may extend the closing date and time for receipt of electronic offers by providing notice of the extension immediately after the electronic procurement system again becomes available.

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

### PCR 2.1: Public Notice of Solicitation.

(a) **Public Notice.** The Contracts & Procurement Manager shall publish notice not less than fourteen (14) days prior to the date and time set for closing of the solicitation document, unless the Contracts & Procurement Manager 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) **Electronic Advertisement of Public Notice.** Unless otherwise specifically provided by these Rules, any notice required to be published by these Rules shall be published electronically if the total contract price is greater than \$100,000. The Contracts & Procurement Manager shall maintain a copy of each published notice. An offeror may obtain a copy of the published notice upon request.

(c) **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;
- (3) The interval between the first date of notice of the solicitation and the closing date;
- (4) The date that offerors 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) If the offers may be received by electronic means;
- (8) The scheduled opening date and time; and
- (9) Any other information the Contracts & Procurement Manager deems appropriate.



(d) **Fees.** The City Manager may establish a fee or deposit to be charged to potential offerors 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 (30) days following the closing date.

(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 offerors are authorized to propose alternative terms and conditions in the request for proposals, an offeror shall not make an offer that is contingent upon the acceptance of any terms or conditions.

(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 alternative terms and conditions, the offer shall include, in addition to all nonnegotiable terms and conditions, any alternative terms and conditions offered for negotiation.

**PCR 2.3: 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 the closing date, 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 shall be disregarded.

(d) **Discrimination in subcontracting prohibited.** Each offeror that submits an offer or is awarded a contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business that is certified under ORS 200.055, as required by ORS 279A.110.

(e) **Facsimile and Electronic Submissions.** Facsimile and electronic offers shall not be considered submitted, unless facsimile or electronic submissions have been authorized by the Contracts & Procurement Manager, 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. 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 date and time, regardless of the method used to submit the offer.

(i) **Offers Must Conform to 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 2.4: Pre-Offer Conferences.**

(a) **Purpose.** Pre-offer conferences may be held with prospective offerors prior to the closing date and time to explain procurement requirements, to obtain information, or to conduct site inspections. The notice of any pre-offer conference shall be included in the solicitation document.

(b) **Mandatory/Voluntary Attendance.** The solicitation documents shall specify whether the pre-offer conference is mandatory or voluntary. Attendance at the pre-offer conference may be required as a condition for making an offer. An offer made by an offeror 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 date and time 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.

**PCR 2.5: Changes to Solicitation Documents.**

(a) **Generally.** A solicitation document may only be changed by written addendum. The solicitation document shall specify how notice of addenda will be provided and how the addendum 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 (5) days prior to closing date and time. A request for a change to an addendum must be made not later than the close of the second 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 offeror if the change is not made.

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

(d) **Receipt.** Offerors shall include written acknowledgment of receipt of all issued addenda with 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 date and time, to allow prospective offerors to consider the addenda in preparing offers. The closing date may be extended if the Contracts & Procurement Manager 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 three (3) days before the closing date, unless the addenda also extends closing date.

(2) An addenda that modifies evaluation criteria, the selection process, the 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 (5) days before

the beginning of that tier or step of competition, unless the Contracts & Procurement Manager determines that a shorter period is sufficient to allow offerors to prepare for that tier or step of competition. The Contracts & Procurement Manager 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 2.6: Pre-Closing Modification or Withdrawal of Offers.**

(a) **Modifications.** An offeror may modify an offer, in writing, prior to the closing date. Any modification must be initialed by the offeror and 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 any written notice to withdraw, 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 Contracts & Procurement Manager, at the Contracts & Procurement Manager's office, if no individual or location are specified. To be effective, the withdrawal must be received prior to the closing date and time. The written notice to withdraw an offer shall include the following:

- (1) The solicitation document number, or such other identification as specified in the solicitation document.

(c) **Return.** The Contracts & Procurement Manager 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.

(d) **Documentation.** The Contracts & Procurement Manager shall include all documents relating to a modification or withdrawal of offers in the procurement file.

**PCR 2.7: Receipt, Opening, and Recording of Offers; Confidentiality of Offers.**

(a) **Receipt.** The offeror 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 the time set for opening, the offer or modification shall be resealed, returned to a confidential and secure state, and maintained in such state until the time set for opening. The Contracts & Procurement Manager shall document the fact of, and reasons for, the resealing in the procurement file, e.g., “City inadvertently opened the offer due to improper identification of the offer.”

(b) **Opening and Recording.**

- (1) **Bids.** Bids shall be publicly opened. To the extent practicable, the Contracts & Procurement Manager shall read aloud the name of each offeror, and such other information as the Contracts & Procurement Manager 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 after the opening date and time, and included in the procurement file.
- (3) **Confidential Information.** The City may withhold from disclosure information in bids or proposals.

**PCR 2.8: Late Offers, Late Withdrawals and Late Modifications.** Any offer received after the closing date and time is late. A request for modification of an offer, or notice of withdrawal of an offer, received after closing date and time is late. The City shall not consider an offer, a request for modification, or a notice of withdrawal that is late.

**PCR 2.9: Mistakes.**

- (a) **Generally.** The Contracts & Procurement Manager shall not permit waiver, correction, or withdrawal of offers for mistakes, except as provided in this Rule.
- (b) **Treatment of Errors in Judgment.** The Contracts & Procurement Manager 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 Contracts & Procurement Manager discovers mistakes in an offer after the date and time set for opening, but before award, the Contracts & Procurement Manager:
  - (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 addendum 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 Contracts & Procurement Manager determines the addendum 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, and 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 will suffer substantial detriment if the City does not grant the offeror permission to withdraw the offer;

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

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

(d) **Rejection for Mistakes.** The Contracts & Procurement Manager may 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 2.10: Responsibility of Offerors.**

(a) **Determination of Responsibility.** Before awarding a contract, the Contracts & Procurement Manager shall determine whether the offeror submitting the lowest bid or the offeror submitting the most advantageous proposal is responsible. In the event the Contracts & Procurement Manager determines an offeror is not responsible, the Contracts & Procurement Manager shall prepare and place a written determination of non-responsibility in the procurement file and reject the offer.

(b) To be a responsible offeror, the offeror shall:

(1) Have available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(2) Have completed previous contracts of a similar nature with a satisfactory record of performance.

(A) The Contracts & Procurement Manager shall 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, shall determine whether the deficient performance was expressly excused under the terms of the contract, or whether the offeror took appropriate corrective action.

(B) The Contracts & Procurement Manager 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 2.11 may be used to determine an offeror's integrity.

(B) The Contracts & Procurement Manager may find that an offeror is non-responsible based on the lack of integrity of any offeror 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) Complied with the tax laws of the State of Oregon, including ORS 305.620 and ORS Chapters 316, 317, and 318.

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

(A) Before awarding a contract, the Contracts & Procurement Manager 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 Contracts & Procurement Manager may base the determination of responsibility on any readily available information, or may find the offeror non-responsible.

**PCR 2.11: Debarment of Prospective Offerors.**

(a) **Generally.** The Contracts & Procurement Manager may debar prospective offerors from consideration for contracts for a period of not more than three (3) 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 prospective 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 offeror'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 that is regarded by the Contracts & Procurement Manager or the Construction Contractors Board to be so serious as to justify debarment. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with 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 any insurance as required by applicable law.

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

(1) The Contracts & Procurement Manager shall give written notice of the reasons for the debarment and the proposed length of debarment to the offeror for whom debarment is being considered.

(2) The offeror shall be given not less than fourteen (14) days to respond to the Contracts & Procurement Manager in writing.

(3) The Contracts & Procurement Manager shall issue a written decision that states the reason for the action taken and that informs the offeror of the offeror's appeal rights.

(c) **Imputed Knowledge.** The Contracts & Procurement Manager may attribute to a prospective offeror improper conduct of a prospective offeror's affiliate or other offerors with whom a contract with the prospective offeror, where the impropriety occurred in connection with the offeror's duty for, or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective offeror.

(d) **Limited Participation.** The Contracts & Procurement Manager may allow a debarred offeror 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 2.12: 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 2.25.

(c) **Public Printing.** For the purpose of evaluating bids or proposals for printing, binding, stationery work, the City shall comply with 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 2.24.

(e) **Clarification of Bids.** After the date and time set for 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 bids. The Contracts & Procurement Manager 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 offeror submitting the lowest responsive bid or the responsible offeror 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 2.23, the contract shall be awarded in accordance with the procedures set forth in that Rule.

(3) **Multiple Items.** A solicitation document may call for pricing of multiple items of similar or related type, with award based on individual line item, group total of certain items, 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) **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 Contracts & Procurement Manager 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 under 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, services, personal services, or professional services.

(5) Partial Awards. If after evaluation of offers the Contracts & Procurement Manager determines that an acceptable offer has been received for only parts 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 2.13: Intent to Award.**

(a) **Notice of Intent to Award.** Unless otherwise provided in these Rules, the Contracts & Procurement Manager shall post by electronic means or provide to each offeror the notice of intent to award a contract pursuant to the solicitation document, at least seven (7) days prior to award, unless circumstances require prompt execution of the contract, in which case the Contracts & Procurement Manager may provide shorter notice. The Contracts & Procurement Manager 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.

**PCR 2.14: Documentation of Award.**

(a) 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 the following components.

(1) For solicitations made by invitation to bid:

(A) All bids;

(B) The completed bid tabulation sheet; and

(C) A written justification for any rejection of any bids.

- (2) For solicitations made by request for proposals:
  - (A) All proposals;
  - (B) The completed evaluation of the proposals;
  - (C) A written justification for any rejection of higher scoring proposals;  
and
  - (D) If selection was made pursuant to PCR 5.3, written documentation of the content of any discussions, negotiations, best and final offers, or any other procedures used to select the offeror to whom the contract was awarded.

**PCR 2.15: Contract Documents; Availability of Award Decisions.**

- (a) **Contract Documents.** The City shall deliver to the successful offeror all applicable contract documents including, but not limited to, a purchase order or price agreement.
- (b) **Availability of Award Decisions.** Subject to ORS 192.410 through ORS 192.505, any offeror may obtain copies of any bid tabulations or evaluations of proposals for a fee, as established in a schedule adopted by the City Council. The Contracts & Procurement Manager may make bid tabulations and evaluations of proposals available electronically.

**PCR 2.16: Rejection of an Offer.**

- (a) **Grounds for Rejection.**
  - (1) Any offer may be rejected, in whole or in part, when the Contracts & Procurement Manager determines rejection is in the best interest of the City.
  - (2) An offer shall be rejected by the Contracts & Procurement Manager as non-responsive upon finding that an offer:
    - (A) Is contingent upon the acceptance of specifications that differ from those contained in the solicitation document;
    - (B) Takes exception 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) Provides for 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 Contracts & Procurement Manager 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, if required by the solicitation document;
- (D) Has not submitted properly executed bid or proposal security as required by the solicitation document, if required;
- (E) Has failed to provide any certification of non-discrimination required under ORS 279A.110(4) and PCR 2.3(d); or
- (F) Is not responsible.

(b) **Form of Business Entity.** For purposes of making any determination under this Rule, the Contracts & Procurement Manager may investigate any offeror submitting an offer, which may include an investigation of the offeror's officers, directors, owners, affiliates, or any other offeror acquiring ownership of the company.

(c) The Contracts & Procurement Manager shall document the reason for any rejection in the procurement file.

**PCR 2.17: Rejection of All Offers.**

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

(b) **Criteria.** Rejection of all offers in the best interest of the City shall be based upon any of 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;
- (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. Such causes include, but are not limited to, collusion, corruption, or unlawful conduct 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 Contracts & Procurement Manager shall document the reason for rejection of all offers in the procurement file.

**PCR 2.18: Disposition of Offers in all Rejected.** If all offers are rejected, and the procurement or solicitation is cancelled, the Contracts & Procurement Manager shall keep all offers in the procurement file.

**PCR 2.19: Cancellation, Delay or Suspension of a Procurement or Solicitation.**

(a) **Cancellation.** A procurement or solicitation may be cancelled if the Contracts & Procurement Manager 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 the time set for opening, the Contracts & Procurement Manager shall provide written notice of cancellation to all offerors who received the solicitation document and who also attended any mandatory pre-offer conference. The Contracts & Procurement Manager may also provide notice of cancellation in the same manner as initial notice of the solicitation was provided.

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

(3) **Contents of Notice.** The written notice of cancellation shall contain:

- (A) An identification of the solicitation document;
- (B) A brief explanation of the reason for cancellation; and
- (C) If appropriate, an explanation that an opportunity will be given to compete on any future solicitation.

(b) **Delay or Suspension.** A procurement or solicitation may be delayed or suspended if the Contracts & Procurement Manager determines that delay or suspension is in the best interest of the City.

(c) The Contracts & Procurement Manager shall document the reason for any cancellation, delay, or suspension in the procurement file.

**PCR 2.20: Disposition of Offers if Procurement or Solicitation Cancelled.**

(a) **Prior to Opening.** If the Contracts & Procurement Manager cancels a procurement or solicitation prior to the time set for opening, each offers received shall be returned unopened, provided it 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 Contracts & Procurement Manager shall open the offer to determine the source and then return the offer. If the offer were received electronically, the Contracts & Procurement Manager shall make a reasonable effort to have it deleted from the City’s electronic procurement system.

(b) **After Opening.** If a procurement or solicitation is cancelled after the time set for opening, the Contracts & Procurement Manager:

- (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.

**PCR 2.21: Qualified Products Lists.** The Contracts & Procurement Manager may develop and maintain a qualified products list, pursuant to ORS 279B.115.

**PCR 2.22: Prequalification of Prospective Offerors.** The City Manager may allow for the prequalification of prospective offerors pursuant to ORS 279B.120 and 279B.125.

**PCR 2.23: 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 for 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 for 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 Oregon or in the City, then the contract shall be awarded by drawing lots among the identical offers.

(b) **Determining if Goods or Services are Manufactured or Produced in Oregon or the City.** For the purposes of complying with this Rule, the Contracts & Procurement Manager may request in the solicitation document, following the time set for closing or at any other time, information appropriate and necessary to allow a determination that the goods or services are manufactured or produced in Oregon or the City. The Contracts & Procurement Manager may use any reasonable criteria to determine if the goods or services are manufactured or produced in Oregon or the City provided that the criteria reasonably relate to that determination and are applied equally to each offeror.

(c) **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.



(d) **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 2.24: Preference for Recycled Materials.**

(a) In the procurement of goods, preference shall be given to goods manufactured from recycled materials.

(1) 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 exists:

(A) The recycled product is available;

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

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

(D) The recycled product's cost does not exceed the cost of a non-recycled product by more than five percent, or a higher percentage if a written determination is made by the City Manager.

(2) To be eligible for the preference under this Rule, an offeror must:

(A) Request the preference in the offer;

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

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

(3) For the purposes of this Rule, the Contracts & Procurement Manager shall have the authority to determine if goods are manufactured from recycled materials in accordance with standards established by the City.

**PCR 2.25: Preference for Goods Fabricated or Processed within State of Oregon or Services performed within state.**

- (a) If the City procures goods or services for a public use under ORS Chapter 279B may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within the State of Oregon if the goods or services cost not more than ten (10) percent more than goods that are not fabricated or processed, or services that are not performed, entirely within the State of Oregon. If more than one offeror qualifies for the preference, the City may give a further preference to a qualifying offeror that resides in or is headquartered in the State of Oregon.
- (b) The City may set a higher percentage than the percentage in this Rule, if the City, in a written determination finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.
- (c) Notwithstanding ORS 279C.320(1), PCR 2.25(b) does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320(1).

### 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 \$10,000 or less are small procurements.
- (b) **Purchases up to \$5,000.** A Department Director may use any procurement method the Department Director deems practical or convenient, including direct negotiation, for small procurements of goods or services with a contract price of up to \$5,000.
- (c) **Purchases between \$5,001 and \$10,000.** A Department Director may use competitive verbal quotes or informal written solicitations for small procurements of goods or services with a contract price between \$5,001 and \$10,000.
- (d) **Negotiations.** The Department Director may negotiate with an offeror to clarify competitive verbal quotes or informal written proposals, or to make modifications that will make the quote or proposal acceptable, or more advantageous to the City.
- (e) **Award.** The contract, if awarded, shall be awarded to the offeror whose verbal quote or proposal the Department Director 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 1.9.
- (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 between \$10,001 and \$100,000 are intermediate procurements. Intermediate procurements shall be by informal written solicitation.
- (b) **Negotiations.** The Contracts & Procurement Manager may clarify an informal written solicitation or may negotiate with an offeror to make the offer acceptable, or more advantageous, to the City.
- (c) **Award.** The Contracts & Procurement Manager may award all intermediate procurements with a contract price of up to \$25,000. The City Manager shall award all intermediate procurements with a contract price of more than \$25,000. If a contract is awarded, the award shall be made to the offeror whose offer will best serve the interests of

the City, taking into consideration price, experience, expertise, product functionality, suitability for a particular purpose, and contractor responsibility.

(d) **Amendments.** Intermediate procurement contracts may be amended, as provided in PCR 1.9.

(e) **Public Notice.** No public notice of an intermediate procurement is required.

**PCR 3.3: Solicitation Method for Competitive Verbal Quotes (Small Procurements).** 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, facsimile, or e-mail. A good faith effort shall be made to contact at least three (3) potential providers. If three (3) potential providers are not reasonably available, the Contracts & Procurement Manager shall make a written record of the reasons for such unavailability 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 and should be sent to not less than three (3) potential providers. If three (3) potential providers are not reasonably available, the Contracts & Procurement Manager shall make a written record of the reasons for such unavailability as part of the procurement file.

(b) The solicitation document shall request competitive bids or competitive proposals and shall include:

(1) The date, time, and place that bids or proposals are due;

(2) A description and quantity of the good or service required;

(3) The time period for which offers must remain firm, irrevocable, valid, and binding on the offeror;

(4) Any required contract terms or conditions; and

(5) Any required bid form or proposal format.

(c) Bids or proposals shall be received by the Contracts & Procurement Manager at the date, time, and place established in the solicitation document. The Contracts & Procurement Manager shall keep a written record of the sources of the bids or proposals.

#### **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 for a procurement with a contract price of \$5,000 or more, the Department Director must make written findings that the goods or services, personal services, or professional services are available from only one source to the Contracts & Procurement Manager, 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 required for the exchange of software or data with other public or private agencies and are available from only one source;

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

(4) Other findings that support the conclusion 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 Contracts & Procurement Manager shall post notice of any sole source contract. The notice shall be posted by electronic means, not less than seven (7) 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 acquired, 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. This notice provision only applies to procurements with a contract price of \$5,000 or more.

##### **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 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 or a Department Director 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 Director may determine circumstances exist justifying an emergency procurement with a contract price of \$25,000 or more. The authority to make the determination that 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 (3) potential providers.

(d) **Award.** A Department Director 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 more, unless the emergency requires award of the contract before the City Manager can be reached, in which case a Department Director may award the contract.

(e) **Documentation.** Whenever an emergency procurement is made, the Department Director shall document the nature of the emergency, describe the method used for selection of the particular contractor, and forward such documentation to the Contracts & Procurement Manager for the procurement file.

**PCR 4.3: Special Procurements.**

(a) **Generally.** The City Manager may authorize a special procurement pursuant to the requirements of ORS 279B.085.

(b) **Notice.** Public notice of a proposed special procurement must be published by electronic means not less than seven (7) days prior to the approval of the special procurement.

(c) **Award.** If a contract for a special procurement is awarded, the contract shall be awarded to the offeror whose offer the Contracts & Procurement Manager determines, in writing, to be the most advantageous to the City.

## 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 over \$100,000. Competitive sealed bidding is initiated by an invitation to bid.

(b) **Invitation to Bid.** The invitation to bid shall including the following components.

(1) Specify a time and date by which bids must be received and a place at which the bids must be submitted. The City may receive bids by electronic means or direct a bidder to submit bids by electronic means.

(2) Specify the name and title of the person designated to receive offers and the person designated as the contact person for the procurement, if different.

(3) Describe the procurement. In the description, the City shall identify the scope of work included within the procurement, outline the contractor's anticipated duties and set expectations for the contractor's performance. Unless the City for good cause specifies otherwise, the scope of work shall require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

(4) Specify a time, date, and place for prequalification applications, if any, to be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120.

(5) State that the City may cancel the procurement or reject any or all bids in accordance with ORS 279B.100.

(6) Require the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710.

(7) Include all contractual terms and conditions applicable to the procurement. The contract terms and conditions shall specify clear consequences for a contractor's failure to perform the scope of work identified in the invitation to bid or the contractor's failure to meet established performance standards. The consequences may include, but not limited to:

(A) Reducing or withholding payment;

- (B) Requiring the contractor to perform, at the contractor's expense, additional work necessary to accomplish the identified scope of work or meet the established performance standards; or
  - (C) Declaring a default, terminating the contract and seeking damages and other relief available under the terms of the contract or other applicable law.
- (8) The City may require bid security if the City determines that bid security is reasonably necessary or prudent to protect the interests of the City.
  - (A) The City shall return the bid security to all bidders upon the execution of the contract.
  - (B) The City shall retain the bid security if the bidder who is awarded a contract fails to promptly and properly execute the contract. For purposes of this Rule, prompt and proper execution of the contract includes all action by a bidder.
- (9) 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.
- (10) 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.
- (11) A statement that each bidder must identify whether they are "resident bidder" pursuant to ORS 279A.120.
- (12) A statement that each bidder has not discriminated and will not discriminate against a subcontractor in awarding a subcontract because a subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business that is certified under ORS 200.055.
- (13) A description of any required insurance coverage.



- (14) A statement of how bidders will be notified of addenda and how the addenda will be made available.
- (15) An outline of the bidding and evaluation process.
- (16) The anticipated schedule, deadlines, evaluation process, and protest process.
- (17) 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.
- (18) 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.

**PCR 5.2: Multistep Competitive Sealed Bids.** Pursuant to ORS 279B.055(12), 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.

**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 proposals.
- (b) **Request for Proposals.**
  - (1) A request for proposals shall include the following components.
    - (A) Specify a time and date by which sealed proposals must be received, and a place at which the proposals must be submitted. The City, in the City's sole discretion, may receive proposals by electronic means or may direct or permit proposers to submit proposals by electronic means.
    - (B) Specify the name and title of the person designated to receive proposals and the person the City designates as the contact person for the procurement, if different.
    - (C) Describe the procurement. In the description, the City shall identify the scope of work included within the procurement, outline the proposer's anticipated duties and set expectations for performance.

(D) Specify a time, date and place for prequalification applications, if any, to be filed and the classes of work, if any, for which proposers must be prequalified in accordance with ORS 279B.120.

(E) State that the City may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100.

(F) Require the successful proposer or their subcontractor to possess an asbestos abatement license, if required under ORS 468A.710.

(G) Include all contractual terms and conditions applicable to the procurement. The contract terms and conditions shall specify clear consequences for a proposer's failure to perform the scope of work identified in the request for proposals or the proposer's failure to meet established performance standards. The consequences may include, but are not limited to:

(i) Reducing or withholding payment;

(ii) Requiring the proposer to perform, at the proposer's expense, additional work necessary to accomplish the identified scope of work or meet the established performance standards; or

(iii) Declaring a default, terminating the contract, and seeking damages and other relief available under the terms of the contract or other applicable law.

(2) The request for proposals also may include the following components.

(A) Identify contractual terms or conditions that the City reserves, in the request for proposals, for negotiation with proposers.

(B) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals.

(C) Contain or incorporate the form and content of the contract that the City will accept, or suggest contract terms and conditions that nevertheless may be the subject of negotiations with proposers.

(D) Announce the method the City will use to select the proposer, which may include, but is not limited to, negotiating with the highest ranked proposer, competitive negotiations, a multiple-tiered competition that is designed to identify a class of proposers that fall within a competitive range

or to otherwise eliminate from consideration a class of lower ranked proposers, or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065.

(E) Describe the manner in which the City will evaluate proposals, identifying the relative importance of price and other factors the City will use to evaluate and rate the proposals in the first tier of competition. If the City uses more than one tier of competitive evaluation, the request for proposals must describe the process the City will use to evaluate proposals in the subsequent tiers.

(F) Require proposal security in any form the City deems prudent.

(i) The City shall return the proposal security to all proposers upon the execution of the contract.

(ii) The City shall retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt and proper execution of the contract includes all action by a proposer that is necessary to form a contract in accordance with the request for proposals, including posting performance security and submitting proof of insurance when the request for proposals requires the submission. If contract negotiations or competitive negotiations are conducted, the failure of the City and a proposer to reach agreement prior to award does not constitute grounds for retaining proposal security.

(G) Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation, but the City shall record and make available the identity of all proposers as part of the City's public records after the proposals are opened. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

(H) Notwithstanding a requirement to make proposals open to public inspection after the City issues notice of intent to award a contract, a contracting agency may withhold from disclosure to the public materials included in a proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(I) If a request for proposals is cancelled under ORS 279B.100 after proposals are received or if a proposal is rejected, the City may return a

proposal to the proposer. The City shall keep a list of returned proposals in the file for the solicitation.

**PCR 5.4: Competitive Range for Proposers.** The City Manager may authorize the establishment of a competitive range at any stage in the competitive sealed proposal procurement process.

**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. This process 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.

**PCR 5.6: Demonstration of Feasibility/Cost Analysis.** Services with an estimated price that exceeds \$250,000, shall demonstrate the following:

(a) By the means of a written cost analysis pursuant to ORS 279B.033 that the City would incur less cost in conducting the procurement than in performing the services with the City's own personnel and resources; or

(b) Pursuant to ORS 279B.036 that performing the services with the City's own personnel and resources is not feasible.

**PCR 5.7: Amendments.** Formal competitive procurement contracts for goods and services may be amended, as provided in PCR 1.9, if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) 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, photogrammetric mapping, transportation planner, 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; and
- (5) Contracts for services as a consultant.

(b) All personal services contracts with a contract price of \$25,000 or more 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 cancelled, 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; or

(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 through direct negotiations may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of all amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price unless approved by the City Manager.

(c) **Public Notice.** No public notice of personal services contracts procured through direct negotiations 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 or equal to \$100,000.

- (b) An informal written solicitation shall solicit proposals from at least three (3) qualified offerors. If the Contracts & Procurement Manager determines three (3) qualified providers are not reasonably available, fewer will suffice, if the reasons three (3) qualified 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 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; and
  - (6) Geographic proximity to the project or the area where the personal services are to be performed.
- (e) The Contracts & Procurement Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and proposers names and addresses in the procurement file.
- (f) **Amendments.** Personal services contracts procured by informal written solicitations may be amended provided:
- (1) The amendment is within the scope of the original contract and the cumulative amount of all amendments does not increase the total contract price by more than twenty-five percent (25%) 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 proposer within the time frames necessary to complete the work.

(g) **Public Notice.** No public notice of personal services contracts procured through informal written solicitations 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 greater than \$100,000, the contract is for auditing services required under ORS 297.425, 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.

(1) A request for proposals shall include the following components:

(A) Specify a time and date by which sealed proposals must be received, and a place at which the proposals must be submitted. The City, in the City's sole discretion, may receive proposals by electronic means or may direct or permit proposers to submit proposals by electronic means.

(B) Specify the name and title of the person designated to receive proposals and the person the City designates as the contact person for the procurement, if different.

(C) Describe the procurement. In the description, the City shall identify the scope of work included within the procurement, outline the proposer's anticipated duties and set expectations for performance.

(D) Specify a time, date, and place for prequalification applications, if any, to be filed and the classes of work, if any, for which proposers must be prequalified in accordance with ORS 279B.120.

(E) State that the City may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100.

(F) Require the successful proposer or their subcontractor to possess an asbestos abatement license, if required under ORS 468A.710.

(G) Include all contractual terms and conditions applicable to the procurement. The contract terms and conditions shall specify clear consequences for a proposer's failure to perform the scope of work identified in the request for proposals or the proposer's failure to meet



established performance standards. The consequences may include, but are not limited to:

- (i) Reducing or withholding payment;
- (ii) Requiring the proposer to perform, at the proposer's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; and
- (iii) Declaring a default, terminating the contract, and seeking damages and other relief available under the terms of the contract or other applicable law.

(2) The request for proposals also may include the following components:

(A) Identify contractual terms or conditions that the City reserves, in the request for proposals, for negotiation with proposers.

(B) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals.

(C) Contain or incorporate the form and content of the contract that the City will accept, or suggest contract terms and conditions that nevertheless may be the subject of negotiations with proposers.

(D) Announce the method the City will use to select the proposer, which may include, but is not limited to, negotiating with the highest ranked proposer, competitive negotiations, a multiple-tiered competition that is designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065.

(E) Describe the manner in which the City will evaluate proposals, identifying the relative importance of price and other factors the City will use to evaluate and rate the proposals in the first tier of competition. If the City uses more than one tier of competitive evaluation, the request for proposals must describe the process the City will use to evaluate proposals in the subsequent tiers.

(F) Require proposal security in any form the City deems prudent.

- (i) The City shall return the proposal security to all proposers upon the execution of the contract.

(ii) The City shall retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract. For purposes of this Rule, prompt and proper execution of the contract includes all action by a proposer that is necessary to form a contract in accordance with the request for proposals, including posting performance security and submitting proof of insurance when the request for proposals requires the submission. If contract negotiations or competitive negotiations are conducted, the failure of the City and a proposer to reach agreement prior to award does not constitute grounds for retaining proposal security.

(G) Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation, but the City shall record and make available the identity of all proposers as part of the City's public records after the proposals are opened. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

(H) Notwithstanding a requirement to make proposals open to public inspection after the City issues notice of intent to award a contract, the City may withhold from disclosure to the public materials included in a proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(I) If a request for proposals is cancelled under ORS 279B.100 after proposals are received or if a proposal is rejected, the City may return a proposal to the proposer. The City shall keep a list of returned proposals in the file for the solicitation.

(b) **Amendments.** Personal services contracts procured by a request 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 all amendments does not increase the total contract price by more than twenty-five percent (25%) 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 necessary to complete the work.

**PCR 6.6: Consultants of Record.**

- (a) **Generally.** Consultants to provide personal services as consultants of record on a continuing, “as-required” basis during periods when City staff is unavailable due to workload may be selected pursuant to this Rule. The purpose of consultants of record contracts is to quickly and efficiently obtain required personal services on short-notice.
- (b) The City Manager may establish categories of personal services to be procured as consultants of record contracts. The City Manager shall, as part of the approval process, establish the maximum annual contract price and the maximum individual assignment price for each consultant of record.
- (c) **Selection Method.** Consultants of record shall be selected by a request for proposals, pursuant to PCR 6.5. In addition to the requirements set forth in PCR 6.5(a), a request for proposals shall:
- (1) Identify the maximum annual contract price and the maximum individual assignment price;
  - (2) Identify the criteria which will be used to rank proposers, including the number of points applicable to each criterion; and
  - (3) Identify the method to establish the list of consultants 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) **Contract Terms.** Contracts for consultants of record may:
- (1) Be non-exclusive;
  - (2) Have a term of one (1) year and may contain the opportunity for renewal terms of four (4) additional one (1) year periods; and
  - (3) State the maximum annual contract price and the maximum individual assignment price.

**PCR 6.7: Award.** The Contracts & Procurement Manager may award a personal services contract with a contract price of up to \$25,000. The City Manager shall award a personal services contract with a contract price of \$25,000 or more. The Local Contract Review Board shall award all personal services contracts for auditing services required under ORS 297.425. 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, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING, LAND SURVEYING, AND RELATED SERVICES CONTRACTS – (PROFESSIONAL SERVICES)**

**PCR 7.1: Definitions.** As used in this Rule, the following mean:

- (a) “Consultant” means an architect, engineer, photogrammetric mapping, transportation planning, land surveying services, or provider of related professional services. The term “consultant” includes a business entity that employs architects, engineers, photogrammetric mapping, transportation planners, 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, photogrammetric mapping, transportation planning, land surveying or related services, or any combination of these services, provided by a consultant.

**PCR 7.2: 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(tt), 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(s) has been selected in accordance with the applicable selection procedure.

**PCR 7.3: Direct Appointment.**

- (a) The City Manager may authorize direct appointment of a consultant if:
  - (1) The fee to be paid is not reasonably anticipated to exceed \$100,000; or
  - (2) The professional services that have been substantially described, planned, or otherwise previously studied or rendered in an earlier contract with the same consultant, and awarded under PCR 7.4 or PCR 7.5, and the new contract is a continuation of the project.
- (b) Negotiations with consultants selected under this Rule shall result in an 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.
- (c) Contracts entered into by direct appointment shall be in writing, and awarded as follows:
- (1) A Contracts & Procurement Manager may award any contract if the contract price is up to \$25,000; and
  - (2) The City Manager shall award any contract with a contract price more than \$25,000.

**PCR 7.4: 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 \$100,000.
- (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 when proposals are due and directions for submitting proposals; and
  - (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) Specialized experience, capabilities, and technical competence, which the proposer may demonstrate with the proposer's proposed approach and methodology to meet the project requirements;

(B) Resources committed to perform the work and the proportion of the time that the proposer's staff would spend on the project, including time for specialized services, within the applicable time limits;

(C) Record of past performance including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, women-owned businesses, service-disabled veteran-owned businesses, emerging small businesses, or historically underutilized businesses;

(E) The proposer's availability and familiarity with the project locale; and

(F) Proposed project management techniques.

(c) The Contracts & Procurement Manager shall provide an informal written solicitation to a minimum of three (3) prospective consultants.

(d) The Contracts & Procurement Manager shall review all proposals received for responsiveness.

(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) Mutual discussion and refinement of the scope of services for the project and negotiation of conditions including, but not limited to, the compensation level and performance schedule based on the scope of services. The compensation level paid must be reasonable and fair to the City as determined solely by the City; and

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

(2) The City shall formally terminate negotiations if the City and proposer are unable for any reason to reach agreement within a reasonable amount of time. Such termination shall be in writing. The City may thereafter negotiate with the next most qualified proposer. The negotiation process may continue in this manner through successive proposers 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 solicitation may be cancelled. Nothing in this Rule precludes the City from proceeding with a new solicitation for the same professional services when the prior solicitation failed to result in a contract.

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

(1) The Contracts & Procurement Manager may award any professional services contract if the contract price is up to \$25,000; and

(2) The City Manager shall award any professional services contract with a contract price which is more than \$25,000.

**PCR 7.5: Requests for Proposals.**

(a) A request for proposals shall be used to select consultants if the contract price is more than \$100,000 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) **Required Contents of Request for Proposals.**

(1) Each request for proposals shall include the following components.

(A) General background information, including a description of the project and the professional services sought, 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 proportion of time proposer estimates the staff would spend on the professional services;
  - (v) 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;
  - (vi) References and recommendations from past clients;
  - (vii) The proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;
  - (viii) Status and quality of any required license or certification;
  - (ix) 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;
  - (x) Results from interviews, if conducted;
  - (xi) Design philosophy, if applicable, and approach to the provision of the professional services;
  - (xii) Availability to the project locale; and
  - (xiii) Any other criteria that the City deems relevant to the project and the provision of the 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) Any insurance requirements.
- (E) Whether interviews are required 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 offerors responding to the request for proposals do so solely at their expense and the City is not responsible for any expenses incurred by the offeror 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 sample form of contract.
- (N) Any other information that the City deems reasonably necessary to evaluate, rank and select the most qualified proposer.

(2) Evaluation Committee.

- (A) The City Manager shall appoint a committee of at least three (3) individuals to review, evaluate, and rank proposals. The evaluation committee shall include at least two (2) City employees and may include at least one (1) 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 comprised of only City employees may be approved if the City Manager determines the public interest would not be harmed.
- (B) No proposer shall 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 evaluation committee conducts interviews, it shall award up to the number of points indicated in the request for proposal for the interview.

(3) Contract Negotiations.

(A) 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 an agreement on:

(1) Mutual discussion and refinement of the scope of services for the project and negotiation of conditions including, but not limited to, the compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the City as determined solely by the City; and

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

(B) The City shall formally terminate negotiations if the City and proposer are unable for any reason to reach agreement within a reasonable amount of time. Such termination shall be in writing. The City may thereafter negotiate with the next most qualified proposer. The negotiation process may continue in this manner through successive proposers 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 solicitation may be cancelled. Nothing in this Rule precludes the City from proceeding with a new solicitation for the same professional services when the prior solicitation failed to result in a contract.

(C) Following successful negotiation, the Contracts & Procurement Manager shall send written notice to all proposers of the intent to award a contract.

(D) 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.

**PCR 7.6: Two-Tiered Selection Procedure for Public Improvement Projects Where Professional Services are Procured by State Agency.**

(a) 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.

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

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

(A) Select a consultant from the list provided by the state agency; or

(B) Select a consultant to perform the professional services through the source selection process provided in PCR 7.7 or PCR 7.8, 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 7.7: Consultants of Record.**

(a) Consultants of record may be selected to provide professional services on a continuing or "as required" basis. The purpose of consultants of record is to quickly and efficiently obtain required professional services of consultants.

(b) The City Manager may approve the selection of 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.** Consultants of record shall be selected by requests for proposals, pursuant to PCR 7.6. In addition to the requirements set forth in PCR 7.6, the request for proposals may include:

(1) The maximum total fee and maximum assignment fee; and

(2) The criteria which will be used to award a contract to the consultants of record, including the number of points applicable to each criterion and the total number of awarded consultants of record for each category.

(d) The City Manager may award a consultant of record contract for each category of professional services designated pursuant to this Rule. The contracts shall be awarded to the most qualified proposers whose proposals are the most advantageous to the City.

(e) **Contract Terms.** Contracts for consultants of record may:

(1) Be non-exclusive;

(2) Have a term of one (1) year, and may contain the opportunity for renewal terms for four (4) additional one (1) year periods; and

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

(f) **Assignment of Projects.** Consultants of record may be selected for individual project assignments as follows:

(1) Upon acceptance, the consultant will have five (5) days from the date of acceptance, unless a shorter time frame was specified in the query, to prepare and submit a proposal, with a specific plan for accomplishing the work and a proposed maximum not-to-exceed fee;

(2) The City may accept the consultant's proposal, negotiate further with the consultant, reject the proposal and terminate the project assignment, reject the proposal and offer the project assignment to another consultant, or reject the proposal and proceed with another selection procedure as provided by these Rules; and

(3) 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 services, completion date, and the fee for professional services to be performed.

**PCR 7.8: General Civil Engineering Consultants of Record.**

(a) **Selection Method.** Consultants for general civil engineering services for Salem Capital Improvement Plan (CIP) projects shall be selected by requests for proposals, pursuant to PCR 7.6. In addition to the requirements set forth in PCR 7.6, the request for proposals may:

(1) Identify the maximum annual contract price and the maximum fee for individual assignments;

(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.

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

(c) **Contract Terms.** Contracts with CIP consultants of record may:

(1) Be non-exclusive;

(2) Have a term of one (1) year, and may contain the opportunity for renewal terms for four (4) additional one (1) year periods; and

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

(d) **Assignment of Projects.** CIP consultants of record will be selected for individual assignments with the following distinctions.

(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 Director shall provide to the Contracts & Procurement Manager, written documentation of the selection process. The Department Director may authorize a purchase order to be released against the contract.

(2) For assignments with total fees between \$250,000 and \$1,000,000, the top three (3) 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 Director shall provide to the Contracts & Procurement Manager a written recommendation for selection and if less than three (3) consultants were invited to submit proposals, the written recommendation shall include a justification for inviting less than three (3) consultants. 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. The consultant or the consultant’s assignment team has successfully designed projects, done studies, or received awards for work within the same technological fields, with an equivalent level of technical complexity, or with a similar magnitude.

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

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

(iv) Resources. The consultant and the consultant’s assignment team has or has access to the specific skills and equipment required for the performance of this specific assignment. Examples of specific skills and equipment 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. The consultant or the consultant’s assignment team has specific knowledge of the project which makes it advantageous to hire the consultant. Examples include successful performance of work on the same or an adjacent section of road or land area within the last five (5) years; and performance of designs

to special or unique standards that are also required on the specific project.

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

(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 may be selected for the assignment.

**PCR 7.9: Ties among Proposers for Professional Services.** If after ranking the proposers, two (2) or more proposals are determined to be equally qualified, a proposer may be selected through any process that the Contracts & Procurement Manager determines will result in the best value for the City, taking into account the scope, complexity, and nature of the professional services.

**PCR 7.10: Purchase Restrictions.**

(a) 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 7.11: Continuation of Project.**

(a) 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 Contracts & Procurement Manager 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 Contracts & Procurement Manager makes written findings that entering into the contract:



- (1) Will promote efficient use of public funds and resources and result in substantial cost savings to the City;
- (2) Will not encourage favoritism in the contracting process; and
- (3) Will not substantially diminish competition for future contracts with consultants.

## VIII. PROCUREMENT PROCEDURES FOR PUBLIC IMPROVEMENTS

### PCR 8.1: Public Notice.

#### (a) Advertising.

(1) Except as provided in PCR 8.1(a)(2), every formal solicitation for a public improvement contract shall be advertised as provided in PCR 2.1.

(2) The Contracts & Procurement Manager shall publish an advertisement for offers in at least one (1) trade newspaper of general statewide circulation if the contract is for a public improvement with an estimated cost in excess of \$125,000.

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

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

(2) Placing notice by electronic means.

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

(1) The public improvement project;

(2) The office where the specifications and contract terms of the project may be reviewed;

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

(4) The date and time after which bids will not be received, which shall be at least five days after the date of the last publication of the advertisement;

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

(6) The date, time, and place of scheduled bid opening; and

(7) If applicable, that the public improvement contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq).

**PCR 8.2: Prequalification of Offerors.**

(a) The City may adopt a rule, resolution, ordinance, or other regulation requiring mandatory prequalification for all offerors desiring to bid for public improvement contracts that are to be let by the City. The rule, resolution, ordinance, or other regulation authorized by this Rule must include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application must be in writing on a standard form prescribed under the authority of ORS 279A.050.

(b) When the City permits or requires prequalification of offerors, those wishing to prequalify shall submit a prequalification application to the City on a standard form prescribed under subsection (a) of this Rule. Within thirty (30) days after receipt of a prequalification application, the City shall investigate the prospective offeror as necessary to determine if the prospective offeror is qualified. The determination shall be made in less than thirty (30) days, if practicable, if the prospective offeror requests an early decision to allow as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the City shall consider only the applicable standards of responsibility listed in ORS 279C.375(3)(b). The City shall promptly notify the prospective offeror whether or not the prospective offeror is qualified.

(c) If the City finds that the prospective offeror is qualified, the notice must state the nature and type of contracts that the prospective offeror is qualified to bid on and the period of time for which the qualification is valid under the City's rule, resolution, ordinance, or other regulation. If the City finds the prospective offeror is not qualified as to any contracts covered by the rule, resolution, ordinance, or other regulation, the notice must specify the reasons found under ORS 279C.375(3)(b) for not prequalifying the prospective offeror and inform the prospective offeror of the right to a hearing under ORS 279C.445 and 279C.450.

(d) If the City has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective offeror and that the prospective offeror is no longer qualified or is less qualified, the City may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective offeror. The notice shall state the reasons found under ORS 279C.375(3)(b) for revocation or revision of the prequalification of the prospective offeror and inform the prospective offeror of the right to a hearing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any public improvement contract for which publication of an advertisement, in accordance with ORS 279C.360, commenced before the date the notice of revocation or revision was received by the prequalified prospective offeror.

(e) Effect of prequalification by Department of Transportation or Oregon Department of Administrative Services. If a prospective offeror is prequalified with the Department of Transportation or with the Oregon Department of Administrative Services, the prospective offeror is rebuttably presumed qualified with the City for the same kind of work. When qualifying for the same kind of work with the City, the prospective offeror may submit

proof of the prequalification in lieu of a prequalification application as required by ORS 279C.430.

(f) **Appeal Hearing.** An appeal of the denial of a prequalification must be made within three (3) business days after receipt of the notice of the Contracts & Procurement Manager's decision.

(1) Notice shall be given to the City Manager that the prospective offeror 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 prospective offeror to be notified of the time and place of the hearing to consider the appeal within thirty (30) 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 an offer to do work as a contractor as defined in ORS 701.005(5), unless the offeror has a current, valid license issued by the Construction Contractors Board at the time the offer is made.

(b) **Landscape Contracts.** The City shall not consider an offer to do work as a landscape contractor unless the offeror has a current, valid 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 an offeror 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 an offeror 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 Contracts & Procurement Manager 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 shall mail, send by facsimile, or send electronically 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 Contracts & Procurement Manager shall notify prospective offerors of addenda.

(c) **Time Lines; Extensions.** The Contracts & Procurement Manager shall issue all addenda and do so within a reasonable time to allow prospective offerors to consider the addenda in preparing an offer. The Contracts & Procurement Manager may extend the closing date of the solicitation if the Contracts & Procurement Manager determines prospective offerors need additional time to review and respond to addenda. The City shall not issue addenda less than seventy-two (72) hours before the closing date of the solicitation unless the addenda also extends the closing date.

(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 Addendum.**

(a) **Request for Clarification.** Prior to the deadline set forth in the solicitation document, an offeror may request clarification of any provision in a solicitation document. Any request for clarification shall be in writing. 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 formally amended by an addendum.

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

(1) **Delivery.** An offeror may request a change to the solicitation document. Any such request shall be in writing. Unless otherwise specified in the solicitation document, an offeror must deliver the written request for change to the Contracts & Procurement Manager not less than ten (10) days prior to the closing date. Unless a different deadline is set forth in the addendum, an offeror may submit a written request for change to the addendum by the close of the next business day after issuance of the addendum, or not less than ten (10) days prior to the closing date, 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 with the following:

(i) “Request for Change;” and

(ii) The 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 the Closing Date.** If a written request for change from an offeror is received in accordance with this Rule, the closing date may be extended if the Contracts & Procurement Manager determines an extension is necessary to consider the request and issue an addendum 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 Contracts & Procurement Manager finds that cancellation is in the public interest. The Contracts & Procurement Manager's reasons for cancellation shall be made part of the procurement file.

(b) **Notice of Cancellation.** If the City cancels a solicitation prior to date set for opening, the Contracts & Procurement Manager shall provide notice of cancellation to offerors who the solicitation document and 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, state that an opportunity will be given to compete on any re-solicitation.

(c) **Disposition of Offers.**

- (1) Prior to Offer Date set for Opening. If a solicitation is cancelled prior to offer date set for opening, the Contracts & Procurement Manager shall return all offers received to offerors unopened, provided the offeror submitted the offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracts & Procurement Manager shall open the offer to determine the source and then return it to the offeror.
- (2) After Offer Date set for Opening. If a solicitation is cancelled after the offer date set for opening the Contracts & Procurement Manager 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," meaning 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 (30) days following the date set for 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 a competitive proposals, the solicitation document shall describe whether an offer is to be made and considered a "firm offer" that may be accepted without negotiation, as in the case of competitive bidding, or whether an offer is subject to discussion, negotiation, or otherwise is not to be considered a final offer.

(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 the 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 and conditions, the offer shall include all 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 date set for opening, in accordance with the instructions in 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 by the City.

(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 disadvantaged business enterprise, minority-owned business, woman-owned business, a service-disabled veteran-owned business, or emerging small business enterprise certified under ORS 200.055.

(e) **Electronic Submissions.** Offers submitted electronically, including by facsimile, shall not be considered, unless such electronic submissions have been specifically authorized 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. The City 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. If electronic submissions are authorized, the offeror must submit and identify electronic submissions in accordance with the instructions set forth in the solicitation document.



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

(i) **Offers Must Conform to 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 Contracts & Procurement Manager to protect the City's interest. Any required bid or proposal security shall be not more than ten percent (10%) or less than five percent (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 and any required performance bond, payment bond, and any required proof of insurance.

(b) **Requirement.** Unless the City Manager has exempted a specific solicitation or class of solicitations from bid security, the Contracts & Procurement Manager shall require bid security for all solicitations for public improvements with an estimated value of more than \$100,000. If it is deemed in the best interest of the City, the Contracts & Procurement Manager may require bid security for a specific solicitation even if the solicitation is in a solicitation class exempted from bid security. The Contracts & Procurement Manager 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 Contracts & Procurement Manager 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 certified check.

(d) **Return of Security.** The Contracts & Procurement Manager 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 Contracts & Procurement Manager

may return the bid or proposal security of unsuccessful offerors prior to award, if the return does not prejudice the public improvement contract award. The Contracts & Procurement Manager may retain the security of at least the three (3) bidders with the lowest bids, or the three (3) proposers with the highest scoring proposals pending execution of the public improvement contract.

**PCR 8.11: Modification or Withdrawal of Offers Prior to Closing.**

(a) **Modifications.** An offeror may modify an offer, in writing, prior to the date set for closing. An offeror shall submit any modification of its offer to the City in compliance with PCR 8.6, 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 a withdrawal. To be effective, the withdrawal must be received prior to the date set for closing. The offeror or offeror's authorized representative may withdraw an offer by appearing in person before the Contracts & Procurement Manager prior to the date set for closing, with presentation of appropriate identification and evidence of authority to make the withdrawal satisfactory to the Contracts & Procurement Manager. The offeror shall mark a written request to withdraw an offer with the following:

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

(c) The Contracts & Procurement Manager may release an unopened offer that has been withdrawn to the offeror or the offeror's authorized representative.

(d) **Documentation.** The Contracts & Procurement Manager shall include all documents relating to a modification or withdrawal of offers in the procurement file.

**PCR 8.12: 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 after the date and time set for closing. If an offer or a modification is inadvertently opened prior to the opening, the offer or modification shall be resealed, returned to a confidential and secure state, and maintained in such state until after the date and time set for closing. The Contracts & Procurement Manager shall document the fact of, and reasons for, the resealing in the procurement file, such as “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 Contracts & Procurement Manager 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 until after a notice of intent to award has been issued. The City may withhold those portions of an offer that are exempt from disclosure or otherwise made confidential under Oregon law or those portions of an offer that the offeror has designated as trade secrets or as confidential, in accordance with ORS 192.501(2) and ORS 646.461 to 646.475. Make, 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.

**PCR 8.13: Late Bids, Late Withdrawals, and Late Modifications.** Any offer received after the date and time set for closing is late. A request for modification of an offer, or a notice of withdrawal of an offer, received after the date and time set for closing is late. The City shall not consider an offer, a request for modification, or a notice of withdrawal that is late.

**PCR 8.14: Mistakes.**

(a) **Generally.** The Contracts & Procurement Manager shall not permit waiver, correction, or withdrawal of offers for mistakes, except as provided in this Rule.

(b) **Treatment of Errors in Judgment.** The Contracts & Procurement Manager 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 Contracts & Procurement Manager discovers mistakes in an offer after opening, but before award, the Contracts & Procurement Manager:

(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 addendum to the solicitation document, provided that it is clear on the face of the offer that the offeror received the addendum and intended to be bound by its terms or the Contracts & Procurement Manager determines addendum 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, errors in arithmetic, or instances in which the intended correct unit or amount is evident by simple arithmetic calculations. Another 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 otherwise provided in the solicitation document.

(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) or (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.

(d) **Criteria.** The criteria in this Rule 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.

(e) **Rejection for Mistakes.** The Contracts & Procurement Manager 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.

(f) **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 8.15: First-Tier Subcontractors; Disclosure and Substitution.**

(a) **Required Disclosure.** Within two (2) business 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 Contracts & Procurement Manager, 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 (5%) of the total contract price or \$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 to which this Rule applies, the City shall:

(1) Set the bid closing on a Tuesday, Wednesday, or Thursday, and at a time between 2:00 p.m. and 5:00 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 (2) 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 for completing the disclosure form.

(d) **Submission.** A bidder shall submit the disclosure form required by this Rule either with its bid submission, or within two (2) 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.** After the bids are opened, the City shall make available for public inspection the subcontractor disclosure forms required by this Rule. The City shall also provide copies of the subcontractor 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 subcontractor 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 an 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 8.16: Disqualification of Offerors.**

(a) **Authority.** The City or the Construction Contractors Board may disqualify a prospective offer from consideration for award of the City's public improvement contracts

for a period of no more than three (3) years after providing the prospective offeror with notice and a reasonable opportunity to be heard in accordance with this Rule.

(b) **Reasons for Disqualification.**

(1) The City may disqualify a offeror for any of the following reasons:

(A) Conviction 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 offeror'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 City or the Construction Contractors Board to be so serious as to justify 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 offeror's control is not a basis for disqualification.

(E) Failure to carry workers' compensation or unemployment insurance as required by state statute.

(c) **Form of Business.** For purposes of this Rule, the City may investigate any prospective offeror, including the prospective offeror's officers, directors, owners, affiliates, or any other ownership of the company to determine application of this Rule.

(d) **Notice of Disqualification.** The City or the Construction Contractors Board shall issue a written decision to disqualify a prospective offeror under this Rule. The decision shall contain:

(1) State the reasons for the action taken; and

(2) A statement of the prospective offeror's appeal rights under ORS 279C.445 and 279C.450 and this Rule, and the applicable appeal deadlines or ORS Chapter

183 if the decision to disqualify was issued by the Construction Contractors Board; and

(3) A copy of the decision issued under this Rule shall be mailed or otherwise furnished immediately to the disqualified prospective offeror.

(e) **Appeal Hearing.** An appeal of a decision to disqualify a prospective offeror must be made within three (3) business days after receipt of notice of the City's decision.

(1) Notice must be given to the City Manager that the prospective offeror 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 prospective offeror to be notified of the time and place of the hearing to consider the appeal within thirty (30) days unless the prospective offeror appealing and the City mutually agree to different period of time. The City shall set forth in writing the reasons for the decision.

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

(f) **Judicial Review.** Judicial review of the City Manager's decision shall be made pursuant to ORS 279C.450, and not otherwise.

**PCR 8.17: 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 bid prices. If the invitation to bid calls for a lump sum 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 pursuant to ORS 279A.120.

(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 the specifications set forth in the solicitation document.

(2) The City shall evaluate product acceptability only in accordance with the criteria set forth 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, provided that such bidder is not listed by the Construction Contractors Board as not qualified to hold a public improvement contract.

(2) Award may be by item, groups of items, or the entire offer, provided such award is consistent with the solicitation document and is in the public interest.

(3) The City Manager shall award all public improvement contracts with a contract price greater than \$25,000.

(f) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a public improvement contract. If the public improvement contract is awarded, the Contracts & Procurement Manager must have information which establishes that the offeror:

(1) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(2) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the public improvement contract;

(3) Is covered by liability insurance and other insurance in the amounts the City requires in the solicitation document;

(4) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;

(5) Has made the disclosures required under ORS 279C.370;

(6) Completed previous public improvement contracts of a similar nature with a satisfactory record of performance. For the purposes of this Rule, a satisfactory record of performance means that to the extent that the costs associated with and

time available to perform a previous contract remained within the offeror's control, the offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The Contracts & Procurement Manager shall document the offeror's record of performance if the Contracts & Procurement Manager finds under this Rule that the offeror is not responsible;

(7) Has a satisfactory record of integrity. The Contracts & Procurement Manager in evaluating the offeror's record of integrity may consider, among other things, whether the offeror has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the offeror's performance of a contract or subcontract. The Contracts & Procurement Manager shall document the offeror's record of integrity if the Contracts & Procurement Manager finds under this Rule that the offeror is not responsible;

(8) Is qualified legally to contract with the City; and

(9) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the offeror fails to promptly supply information requested by the Contracts & Procurement Manager concerning responsibility, the Contracts & Procurement Manager shall base the determination of responsibility upon any available information, or may find the offeror not responsible.

**PCR 8.18: Documentation of Award; Availability of Award Decisions.**

(a) **Basis of Award.** After award, the Contracts & Procurement Manager shall make the 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) A copy of the invitation to bid;

(B) All submitted bids;

(C) The completed bid tabulation sheet; and

(D) A written justification for any rejection of lower bids.

(2) For solicitations made by requests for proposals:

(A) A copy of the request for proposals;

- (B) All submitted proposals;
- (C) The completed evaluation of the proposals;
- (D) A written justification for any rejection of higher scoring proposals or for failing to meet mandatory requirements of the request for proposals; and
- (E) If negotiations were permitted, summaries of the evaluation of the initial proposals and the evaluation of final proposals.

(b) **Bid Tabulations and Award Summaries.** The Contracts & Procurement Manager may also post tabulations of bids or the intent to award by electronic means.

(c) **Availability of Procurement Files.** The Contracts & Procurement Manager shall make completed procurement files available pursuant to the City's public record policy.

(d) **Copies from Procurement Files.** Any person may obtain copies of material from completed procurement files pursuant to the City's public record policy.

**PCR 8.19: 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 (30) days from date set for closing unless otherwise specified in the solicitation document.

(b) **Extension of Acceptance Time.** The Contracts & Procurement Manager may request, either 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 8.20: Negotiation with Bidders Prohibited.**

(a) **Bids.** Except as permitted by ORS 279C.340 and PCR 9.6 when all responsive bids exceed the cost estimate, the City shall not negotiate with any bidder prior to contract award. After award of the public improvement contract, the City and contractor may modify the contract only by change order or written amendment in accordance with PCR 8.24.

(b) **Requests for Proposals.** The City may conduct discussions or negotiations with proposers only in accordance with PCR 10.4.

**PCR 8.21: Rejection of an Offer.**

**(a) Grounds for Rejection.**

(1) Any offer may be rejected upon the Contracts & Procurement Manager's finding that acceptance of the offer may impair the integrity of the procurement process or that rejection of the offer is in the public interest.

(2) An offer shall be rejected by the Contracts & Procurement Manager 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 the terms and conditions, including specifications, in the solicitation document;

(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 document; or

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

(3) An offer shall be rejected by the Contracts & Procurement Manager 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;

(D) Is listed as not qualified by the Construction Contractors Board;

(E) Has not met the requirements of ORS 279A.105, “Subcontracting to emerging small businesses or businesses that service-disabled veterans own,” 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 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 Contracts & Procurement Manager may investigate any prospective offeror submitting an offer, which may include an investigation of the prospective offeror’s officers, directors, owners, affiliates, or any other ownership of the company.

(c) The Contracts & Procurement Manager shall document the reasons for rejection in the procurement file.

**PCR 8.22: Rejection of All Offers.**

(a) **Rejection.** The Contracts & Procurement Manager may reject all offers for good cause upon written finding it is in the public interest to do so. The Contracts & Procurement Manager shall notify all offerors of the rejection of all offers, along with the good cause justification and finding.

(b) The Contracts & Procurement Manager shall document the reasons for rejection in the procurement file and shall retain all such offers as part of the procurement file.

**PCR 8.23: Performance and Payment Bond; Waiver.**

(a) **Public Improvement Contracts.** Unless the required performance bond is 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 full contract price.

(b) **Other Construction Contracts.** The Contracts & Procurement Manager may require performance bond 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 shall be in an amount equal to the full contract price.

(d) **Time for Submission.** The apparent successful offeror must promptly furnish the required performance bond and payment bond upon request by the Contracts & Procurement Manager. If the offeror fails to furnish the performance bond and payment bond as requested, the Contracts & Procurement Manager may reject the offer and award the public improvement contract to the responsible bidder with the next lowest responsive bid, at the Contracts & Procurement Manager's discretion, the offeror shall forfeit its bid security.

**PCR 8.24: Contract Amendments and Change Orders.**

(a) **Change Order Limitations.** The City Manager may establish limitations, including dollar amount limitations on change orders. Dollar amounts are not set by these Rules. The City Manager may also delegate the authority to approve change orders.

(b) Amendments or 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 is made consistent with these Rules and other applicable legal requirements.

## **IX. SOURCE SELECTION METHODS FOR PUBLIC IMPROVEMENTS**

### **PCR 9.1: Contracts for Emergency Work, Minor Alteration, Ordinary Repair, or Maintenance of Public Improvements.**

(a) Contracts for emergency work, minor alteration, ordinary repair, or maintenance of a public improvement shall be procured as “goods or services” pursuant to PCR 2.1-5.7.

(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, “Remedies”; ORS 279C.505-279C.535, “Required Contract Conditions”; ORS 279C.540-279C.545, “Hours of Labor”; ORS 279C.550-279C.570, “Retainage and Payments”; ORS 279C.580, “Subcontractors”; ORS 279C.600-279C.625, “Action on Payment Bonds”; ORS 279C.650-279C.670, “Termination or Suspension of Contract for Public Interest Reasons”; 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 emergency work, 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. The declaration of an emergency shall exempt the contract from the competitive bidding requirements.

(2) A Department Director 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 of an emergency shall be documented in writing and shall describe the circumstances creating the emergency and the anticipated harm from failure to enter into an emergency contract. The declaration shall be forwarded to the Contracts & Procurement Manager to be kept in the procurement file.

(c) **Competition for Contracts.** The City shall encourage such competition for an emergency contract as is 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 Division Director or Department Director may award an emergency contract with a contract price of less than \$100,000. The Department Director or 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 of a contract before the City Manager can make the award, in which case, a Department Director may award the contract. The Department Director shall document the award and reasons why award by the Department Director was necessary, which shall be included in the procurement file. Emergency contracts under this Rule must be awarded within thirty (30) days after declaration of the emergency. The City Manager may grant an extension not to exceed thirty (30) days, if circumstances surrounding the emergency and/or its continuation make it unreasonable to award the contract within thirty (30) days.

(e) **Contract Scope.** 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 an 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 a contract price that does not exceed \$100,000, 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 Contracts & Procurement Manager may authorize oral requests for competitive quotes.

(3) Number of Quotes; Record Required. Quotes shall be received by the Contracts & Procurement Manager at the date, time, and place established as part of the solicitation. The Contracts & Procurement Manager shall keep a written record of the sources of the quotes. At least three (3) 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 (3) quotes are not reasonably available, fewer will suffice, but a written record of the effort to obtain three quotes shall be made part of the procurement file.

(d) **Award.** The Contracts & Procurement Manager may award all intermediate procurements for public improvements with a contract price of up to \$25,000. The City Manager shall award all intermediate procurements with a contract price greater than \$25,000. 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; or 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, ORS 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 9.7 of these Rules, formal competitive bids shall be used for all contracts with an estimated contract price that will exceed \$100,000, 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) A designation for or description of the public improvement project;
- (2) The office where the specifications for the project may be reviewed;
- (3) The date that prequalification applications must be filed under and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- (4) The date and time after which bids will not be received, which must be at least five (5) days after the date of the last publication of the advertisement, and may, in the sole discretion of the City, direct or permit bidders to submit and the City to receive bids by electronic means;
- (5) The name and title of the person designated to receive bids;
- (6) The date on which and the time and place at which the City will publicly open the bids;
- (7) A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to ORS 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, the City will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or ORS 279C.840 or 40 U.S.C. 3141 et seq.;
- (8) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;
- (9) A statement that the City may reject a bid that does not comply with prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility pursuant to ORS 279C.375 (3)(b), and that the City may reject for good cause all bids after finding that doing so is in the public interest;

- (10) Information addressing whether a contractor or subcontractor must be licensed pursuant to ORS 468A.720;
  - (11) Green Energy Technology pursuant to ORS 279C.527; and
  - (12) A statement that the City may not receive or consider a bid for a public improvement contract unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.
- (c) The City may provide solicitation documents by electronic means.
  - (d) A bid made to the City pursuant to ORS 279C.335 must be:
    - (1) In writing;
    - (2) Filed with the person the City designates to receive bids; and
    - (3) Opened publicly by the City immediately after the deadline for submitting bids.

**PCR 9.6: Negotiation When Bids Exceed Cost Estimate.**

- (a) **Definitions.** For the purposes of this Rule, the following mean:
  - (1) “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.
  - (2) “Project” means a public improvement.
- (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 8.15 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 negotiations.

(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 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 City or the public. In determining whether the exemption will result in substantial cost savings, the type, cost, and amount of the contract, and to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following will be considered:

(A) How many people are available to bid;

(B) The construction budget and the projected operating costs for the completed public improvement;

- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (G) Whether granting the exemption may reduce risks to the City or the public that are related to the public improvement;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- (J) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (L) Whether the public improvement will be occupied or unoccupied during construction;
- (M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- (N) Whether the City has, or has retained under contract, and will use City personnel, consultants, and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the City will use to award the public improvement contract and to help negotiate, administer, and enforce the terms of the public improvement contract.

(b) In granting exemptions under this Rule, the Local Contract Review Board shall:

- (1) Require and approve or disapprove written findings that support awarding

a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of PCR 9.5. The findings must show that the exemption of a contract or class of contracts complies with the requirements of PCR 9.7(a).

(2) Require that procurements of construction manager/general contractor services be conducted in accordance with the model rules the Attorney General has adopted pursuant to ORS 279A.065(3).

(3) When appropriate, direct the use of alternate contracting methods that consider 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 fourteen (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 City 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 (5) days after the hearing and approval of the findings.

(d) Public improvement contracts procured pursuant to this Rule shall comply with ORS 279C.400-279C.410, relating to competitive proposals.

**PCR 9.8: 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 9.9: 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. 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 9.10: BOLI Public Works Bond.** Pursuant to ORS 279C.830(2), the specifications for a contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless otherwise exempt. This public works bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

**PCR 9.11: Retainage.**

(a) **Withholding of Retainage.** The City may reserve as retainage from any progress payment on a public improvement contract an amount not to exceed five percent (5%) of the progress payment. If the contractor has performed at least fifty percent (50%) 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 (97.5%) complete, the City may, at its discretion and without application by the contractor, reduce the retained amount to one hundred percent (100%) of the value of the contract work remaining to be done. The City may reinstate retainage at any time. Retainage shall be included in the final payment of the contract price.

(b) **Form of Retainage.** Unless the City finds in writing that accepting a bond or instrument described in subsection (1) or (2) below poses an extraordinary risk that is not typically associated with the bond or instrument, the City, in lieu of withholding moneys from payment, shall accept from the Contractor:

(1) Bonds, securities, or other instruments, of a character approved by the City Attorney, that are deposited with the City or in a bank or trust company for the City to be held for the City's benefit; or

(2) A surety bond in a form acceptable to the City deposited as provided in ORS 279C.560(7).

(c) **Deposit in interest-bearing accounts.** Upon request of the contractor, the City shall deposit cash retainage as accumulated 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.



(d) **Recovery of Costs.** The City may recover from the contractor all costs incurred in the proper handling of cash retainage, bonds, securities, and other instruments by reduction of the final payment. As work on the contract progresses, the City shall, upon demand, inform the contractor of all accrued costs.

(e) **Additional Retainage when Certified Payroll Statements not Filed.** Pursuant to ORS 279C.845(7), if a contractor is required to file certified payroll statements and fails to do so, the City shall retain twenty-five percent (25%) of any amount earned by the contractor on a public works contract until the contractor has filed such statements with the City. The City shall pay the contractor the amount retained under this Rule within fourteen (14) days after the contractor files the certified statements, regardless of whether a subcontractor has filed such certified statements.

**PCR 9.12: 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 its responsibility for defective workmanship or material.

**PCR 9.13: Interest.**

(a) **Prompt Payment Policy.** The City shall pay promptly all payments due and owing to the contractor on public improvement contracts.

(b) **Interest on progress payments.** The City shall pay the contractor interest on the progress payment, not including retainage, due the contractor. Late payment interest shall begin to accrue thirty (30) days after receipt of the invoice or fifteen (15) days after the payment is approved by the City (the "Progress Payment Due Date"), whichever is the earlier date. The interest rate shall equal three (3) times the discount rate on ninety-day (90-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 (30%).

(c) **Interest on final payment.** Final payment of the contract price, including retainage, shall be due and owing no later than thirty (30) 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 (1.5%) per month until paid.

(d) **Settlement or judgment interest.** The City shall pay, upon settlement or judgment in favor of the contractor regarding any dispute as to the compensation due a contractor for work performed under the terms of a public improvement contract, the amount due plus interest at the rate of two (2) times the discount rate, but not to exceed on ninety-day (90-day) commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, on the date of the settlement or judgment and accruing from the later of:

(1) The progress payment due date; or

(2) Thirty (30) days after the contractor submitted a claim for payment to the City in writing or otherwise in accordance with the contract requirements.

**PCR 9.14: Required Contract Clauses.**

(a) All formal solicitations for public improvement contracts shall include all of the contract clauses required by ORS Chapter 279C.

(b) Every public improvement contract must include all of the conditions required by ORS Chapter 279C.

**PCR 9.15: Specifications; Brand Name Products.**

(a) **Generally.** Specifications for public improvement contracts may not expressly or implicitly require any product by brand name or mark, nor 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 as 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 9.16: Records Maintenance; Right to Audit Records.**

(a) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all books, fiscal records, and other records (hereafter collectively referred to as "records") relating to contracts with the City in accordance with generally accepted accounting principles ("GAAP"). In addition, contractors and subcontractors shall maintain all other

records necessary to clearly document their performance and 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 accessible to the City at reasonable times and places, whether or not litigation has been filed as to such claims.

(b) **Inspection and Audit; Cost or Pricing Data.** The City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records of any offeror 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 offeror must provide cost or pricing data under a contract, the offeror shall maintain such records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized by the City 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 (3) 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 by the City in writing.

**PCR 9.17: City Payment for Unpaid Labor or Supplies.**

(a) **Contract still in Force.** If the contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the offeror 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 9.18: Contract Suspension.** 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.

**PCR 9.19: Foreign Contractor; Final Payment.** If the contract price of a public improvement contract 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. The City's shall determine that the above requirements have been complied with before the City issues final payment on the contract.

**NOTE: The following rule, PCR 9.20 applies to URA Only**

**PCR 9.20: Disposition of Development Agreements.**

- (a) **General.** The disposition of real property often involves a partnership where a disposition and development agreement may include 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 proposals 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 of 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 Contracts & Procurement Manager determines necessary or desirable to foster and promote competition.
- (c) **Licensing.** A proposal shall not be considered unless the proposal identifies at least one (1) contractor or subcontractor licensed by the Construction Contractors Board 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 Contracts & Procurement Manager may require a surety bond, an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, or a cashier's 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 Contracts & Procurement Manager, 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 Contracts & Procurement Manager may permit the submission of a cashier's check in an amount equal to one hundred percent (100%) of the construction costs. The obligation for the faithful performance of the disposition and development agreement shall also include

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 and any leasehold proposals and proposed leasehold payments; and
- (3) The amount of any public assistance desired for the proposed development.

(g) **Proposal Evaluation.** Proposals shall be evaluated by an evaluation committee approved by the Contracts & Procurement Manager. 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 successful proposer must negotiate the terms of a memorandum of understanding that will establish the parameters for subsequent negotiations of the disposition and development agreement.
- (2) If any negotiation time line set forth in the solicitation documents 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 any 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 reasonable period of time as determined by the City Manager.

## **X. ALTERNATE CONTRACTING METHODS**

### **PCR 10.1: Definitions.**

- (a) “Construction Manager/General Contractor” or “CM/GC” means a person that provides construction manager/general contractor services to the City under a public improvement contract.
  
- (b) “Construction Manager/General Contractor services” means construction-related services that the City procures by means of an alternative contracting method pursuant to ORS 279C.335 and that:
  - (1) Include a construction manager/general contractor’s:
    - (A) Functioning as a member of a project team that includes the City, the architect or engineer that designs the public improvement under a separate contract with the City, and other contractors and consultants; and
    - (B) Reviewing and analyzing a design for a public improvement in order to:
      - (i) Suggest changes in the design that minimize potential errors, delays, unexpected costs, and other problems during construction;
      - (ii) Recommend means by which the City may achieve the functions of the public improvement or a component of the public improvement safely, reliably, efficiently, and at the lowest overall cost;
      - (iii) Improve the value and quality of the public improvement; and
      - (iv) Reduce the time necessary to complete the public improvement; and
  - (2) May include, depending on the specific terms of the public improvement contract and on whether the City decides to proceed with construction, a CM/GC’s:
    - (A) Devising a schedule for constructing the public improvement;
    - (B) Estimating construction, materials, labor, and other costs for the public improvement;
    - (C) Establishing a fixed price, a guaranteed maximum price, or other

maximum price;

(D) Constructing portions of the public improvement and subcontracting portions to other contractors;

(E) Coordinating and overseeing the construction process; or

(F) Performing other services related to constructing a public improvement in accordance with the terms of the public improvement contract.

(3) “CM/GC services” does not include services related to constructing a public improvement under the terms of:

(A) A public improvement contract that a City awards on the basis of a competitive bidding process that does not require an exemption under ORS 279C.335; and

(B) A public improvement contract that results from a design-build procurement, as defined in rules the Attorney General or the City adopts under ORS 279A.065, and that is exempt from the competitive bidding requirement under ORS 279C.335.

(c) “Guaranteed maximum price” or “GMP” means the total price at which a CM/GC agrees to provide construction manager/general contractor services to a City in accordance with the terms and conditions and scope of work for a specific public improvement contract and within which are:

(1) All costs the City agrees to reimburse and all fees the City agrees to pay for completing the public improvement; and

(2) Any contingent costs, fees, or other charges specifically identified in the public improvement contract.

**PCR 10.2: Construction Manager/General Contractor (CM/GC).**

(a) **Generally.** The CM/GC contracting method “CM/GC method” is a technically complex project delivery system. The City shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC method, as well as knowledgeable staff, consultants, or both who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting, and project management. Unlike the Design-Build method, the CM/GC method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all work related to a specific project. The CM/GC

method has defined contract obligations, including responsibilities as part of the project team along with the City and the design professional, although with the CM/GC method there is a separate contract between the City and the design professional.

(b) **Authorization.** In order to utilize the CM/GC method, the City must be able to reasonably anticipate the following types of benefits:

(1) **Time Savings.** With the CM/GC method, 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. The City may consider operational and financial data 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;

(2) **Cost Savings.** With the CM/GC method, early CM/GC input during the design process is expected to contribute to significant cost savings. The City may consider value engineering, building systems analysis, life cycle costing analysis, and construction planning that lead to cost savings. The City shall specify any special factors influencing this analysis 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

(3) **Technical Complexity.** With the CM/GC method, the public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals, any City project management or technical consultants, and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction personal services. The City may consider the need for CM/GC 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.

**PCR 10.3: Design-Build Contract.**

(a) **Generally.** Design-Build means a form of procurement that results in a public improvement contract in which the construction contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of contract, a single offeror provides the City with all of the personal services and construction work necessary to both design and construct the project.

(b) **Authorization.** The Design-Build form of contracting, as defined in OAR 137-049-0610(3), has technical complexities that are not readily apparent. The City shall use this



contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the City must be able to reasonably anticipate the following types of benefits:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) Shortening project time as construction activity (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
- (5) 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.

**PCR 10.4: Source Selection Method and Process.**

(a) **Request for Proposals.** Source selection for an alternative contracting method shall be by a request for proposals. A request for proposals shall contain the following components.

- (1) Identification of the public improvement project, including the character of the work, applicable plans, specifications and other contract documents.
- (2) Notice of any pre-Proposal conference as follows:
  - (A) The time, date, and location of any pre-proposal conference;
  - (B) Whether attendance at the conference will be mandatory or voluntary; and
  - (C) That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by written addendum.

- (3) The deadline for submitting mandatory prequalification applications and the class or classes of work for which proposers must be prequalified if prequalification is a requirement.
- (4) The name and title of the authorized City representative designated for receipt of proposals and as a point-of-contact (if different).
- (5) Instructions and information concerning the form and submission of proposals, including the address of the office to which proposals must be delivered, any proposal security requirements, and any other required information or special information, such as whether proposals may be submitted by facsimile or electronic means.
- (6) The time, date, and place set for opening.
- (7) The time and date set for closing after which the City will not accept proposals, which time shall be not less than five (5) days after the date of the last publication of the advertisement. Although a minimum of five (5) days is prescribed, the City is encouraged to use at least a fourteen (14) day solicitation period when feasible.
- (8) The office where the specifications for the work may be reviewed.
- (9) If the contract resulting from a solicitation will be a contract for a public work subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), or both the state and federal prevailing rates of wage, a statement that no proposal will be received or considered by the City unless the proposal contains a statement by the proposer that the proposer will comply with ORS 279C.838, 279C.840, or 40 U.S.C. 3141 et seq.
- (10) A statement that the City will not receive or consider an proposal for a public improvement contract unless the proposer is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board.
- (11) Whether a contractor or a subcontractor under the contract must be licensed under ORS 468A.720 regarding asbestos abatement projects.
- (12) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4).
- (13) How the City will notify proposers of addenda and how the City will make addenda available.

(14) When applicable, instructions and forms regarding first-tier subcontractor disclosure requirements.

(15) A statement that the City may reject any proposal not in compliance with all prescribed procedures and requirements, including the requirement to demonstrate the proposer's responsibility under ORS 279C.375(3)(b), and may reject for good cause all proposals after finding that doing so is in the public interest.

(16) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any.

(17) Evaluation criteria, including the relative value applicable to each criterion in the evaluation that the City will use to determine the responsible proposer or proposers with the best responsive proposal or proposals, along with the process the City will use to determine acceptability of the work.

(A) The City shall set forth evaluation criteria in the request for proposals. Examples of evaluation criteria include, but are not limited to, price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment and physical plant, financial capacity, sources of supply, safety record, references, warranty provisions, the ability to respond to the technical complexity or unique character of the project, the ability to analyze and propose solutions or approaches to complex project problems, the ability to coordinate multiple disciplines on the project, and the ability to control matters that could affect the cost or quality of the work;

(B) When the City is willing to negotiate terms and conditions of the contract or allow submission of revised proposals following discussions, the City shall identify the specific terms and conditions in or provisions of the request for proposals that are subject to negotiation or discussion and authorize proposers to propose certain alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. The City shall describe the evaluation, discussion, and negotiation processes, including how the City will establish the competitive range, if any;

(C) The anticipated size of any competitive range must be stated in the request for proposals, but it may be decreased if the number of proposers that submit responsive proposals is less than the specified number, or it may be increased as provided in OAR 137-049-0650(4)(a)(B);

(D) When the City intends to award contracts to more than one proposer,

the City shall identify the manner in which it will determine the number of contracts it will award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular contractor to provide professional services or work.

(18) All contract terms and conditions, including warranties, insurance, and bonding requirements, that the City considers appropriate for the public improvement project.

(19) All applicable contract provisions required by Chapter 279C of the ORS.

(b) **Evaluation of Proposals.**

(1) Evaluation. The City shall evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. 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 its proposal. A proposer shall submit written and signed clarifications, and such clarifications shall become part of the proposal.

(B) Limited Negotiation. If the City did not permit negotiation in its RFP, the City may, nonetheless, negotiate with the highest-ranked proposer, but may then only negotiate the statement of work and the contract price as it is affected by negotiating the statement of work. The process for discussions or negotiations that is otherwise outlined and explained in this Rule does not apply to this limited negotiation.

(2) Discussions; Negotiations. If the City provided for discussions or negotiations in its RFP, the City shall first evaluate proposals and establish the competitive range. The City may then conduct discussions and negotiations as follows:

(A) If the RFP 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. The City's team may include legal, technical, auditing, and negotiating personnel.

(3) Cancellation. Nothing in this Rule shall restrict or prohibit the City from

canceling the solicitation at any time.

(c) **Competitive Range; Protest; Award.**

(1) Determining Competitive Range.

(A) If the City does not cancel the solicitation, after the opening the City will evaluate all proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all proposals, the City will rank the proposers based on the City's scoring and determine the competitive range.

(B) The City may increase the number of proposers in the competitive range if the City's 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 City's evaluation of revised proposals submitted in accordance with the process described in this Rule.

(2) **Protesting Competitive Range.** The City shall provide written notice to all proposers identifying proposers in the competitive range. A proposer that is not within the competitive range may protest the City's evaluation and determination of the competitive range in accordance with OAR 137-049-0450.

(3) **Intent to Award; Discussions or Negotiations.** After the protest period expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:

(A) Provide written notice to all proposers in the competitive range of its intent to award the contract to the highest-ranked proposer.

(i) An unsuccessful proposer may protest the City's intent to award in accordance with OAR 137-049-0450.

(ii) After the protest period has expired, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final contract negotiations with the highest-ranked proposer.

(B) 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 the proposers in the competitive range.

(C) **Discussions; Revised Proposals.** 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:

(i) **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 RFP that the City identified as the subject of discussions. The City may conduct discussions for the following purposes:

- a. Informing proposers of deficiencies in their initial proposals;
- b. Notifying proposers of parts of the proposals for which the City would like additional information; and
- c. 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 RFP.

(ii) **Conducting Discussions.** The City may conduct discussions with each proposer in the competitive range necessary to fulfill the purposes of this Rule, 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 the proposals before the City notifies proposers of the date and time that revised proposals will be due. In conducting discussions, the City:

- a. Shall treat all proposers fairly and shall not favor any proposer over another;
- b. Shall not discuss other proposers' proposals;
- c. 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.

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.

(iii) Revised Proposals. If the City does not cancel the solicitation at the conclusion of the City's discussions with all remaining proposers in the competitive range, the City shall give all remaining proposers written notice of the date and time by which they must submit revised proposals. This written notice constitutes the City's termination of discussions, and proposers must submit revised proposals by the date and time set forth in the notice.

(iv) Upon receipt of the revised proposals, the City shall evaluate the revised proposals based upon the evaluation criteria set forth in the RFP and rank the revised proposals based on the City's scoring.

(v) 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 RFP.

(vi) Intent to Award; Protest. The City shall provide written notice to all proposers of the City's intent to award the contract. An unsuccessful proposer may protest the City's intent to award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final contract negotiations.

(D) Negotiations.

(i) Initiating Negotiations. The City may 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) Scope of 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 RFP. 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 RFP.

(iii) Continuing Negotiations. If the City terminates 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:

a. Determined to award the contract to the proposer with whom it is currently negotiating; or

b. Completed one round of negotiations with all proposers in the competitive range, unless the City provided for more than one round of discussions or negotiations in the RFP, in which case the City may proceed with any authorized further rounds of discussions or negotiations.

(E) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this Rule, the City may terminate discussions or negotiations with the proposer with whom it is currently conducting discussions or negotiations if the City reasonably believes that:

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

(ii) 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.

**PCR 10.5: Alternate Contracting Pricing Mechanisms.**

(a) An RFP may result in a contract with a lump-sum contract price or a fixed contract price, as in the case of competitive bidding. Alternatively, an RFP may result in a cost reimbursement contract with a GMP or some other maximum price specified in the contract.

(b) Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other public contracting objectives,



including, but not limited to total least cost mechanisms such as life cycle costing.

(c) A GMP may be used as the pricing mechanism for CM/GC services contracts 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 services have been completed.

(1) If the collaborative process described above in this subsection is successful, the contractor shall propose a final GMP, which may be accepted by the City and included within the contract.

(2) If the collaborative process described above in this Rule is not successful, and no mutually agreeable resolution on the GMP for the project construction work 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 proposer that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(d) 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.

**PCR 10.6: 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 proposal that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction work.

(b) **Performance Security.** ORS 279C.380(1)(a) provides that for design-build contracts the surety's obligation on performance bonds, or the proposer'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 work, 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.** The City shall conform its Design-Build contracting practices to the following requirements:

- (1) Design Services. The level or type of design services required must be clearly defined within the RFP and the 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 RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the City is benefited from such deliverables.

**PCR 10.7: Additional Requirements for CM/GC Contracts.**

- (a) **Request for Proposals.** In addition to the requirements set forth in 10.4(a), a request for proposals for a CM/GC contract shall contain:
  - (1) A statement of whether the City will use interviews in the procurement process.
  - (2) A description of how the City will use interviews in the procurement process and how the City will evaluate information it obtains from interviews, if interviews are used.
  - (3) A description of any other criteria the City may consider in selecting a CM/GC.

(4) A description of how the City will combine scoring from interviews, evaluating the proposals, and other specified criteria to arrive at a proposer's final score and ranking.

(5) A statement that any savings the CM/GC realizes in performing the public improvement contract will accrue to the City, unless the public improvement contract provides otherwise.

(6) Specific terms and conditions that govern how the fixed price, guaranteed maximum price, or other maximum price set forth in the public improvement contract will be determined and whether the price includes or is based on unit pricing or allows for work that is constructed in phases.

(7) A statement that the City will not pay any amount that exceeds a fixed price, guaranteed maximum price, or other maximum price specified in the public improvement contract unless the amount results from material changes to the scope of work set forth in the public improvement contract and the parties to the contract agree in writing to the material changes.

(8) A statement that the City will conduct the procurement in accordance with model rules the Attorney General adopts pursuant to ORS 279A.065(3).

(9) Specific deadlines and time periods for the procurement that allow prospective contractors a reasonable opportunity to submit proposals including, but not limited to:

(A) The dates on which or the time periods during which the City will conduct interviews, if the City will conduct interviews for the procurement;

(B) The date by which the City plans to indicate an intent to award the public improvement contract; and

(C) The time period during which the City will meet with proposers that the City did not select for the public improvement contract, if a proposer requests a meeting to discuss the procurement.

(b) **Basis for Payment.** The CM/GC process adds specified professional services to traditional design-bid-build general contractor work, requiring full contract performance within a negotiated GMP, fixed contract price, or other maximum contract price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for construction work and professional services rendered, which together shall not exceed the GMP.

(c) **Contract Requirements.** The City shall conform its CM/GC contracting practices to the requirements set forth in OAR 137-049-0690(5).

**PCR 10.8: Waiver of Delay Damages Against Public Policy.** The City shall not place any provision in a public improvement 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. 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 10.9: BOLI Public Works Bond.** Pursuant to ORS 279C.830(2), the specifications for a contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless otherwise exempt. This public works bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

**PCR 10.10: Post-Project Evaluation.**

(a) ORS 279C.355 requires that the City prepare a formal post-project evaluation of a public improvement contract, or a class of public improvement contracts, 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 available for public inspection and must be delivered to the Local Contract Review Board within thirty (30) days of the date the City accepts the public improvement project, or the last public improvement project, if the project falls within a class of public improvement contracts. The evaluation shall include:

- (1) The actual project cost as compared with original project estimates;
- (2) The amount of any guaranteed maximum price;
- (3) The number of project change orders issued by the City;
- (4) A narrative description of successes and failures during design, engineering, and construction of the project; and
- (5) An objective assessment of the use of the alternative contracting method as compared to the findings required by ORS 279C.335.

## **XI. COOPERATIVE PROCUREMENTS**

### **PCR 11.1. 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, services, or personal services when the solicitation and award process for the original contract is an open and impartial competitive process and uses 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, services, or personal services when the solicitation and award process for the original contract is an open and impartial competitive process and uses 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, services, or personal services when the solicitation and award process for the original contract is an open and impartial competitive process and uses 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 the result 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 Contracts and Procurement Manager 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 offerors 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.
- (e) 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 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 11.2: 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 11.3: 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 \$250,000 on goods, 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 Contracts & Procurement Manager will estimate that more than \$250,000 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 \$250,000, 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 \$250,000; or

(C) The Contracts & Procurement Manager 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, services, or personal services under the contract or price agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the contract or price agreement.

(d) When public notice is required, it shall be given as follows:

(1) The notice shall be published no less than seven (7) days before the deadline established by the City 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 electronically or at least once in one (1) 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 City 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 vendor who would otherwise be a prospective bidder or proposer and must be submitted in writing to the City. If the City receives comments on the intent to establish a contract or price agreement through a permissive cooperative procurement, before the City may establish a contract or price agreement through the permissive cooperative procurement, the City shall make a written determination that establishing a contract or price agreement through a permissive cooperative procurement is in the best interest of the City. The City shall provide a copy of the written determination to any vendor that submitted comments.

**PCR 11.4: 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 is 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

(2) If the solicitation document issued by the administering agency was not advertised in accordance with subsection (c)(1) of this Rule, the City gives public 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 City for submitting comments regarding City's intent to enter into a contract or price agreement through an interstate cooperative procurement;

(i) The notice shall be published electronically or at least once in one newspaper of general circulation within Salem, and shall contain the description of the procurement; an estimated amount of the procurement; the name of the administering agency; and the time, place, and date by which comments must be submitted to the City 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 vendor who would otherwise be a prospective bidder or proposer and must be submitted in writing to the City. If the City receives comments on the intent to establish a contract or price agreement through an interstate cooperative procurement, before the City may establish a contract or price agreement through the interstate cooperative procurement, the City shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of the City. The City shall provide a copy of the written determination to any vendor that submitted comments.

**PCR 11.5: Joint Cooperative Procurements for Public Improvements.**

(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 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 more favorable to bidders or proposers who reside in the jurisdiction favored by the preference than those provided in ORS 279A.120(2); and

(C) Used reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(b) **Conditions.** If the City is the administering contracting agency, then:

(1) The Contracts and Procurement Manager may establish conditions under which offerors 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 offerors 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.

## **XII. PROTEST PROCEDURES**

### **PCR 12.1: Protests and Judicial Review of Special Procurements.**

- (a) **Generally.** An affected vendor may protest the request for approval of a special procurement as provided in this Rule.
- (b) **Delivery; Late Protests.** An affected offeror must deliver a written protest to the City Manager or the City Manager's designee within seven (7) days after the first date of publication of the 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 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 offeror; and
  - (5) The relief requested.
- (d) **Additional Information.** The City Manager may allow any vendor to respond to the protest in any manner the City Manager deems appropriate, by giving written notice of the time and manner in which 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 Contracts & Procurement Manager 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.** The approval of a special procurement may be challenged by filing a writ of review as provided in ORS 279B.400. Before seeking review of the approval of a special procurement, a vendor must first exhaust all available administrative remedies.

**PCR 12.2: Protests and Judicial Review of Sole Source Procurements.**

- (a) **Generally.** An affected offeror may protest the determination that goods, services, personal services or professional services or a class of goods, services, personal services or professional services are available from only one (1) source as provided in this Rule.
- (b) **Delivery; Late Protests.** An affected offeror must deliver a written protest to the City Manager or the City Manager's designee within seven (7) days after the first date of publication of the public notice of a proposed sole source 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) 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 offeror; and
  - (4) The relief requested.
- (d) **Additional Information.** The City Manager may allow any vendor to respond to the protest in any manner the City Manager deems appropriate by giving written notice of the time and manner in which 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.** Judicial review of a sole source procurement shall be in accordance with ORS 279B.420. Before seeking judicial review of a sole source procurement, an offeror must first exhaust all available administrative remedies.

**PCR 12.3: Protests and Judicial Review of Personal Services Procurements.**

- (a) **Generally.** An affected offeror may protest the procurement of a personal services contract as provided in this Rule.

(b) **Delivery; Late Protests.** An affected offeror shall deliver a written protest to the City Manager or the City Manager's designee. Protests of the procurement of a personal services contract shall be made prior to the time and date set for closing. Protests of the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the notice of the intent to award, or if no notice of intent to award is given, within forty-eight (48) 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. Protests submitted after the time lines established under this subsection are untimely and shall not be considered.

(c) **Contents of Protest.** The written protest shall include:

(1) A detailed statement of the legal and factual grounds for the protest as follows:

(A) A proposer may protest a solicitation on the grounds that it is not for a personal services contract or 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.

(B) A proposer may protest the award or a notice of the intent to award a personal services contract for the reason that:

(i) All proposals ranked higher than the affected offeror's proposal 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 proposer's proposal as non-responsive; or

(iv) The City's 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) Evidence or supporting documentation that supports the grounds on which the protest is based;

(3) A description of the resulting harm to the affected proposer; and

(4) The relief requested.

(d) **Additional Information.** The City Manager may allow any proposer to respond to the protest in any manner the City Manager deems appropriate by giving 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 solicitation 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 proposer must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

**PCR 12.4: Protests and Judicial Review of Multi-Tiered and Multistep Solicitations.**

(a) **Generally.** An affected bidder or proposer may protest actions taken during a multi-tiered or multistep solicitation as follows:

(1) **Protest of Solicitation.** Protests to the solicitation process, specifications or the contract terms or conditions must be made prior to the time and date set for closing of the initial phase.

(2) **Protest of Award.** An affected offeror who participated in the final phase may protest the notice of the intent to award a contract.

(3) **Protest of Addenda.**

(A) A prospective bidder or proposer 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 addendum issued after the close of the initial phase may protest an addenda issued in subsequent phases.

(B) **Delivery.** Unless otherwise specified in the solicitation document or an addendum, a prospective offeror must deliver a written protest to the City Manager not less than ten (10) days prior to date set for closing of the phase in which the addendum being protested is issued.

(4) **Exclusion Protest.**

(A) A bidder or proposer may protest exclusion from subsequent phases of a multi-tier or multistep procurement only if:

(i) The bidder or proposer is responsible, as defined by these Rules;

(ii) The bidder or proposer submitted a responsive bid or proposal; and

(iii) But for the City's mistake in evaluating the bids or proposals received, the affected bidder or proposer would have been eligible to participate in the next tier or step of the procurement.

(B) **Delivery.** Unless otherwise specified in the solicitation document, an affected bidder or proposer must deliver a written protest of exclusion to the City Manager within seven (7) days after issuance of the notice of the competitive range or notice of exclusion from subsequent phases of a multi-tier or multistep procurement. 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 shall 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 offeror; and

(4) The relief requested.

(c) **Additional Information.** The City Manager or the City Manager's designee shall mail a copy of the protest, or provide a copy of the protest by facsimile, to all bidders or proposers included in the tier or step of the procurement from which the protestor has been excluded. These bidders or proposers shall be given a reasonable opportunity to provide written material relevant to the determination of the protest within the time and in the manner specified by the City Manager.

(d) **Late Protests.** The City Manager shall not consider a protest submitted after the time period established for submitting protests under these Rules, 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 bidder or proposer must exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

**PCR 12.5: Protests and Judicial Review of Solicitation Documents and the Procurement Process.**

(a) **Generally.** A prospective bidder or proposer may protest the procurement process or the solicitation document for a contract solicited under ORS 279B.055, 279B.060, or 279B.085 as set forth in ORS 279B.405.

(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 date set for 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 condition upon which the prospective offeror based its protest.

(d) **Additional Information.** The City Manager may allow any bidder or proposer to respond to the protest in any manner the City Manager deems appropriate by giving 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 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 City Manager's sole discretion either cause to be issued an addendum reflecting the disposition or cancel 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) **Extension of Closing.** If the City Manager receives a protest from a prospective offeror in accordance with this Rule, the City may extend the date set for 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 an 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 12.6: Protests and Judicial Review of Addenda to Contracts for Goods, 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 (48) hours of the close of the City's next business day following 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. The City does not allow protests of addenda issued after the initial date set for 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 addendum 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 bidder or proposer to respond to the protest in any manner the City Manager deems appropriate by giving 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 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 City Manager's sole discretion either cause to be issued an addendum reflecting the 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 bidder or proposer in accordance with this Rule, the City may extend the date set for 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 decision regarding an addendum. Judicial review shall be in accordance with ORS 279B.405.

**PCR 12.7: Protests and Judicial Review of Public Improvement Procurements.**

(a) **Generally.** An offeror may protest the specifications or the contract terms and conditions in a solicitation document for a public improvement only if the offeror made a request for a change as provided for in these Rules. 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 ten (10) business days prior to the date set for closing. Unless otherwise specified in the addenda, an offeror must deliver a written protest of an addendum to the City Manager by the close of the next business day following issuance of the addendum, or not less than five (5) business days prior to the date set for closing, whichever date is later. 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.

(b) **Content of Protest.** The written protest shall include:

- (1) A detailed statement of the legal and factual grounds for the protest;
- (2) A description of the resulting prejudice to the offeror; and
- (3) A statement of the desired changes to the specifications or the contract terms and conditions.

(c) **Additional Information.** The City Manager may allow any offeror to respond to the protest in any manner the City Manager deems appropriate, by giving 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 shall issue a written disposition of the protest not less than three (3) business days before bids or offers are due, unless a written determination is made by the City that circumstances exist to justify a different time limit. If the City Manager upholds the protest, in whole or in part, the City Manager may, in the City Manager's sole discretion, either cause to be issued an addendum reflecting the City Manager's determination or cancel the solicitation.

(e) **Extension of Closing.** If the City Manager receives a protest from a prospective offeror in accordance with this Rule, the City may extend the date set for closing if the City Manager determines that an extension is necessary to consider and respond to the protest.

(f) **Late Protests.** The City shall not consider a late protest or a protest of 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 decision. Judicial review shall be in accordance with ORS 279B.405.

**PCR 12.8: Protests of Awards of Goods or Services Contracts.**

(a) **Generally.** An offeror may protest the 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; or

(B) The City has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation documents; or

(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 ORS Chapter 279B.

(b) **Delivery.** Unless otherwise specified in the solicitation document, an offeror must deliver a written protest to the City Manager within seven (7) days after issuance of the notice of intent to award the contract or, if no notice of intent to award is issued, within seventy-two (72) 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 as set forth in 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 consider a protest if it is timely filed and meets all other conditions set forth in this Rule. 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 City Manager's sole discretion, either award the contract to the successful protestor or cancel the 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 12.9: Appeal of Prequalification and Debarment Decisions.**

(a) A prospective offeror that wishes to appeal a prequalification or debarment decision shall, within three (3) business days after receipt of the City's notice regarding the City's decision, notify the City that the prospective offeror is appealing the decision.

(b) The notice of appeal must be given to the City Manager, and this notice to the City Manager shall be considered notice to the City as required under ORS 279B.425. Upon receipt of the notice of appeal, the City Manager shall cause the prospective offeror to be notified of the time and place of the hearing to consider the appeal. The hearing shall be conducted and the appeal shall be decided within thirty (30) days after receiving the notice of appeal from the prospective offeror. The decision shall be set forth in writing and contain the reasons for the decision.

(c) The City Manager is delegated the authority to conduct the hearing and decide the appeal.

(d) Judicial review of the City's prequalification and debarment decisions shall be as set forth in ORS 279B.425.

**PCR 12.10: Protests and Judicial Review of Solicitation Documents for Professional Services.** Consultants may submit a written protest of anything contained in a request for proposals not later than ten (10) days prior to the date proposals are due, unless a different deadline is specifically set forth in the Request for Proposals. Each protest must include the specific reason(s) for the protest of the provision, specification, or contract term. The City Manager shall consider

the protest if it is timely filed. The City Manager may, but is not required to, consider a protest submitted after the deadline if the City Manager determines, in the City Manager's sole discretion, that it would be in the public interest to consider the protest. If the City Manager upholds the protest in whole or in part, the City Manager may, in the City Manager's sole discretion, either issue an addendum reflecting any change(s) made to the request for proposals or cancel the procurement.

**PCR 12.11: Protests of Award of Professional Services Contracts.**

(a) **Generally.** 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 be accompanied by 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 specifically set forth in the request for proposals, the written protest must be submitted no later than seven (7) days after the date of the notice of intent to award. A protest submitted after the deadline established under this section is untimely and shall not be considered.

(b) **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, photogrammetric mapping, transportation planning, land surveying services, or related services described in the request for proposals.

(c) **Additional Information.** The City Manager may allow any offeror to respond to the protest in any manner the City Manager deems appropriate by giving written notice of the time and manner in which any response must be submitted.

(d) **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, either award the contract to the successful protestor or cancel the 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.** 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 12.12: Protests of Public Improvement Contract Award.**

(a) **Generally.** An adversely affected or aggrieved offeror may submit a written protest of the City's intent to award a public improvement contract to the City Manager. Unless a different deadline is specifically set forth in the solicitation document, the written protest must be submitted no later than seven (7) days after the date of the notice of intent

to award. The written protest must specify the grounds upon which the protest is based and must be accompanied by 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 deadline established under this section is untimely and shall not be considered.

(b) 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 and as such the protesting offeror must claim that all lower bidders or higher-scored proposers are ineligible for award:

(1) Because their offers were non-responsive; or

(2) 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.

(c) **City Response.** The City Manager shall cause a copy of any protest filed under this Rule to be mailed, sent by facsimile, or electronically 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 City Manager's sole discretion, direct award of the public improvement contract to the successful protestor or cancel 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.

(d) **Judicial Review.** Judicial review of the City Manager's decision is available if provided by statute. An adversely affected or aggrieved offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the City's public improvement contract award decision.

### **PCR 12.13: Protest of Competitive Range for Public Improvements Procured by Alternative Contracting Methods.**

(a) **Generally.** 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 (7) days after issuance of the notice of the competitive range, unless a different protest period is specifically set forth in the solicitation document. 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.

(b) **Definition of Adversely Affected.** 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 and as such the protesting proposer must claim eligibility for inclusion in the competitive range as all higher-scoring proposers are ineligible for inclusion in the competitive range because:

(1) Their proposals were not responsive; or

(2) The City committed a substantial violation of a provision in the request for proposals or an applicable 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.

(c) 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 request for proposals. 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 Response.** The City Manager shall cause a copy of any protest filed under this Rule to be mailed, sent by facsimile, or sent electronically to those proposers who may be affected by the City Manager's determination of the protest. Those proposers 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 City Manager's sole discretion, permit the proposer to be included in the competitive range or cancel 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.

(e) **Judicial Review.** Judicial review of the City Manager's decision is available if provided by statute.

**PCR 12.14: Protests of Cooperative Procurements.**

(a) A protest by an offeror regarding a cooperative procurement process, the contents of a solicitation document, or the award or proposed award of an original contract shall be submitted to the City only if the City is the administering agency. Protests shall be made in accordance with, and are subject to, ORS 279B.400 to 279B.425. If the City is not the administering agency, then an offeror shall submit such protests with the administering agency in accordance with the processes and procedures established by the administering agency.

(b) A protest regarding the use of a cooperative procurement by the City after the execution of an original contract may be submitted only to the City. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425 and is limited in scope to the City's authority to enter into a cooperative procurement contract.

(c) The decision by the City to use a cooperative procurement is reviewable in the Circuit Court for Marion County.



### **XIII. SALE, TRANSFER, AND DISPOSAL OF PUBLIC PROPERTY**

**PCR 13.1: Surplus Personal Property.** Personal property owned by the City and estimated by a Department Director to be worth less than \$2,500 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 \$2,500 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 \$2,500 or more will be determined by the Contracts and Procurement Manager as provided in this Rule.

**PCR 13.2: Auction Sales.** Surplus personal property may be sold at auction if the City determines that an auction will likely result in the best net return for the City.

**PCR 13.3: Competitive Sales.**

(a) When the current market value per item is estimated to be more than \$50,000, the City may dispose of such surplus personal property using competitive sealed bidding after advertising in a newspaper of general circulation in the City or by electronic means. 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:

(1) An appraisal of the market value of the property is obtained and documented, and the negotiated sale price exceeds the market value; or

(2) The sale amount exceeds the highest bid received through the bidding or auction process.

**PCR 13.4: Negotiated Sales.** The City may sell surplus personal property by a negotiated sale if the value of the property is estimated to be less than \$50,000 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 13.5: Transfers.**

(a) The City may transfer surplus personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration and without competitive bids as follows:

(1) To another public agency;

- (2) To individuals pursuant to any community program approved by the City Manager; or
- (3) To a recognized non-profit agency, 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 \$2,500 or more, the donation or sale shall:
    - (i) Be approved by the City Manager or designee;
    - (ii) Be documented by the City to be clearly in the public interest; and
    - (iii) The City shall maintain a record of all transfers, donations, or sales authorized by this subsection.

**PCR 13.6: Lost, Abandoned, or Unclaimed Property.** Lost, abandoned, or unclaimed property that comes into the possession of the City shall be handled in accordance with applicable state statutes and City policies.