

ADMINISTRATIVE ORDER NO. 44-08-06-F
of the
City Manager
City of Eugene, Oregon

AMENDMENT OF PUBLIC CONTRACT ADMINISTRATIVE RULE R-1415 AND REPEAL OF ADMINISTRATIVE ORDER NO. 44-05-10-F.

The City Manager of the City of Eugene finds that:

A. Section 2.019 of the Eugene Code, 1971 ("EC"), authorizes the City Manager to adopt rules for implementation of any provisions of that Code. EC Sections 2.1400 through 2.1450 establishes public contract regulations consistent with ORS Chapters 279A, 279B and 279C. EC Section 2.1415 specifically authorized the City Manager to adopt rules for implementation of those provisions.

B. Pursuant to that authority, and in accordance with EC 2.019(5), on September 1, 2005, the City Manager issued Administrative Order No. 44-05-10-F, adopting the previous Public Contract Temporary Administrative Rule R-1415 as a permanent rule, which ensured that the City's public contract activities were administered in a manner consistent with state law and the newly adopted provisions of the Eugene Code, 1971.

C. On September 15, 2008, I issued Administrative Order No. 44-08-06 proposing to amend Public Contract Administrative Rule R-1415 as set forth in that Order. The amendments are necessary due to state public contracting amendments enacted by the State Legislature, and to ensure consistency with state law, City Code provisions and City practices.

D. Notice of the proposed amendment of Public Contract Administrative Rule R-1415 was published in the Register Guard, a newspaper of general circulation within the City on September 22, 23, 24, 25, and 26, 2008. The Notice was also made available to persons who had requested such notice, and provided that written comments would be received for a period of 15 days from the first date of publication. No comments were received within the time or in the manner provided in the Notice.

Now, therefore, based on the above findings and the findings in Administrative Order No. 44-08-06 which are hereby adopted, and pursuant to the authority of Sections 2.019 and 2.1415 of the Eugene Code, 1971, I order that:

1. Public Contract Administrative Rule R-1415 is amended and adopted as set forth in Exhibit A attached to this Order;

2. The unamended Rule provisions established by Administrative Order No. 44-05-10 remain in full force and effect and are incorporated into the amended Rule attached as Exhibit A to this Order.

3. Administrative Order No 44-05-10-F is repealed as of the effective date of this Order.

Dated and effective this 24 day of October, 2008.



Jon R. Ruiz
City Manager

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PUBLIC CONTRACT ADMINISTRATIVE RULE R-1415

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CITY OF EUGENE
PUBLIC CONTRACTING REGULATIONS

ARTICLE 1

INTRODUCTION AND EXEMPTIONS FROM REGULATIONS

- 1.1 TITLE.** These regulations incorporate the provisions of Eugene Code 2.1400 to 2.1450 and the Oregon Public Contracting Code and comprise the Eugene Public Contracting Regulations.
- 1.2 POLICY.** It is the policy of the city to utilize Public Contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
- (a) Promoting impartial and open competition;
 - (b) Using Solicitation materials that are complete and contain a clear statement of contract Specifications and requirements; and
 - (c) Taking full advantage of evolving Procurement methods as they emerge within various industries.
- 1.3 EXEMPT CONTRACTS.** In accordance with ORS 279A.025, these regulations apply to all Public Contracts except for the following:
- 1.3 .1 GOVERNMENT CONTRACTS.** Contracts between the city and:
- (a) Another contracting agency;
 - (b) The Oregon Health and Science University;
 - (c) The Oregon State Bar;
 - (d) A governmental body of another state;
 - (e) The federal government;
 - (f) An American Indian tribe or an agency of an American Indian tribe;
 - (g) A nation, or a government body in a nation, other than the United States; or
 - (h) An intergovernmental entity formed between or among:
 - A. Governmental bodies of this or another state;
 - B. The federal government;
 - C. An American Indian tribe or an agency of an American Indian tribe;
 - D. A nation other than the United States; or
 - E. A governmental body in a nation other than the United States.
 - (i) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.

- 1.3 .2 GRANTS, BUT NOT THE EXPENDITURE OF GRANT FUNDS.** A grant contract is an agreement under which the city is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions. *The making or receiving of a grant is not a Public Contract subject to the Oregon Public Contracting Code; however, the expenditure of any grant received by the City is subject to these Regulations and the expenditure of Grants made by the City to construct a Public Improvement or Public Works project is subject to these Public Contracting Regulations.*
- 1.3 .3 LEGAL WITNESSES AND CONSULTANTS.** Contracts for professional or expert witnesses or consultants to provide Services or testimony relating to existing or potential litigation or legal matters in which the city is or may become interested;
- 1.3 .4 REAL PROPERTY.** Acquisitions or disposals of real property or interests in real property. Acquisitions or disposals of real property or interests in real property are subject to applicable provisions of the Eugene Code, including 2.861 to 2.874;
- 1.3 .5 TEXTBOOKS.** Contracts for the Procurement or distribution of textbooks;
- 1.3 .6 OREGON CORRECTIONS ENTERPRISES.** Procurements from an Oregon corrections enterprises program; and
- 1.3 .7 FINANCE.** Contracts, agreements or other documents entered into, issued or established in connection with:
- (a) The incurring of debt by the city, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (b) The making of program loans and similar extensions or advances of funds, aid or assistance by the city to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of Public Works or Public Improvements;
 - (c) The investment of funds by the city as authorized by law, or
 - (d) Other predominantly financial transactions of the city that, by their character, cannot practically be established under the competitive contractor selection procedures, as determined by the Purchasing Agent.
- 1.3 .8 EMPLOYEE BENEFITS.** Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.
- 1.3 .9 EXEMPT UNDER OTHER LAWS.** Any other Public Contract specifically exempted from the Oregon Public Contracting Code by a provision of law.

1.4 FEDERAL LAW PREVAILS IN CASE OF CONFLICT. Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in Public Contracts not authorized by the Oregon Public Contracting Code or these regulations.

1.5 ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES. The model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of the city unless specifically referenced and adopted in the these regulations, but may be used by the Purchasing Agent as supplemental rules if needed to address circumstances not provided for by the city's Public Contracting Regulations.

ARTICLE 2

CONTRACTING AUTHORITY

- 2.1 CITY'S CONTRACTING AUTHORITY.** The city shall exercise all rights, powers and authority of the city and a local contracting agency under the Oregon Public Contracting Code.
- 2.2 REGULATION BY CITY COUNCIL.** The city council has reserved to itself the exercise of all of the duties and authority of a contract review board under the Oregon Public Contracting Code, including, but not limited to, the power and authority to:
- 2.2 .1 SOLICITATION METHODS APPLICABLE TO CONTRACTS.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- 2.2 .2 BRAND NAME SPECIFICATIONS.** Exempt the use of brand name Specifications for Public Improvement contracts;
- 2.2 .3 WAIVER OF PERFORMANCE AND PAYMENT BONDS.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a Public Improvement other than in cases of emergencies;
- 2.2 .4 ELECTRONIC ADVERTISEMENT OF PUBLIC CONTRACTS.** Authorize the use of electronic advertisements for Public Contracts in lieu of publication in a newspaper of general circulation; and
- 2.2 .5 APPEALS OF DEBARMENT AND PREQUALIFICATION DECISIONS.** Hear properly filed appeals of the Purchasing Agent's determination of Debarment, or concerning prequalification.
- 2.3 AUTHORITY AND RESPONSIBILITY OF PURCHASING AGENT.** (EC 2.1415). The Purchasing Agent has the following authority and responsibility:
- 2.3 .1 GENERAL AUTHORITY.** The Purchasing Agent is authorized to award all city contracts for which there is an appropriation. Subject to the provisions of EC 2.1400 to 2.1450, the Purchasing Agent may adopt and amend all rules, regulations, procedures and forms required or permitted to be adopted by the city under the Oregon Public Contracting Code or otherwise convenient for the city's contracting needs. Without limiting the generality of the foregoing, the Purchasing Agent shall adopt Public Contracting rules for the award of Personal Services Contracts and Concession Agreements and shall hear all Solicitation and award protests.
- 2.3 .2 PROCEDURAL STANDARDS.** When adopting rules, the Purchasing Agent shall establish practices and procedures that:

- (a) Do not encourage favoritism or substantially diminish competition;
- (b) Allow the city to take advantage of the cost-saving benefits of alternative contracting methods and practices;
- (c) Give preference to Goods and Services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal;
- (d) Give preference to Goods that are certified to be made from recycled products when such Goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of Goods made from recycled products is not significantly more than the cost of Goods made from non-recycled products; and
- (e) Assure, to the maximum extent economically feasible, the purchase of materials, Goods and supplies that may be recycled or reused when discarded.

2.3 .3 DELEGATION OF PURCHASING AGENT’S AUTHORITY. Any of the responsibilities or authorities of the Purchasing Agent not specifically reserved to the city manager under these regulations may be delegated and sub-delegated by administrative order.

2.3 .4 MANDATORY REVIEW OF RULES. The Purchasing Agent shall review the city’s Public Contracting Regulations whenever the Oregon Attorney General modifies the model rules under ORS 279A.065 to determine whether the city should modify its Regulations to ensure compliance with statutory changes.

2.3 .5 ANNUAL REPORT TO BUREAU OF LABOR AND INDUSTRIES. (ORS 279C.305). Not less than thirty (30) days prior to adoption of the city’s annual budget, the city shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every Public Improvement known to the city, other than a Public Improvement to be used for the distribution of power, that the city plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether the city intends to perform the construction through a private contractor. If the city intends to perform construction work using the city’s own equipment and personnel on a project estimated to cost more than \$125,000, the city shall also show that the city’s decision conforms to the least-cost policy stated in subsection 4.4.1. The list is a public record and may be revised periodically by the city.

ARTICLE 3

CONTRACT REVIEW BOARD PROCEDURES FOR APPROVAL OF SPECIAL PROCUREMENT METHODS AND EXEMPTIONS FROM COMPETITION

The Board, upon its own initiative, or upon request of a Solicitation Agent, may create special selection, evaluation and award procedures for, or may exempt from competition the award of, a specific contract or class of contracts as provided in this Article 3.

3.1 SPECIAL SOLICITATION.

3.1 .1 BASIS FOR APPROVAL OF ALTERNATE SELECTION METHOD. The approval of a special Solicitation method, including, but not limited to, direct appointment, must be based upon a record before the Board that contains the following:

- (a) The nature of the contract or class of contracts for which the special Solicitation or exemption is requested;
- (b) Estimated Contract Price or cost of the project, if relevant;
- (c) Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive Solicitation;
- (d) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the Public Contract or class of Public Contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the Solicitation requirements that are applicable under these regulations;
- (e) A description of the proposed alternative contracting methods to be employed, and
- (f) The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the Board may consider the type, cost, amount of the contract or class of contracts, number of persons available to make Offers, and such other factors as it may deem appropriate.

3.1 .2 RECORD SUPPORTING SPECIAL SOLICITATION METHOD FOR PUBLIC IMPROVEMENT. The record supporting a special solicitation method for a Public Improvement contract shall include the defining characteristics of the contract or class, such as the project description or location, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of Public Improvement contracts from the city's overall construction program. The city may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in Section 3.1.

3.2 HEARING.

- (a) The Board shall approve the special Solicitation or exemption after a public hearing following notice by publication in at least one newspaper of general circulation in the Eugene/Springfield metropolitan area.
- (b) At the public hearing, the city shall Offer an opportunity for any interested party to appear and present comment; and
- (c) The Board will consider the Findings and may approve the exemption after providing an opportunity for public comment.

3.3 SPECIAL REQUIREMENTS FOR PUBLIC IMPROVEMENT CONTRACTS.

- (a) Notification of the public hearing shall be published in a trade newspaper of general statewide circulation at least fourteen (14) days prior to the hearing;
- (b) The notice shall state that the public hearing is for the purpose of taking comments on the city's draft Findings for an exemption from the standard Solicitation method. At the time of the notice, copies of the draft Findings shall be made available to the public.

3.4 COMMENCEMENT OF SOLICITATION PRIOR TO APPROVAL. A Solicitation may be issued prior to the approval of a special exemption under this Article 3, provided that the Closing may not be earlier than three (3) Business Days after the date of the hearing at which the Board approves the exemption. If the Board fails to approve a requested exemption, or requires the use of a Solicitation procedure other than the procedures described in the issued Solicitation Documents, the issued Solicitation may either be modified by Addendum, or cancelled.

3.5 USE OF APPROVED SPECIAL METHOD. When the city council approves a class Special Procurement under Article 3, the city may award a contract to acquire Goods or Services within the class in accordance with the city council's approval without making a subsequent request for approval.

ARTICLE 4

CLASSES OF CONTRACTS AND METHODS OF AWARD

- 4.1 RULES FOR USE OF CLASSIFICATIONS.** The following Purchasing Agent rules apply to the determination of classification and record of method of award.
- 4.1 .1 DIVISION OF CONTRACTS.** As provided in ORS 279B.065, 279B.070, and Section 132, Chapter 794, Oregon Laws, 2003, no Procurement or Contract or Public Improvement may be artificially divided into parts or phases for the purpose of avoiding any competitive Solicitation requirement that would otherwise apply.
- 4.1 .2 METHODS BASED ON CONTRACT PRICE.**
- 4.1 .2 .1 Contracts Other than Public Improvements.** A Contract for the purchase of Goods or Services or construction Services other than Public Improvements or a contract for personal services may not be awarded under a method based on Contract Price or estimated Contract Price if the actual Contract Price exceeds the maximum price allowable for the method. Therefore, if Offers or Quotes exceed the method threshold, the Solicitation Agent must cancel the Solicitation and may re-issue a Solicitation under a method appropriate for the probable Contract Price.
- 4.1 .2 .2 Public Improvement Contracts.** When the appropriate Solicitation Method is based on an estimated Contract Price, the estimated Contract Price shall be calculated to include the full cost of all Goods, Services, materials and labor then anticipated to be acquired plus a reasonable contingency against market price fluctuation. The ability to amend a contract is limited as provided in Article 16. If an informal Solicitation Method is selected, and the Quotes received indicate that the likely Contract Price will exceed the price limit for the informal method, the Solicitation Agent shall have discretion to proceed with the Informal Solicitation, subject to the reporting requirements of subsection 4.4.3, or to reissue the Solicitation under the method prescribed for the likely Contract Price.
- 4.1 .3 RECORD OF SELECTION METHOD.** Except as otherwise provided in these regulations, the Solicitation Agent shall record the method used to award every Public Contract and the basis of the award and, unless the award was made pursuant to an Invitation to Bid or a Request for Proposals, of the reasons why the method of selection was deemed in the best interest of the city.
- 4.2. CLASSES OF CONTRACTS AND METHODS OF AWARD.** Except where indicated by the provisions of this Article 4, the classes of contracts described in Sections 4.3 through 4.13 and the methods for their award have been established by the Board under Eugene Code 2.1430:

4.3 PURCHASES FROM QUALIFIED NONPROFIT AGENCIES FOR INDIVIDUALS WITH DISABILITIES.

4.3 .1 IN GENERAL. Pursuant to Eugene Code 2.1430 and in accordance with ORS 279.835 through 279.850, if Goods or Services needed by the city are available in a timely manner from a Qualified Nonprofit Agency for Individuals with Disabilities, the city shall obtain the Goods or Services from the qualified Nonprofit Agency in accordance with the provisions of ORS 279.835 through 279.850.

4.3 .2 COMPETITION. If Goods or Services are available from more than one such agency, the Solicitation Agent shall award a contract to the agency with Goods and Services that best meet the needs of the city.

4.3 .3 WHEN NOT APPLICABLE. The provisions of this paragraph do not apply to Personal Services Contracts or Concession Agreements.

4.4 PUBLIC IMPROVEMENT CONTRACTS. Unless a Public Improvement contract qualifies for award under another classification, it shall be awarded under the classifications described in this Section 4.4.

4.4 .1 LEAST-COST POLICY. The city shall make every effort to construct Public Improvements at the least cost to the city.

4.4 .2 METHOD OF AWARD FOR ANY PUBLIC IMPROVEMENT. Unless otherwise provided in these regulations or approved for a special exemption, Public Improvement contracts in any amount may be issued only under an Invitation to Bid.

4.4 .3 EVALUATION OF NON-BID PUBLIC IMPROVEMENTS.

4.4 .3 .1 When Report Required. Upon completion of and final payment for any Public Improvement contract, or class of Public Improvement contracts, in excess of \$100,000 for which the Solicitation Agent did not use the competitive bidding process, the Solicitation Agent shall prepare and deliver to the city council an evaluation of the Public Improvement contract or the class of Public Improvement contracts.

4.4 .3 .2 Contents of Report. The evaluation shall include but is not limited to the following matters:

- (a) The actual project cost as compared with original project estimates;
- (b) The amount of any guaranteed maximum price;
- (c) The number of project change orders issued by the city;
- (d) A narrative description of successes and failures during the design, engineering and construction of the project; and

- (e) An objective assessment of the use of the alternative contracting process as compared to the Findings required by ORS 279C.335.

4.4 .3 .3 Public Inspection; Due Date. The evaluations required by this subsection 4.4.3:

- (a) Must be made available for public inspection; and
- (b) Must be completed within thirty (30) days of the date the city accepts:
 - (A) The Public Improvement project; or
 - (B) The last Public Improvement project if the project falls within a class of Public Improvement contracts.

4.4 .4 PUBLIC IMPROVEMENTS UP TO \$100,000. Public Improvement contracts for which the estimated Contract Price does not exceed \$100,000 may be awarded using an Informal Solicitation for Quotes.

4.4 .5 PUBLIC IMPROVEMENTS UP TO \$5,000. Contracts for Public Improvements for up to \$5,000 are not subject to competitive Solicitation requirements and may be awarded in any manner, at the discretion of the Solicitation Agent. The Solicitation Agent does not need to make a record of the method of award or any other Findings concerning any purchase under this paragraph.

4.4 .6 PRIVATELY-CONSTRUCTED SYSTEM IMPROVEMENTS. So long as the city does not contribute funding to privately-constructed system improvements, such projects are not subject to the competitive Solicitation requirements, as provided in this subsection.

4.4 .6 .1 No Public Funding. Privately-constructed system improvements for which no Direct City Funding or Indirect City Funding is provided are exempt from the provisions of these regulations.

4.4 .6 .2 Public Funds Involved. If the city provides Direct Funding or Indirect Funding for privately-constructed system improvements, the entire project shall be considered a Public Improvement and Public Works project. The privately-constructed system improvements will be exempted from the Solicitation requirements of these regulations, however, if all of the following conditions are met with respect to the entire project and not just for the portion of the project financed by the city:

- (a) The city's funding may not exceed twenty-five percent (25%) of the total cost of the project;
- (b) If the project is a Public Work, the general contractor and all subcontractors for the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the entire project;

- (c) The city’s funding may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;
- (d) The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash equivalent security that is acceptable to the Purchasing Agent to protect the city against claims for payment and defective performance, unless the city’s obligation to make a payment is conditioned upon final completion of the improvements and proof of, or security for, payment that is acceptable to the Purchasing Agent; and
- (e) The contract for construction of all of the improvements must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the city for all claims for payment, injury or property damage arising from or related to the construction of the privately-constructed system improvements.

4.4 .7 CONSTRUCTION OF PUBLIC IMPROVEMENTS OR RESURFACING OF ROADS USING CITY EQUIPMENT OR PERSONNEL.

4.4 .7 .1 Required Plans and Reports. Before the city constructs a Public Improvement, or resurfaces a highway, road or street at a depth of two or more inches and at an estimated cost that exceeds \$125,000, using its own equipment or personnel, other than an improvement to be used for the distribution or transmission of electric power:

- (a) If the estimated cost exceeds \$125,000, the department that will perform the work shall prepare adequate plans and Specifications and the estimated unit cost of each classification of work. The estimated cost of the work must include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, “adequate” means sufficient to control the performance of the work and to ensure satisfactory quality of construction by the city personnel.
- (b) The department that performs the work shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs is a public record.

4.4 .7 .2 Required Accounting System. If the city fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by DAS pursuant to Section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555, the city may not construct a Public Improvement with the city’s own equipment or personnel if the cost exceeds \$5,000.

- 4.5 PERSONAL SERVICES CONTRACTS.** The Purchasing Agent has adopted the following rules for the award of contracts for personal services: Unless a Personal Services Contract qualifies for award under another classification, the contract shall be awarded under the classifications described in this Section 4.5.
- 4.5 .1 GENERAL PROVISIONS.** The award of contracts for personal services shall be based on an evaluation of all criteria deemed relevant by the Solicitation Agent, and price need not be the dominant criterion. For any class of Personal Service Contract described in this section, the Solicitation Agent shall make awards upon a determination of the city's needs.
- 4.5 .2 ANY CONTRACT.** Unless the contract qualifies for award under another classification in these regulations, contracts for personal services must be awarded under an RFP. For some industries, it is customary to entitle an RFP as a "Request for Qualifications."
- 4.5 .3 SELECTION OF ARCHITECTURAL, ENGINEERING OR LAND SURVEYING SERVICES FOR CERTAIN CONTRACTS GOVERNED BY ORS 279C.110.** ORS 279C.110 governs the selection of architectural, engineering or land surveying services for certain contracts for which (i) the city receives moneys from the State Highway Fund; or (ii) a state grant or loan will be used to pay for any portion of the design and construction of the project; and (iii) the total value of the project and the total amount of the state grants, loans and moneys exceed certain threshold amounts. Selection of architectural, engineering or land surveying services for such contracts shall be conducted in accordance with the requirements of ORS 279C.110.
- 4.5 .4 SELECTION FROM A QUALIFIED POOL.** Contracts of not more than \$75,000 in any fiscal year may be awarded from a Qualified Pool by any method deemed appropriate by the Solicitation Agent. Contracts for Personal Services not exceeding \$150,000 may also be awarded from a Qualified Pool under an Informal Solicitation for either Quotes or Proposals pursuant and subject to Article 10.
- 4.5 .5 CONTRACTS UNDER \$25,000.** Contracts under which payments will not exceed \$25,000 in any fiscal year may be awarded by any method deemed appropriate by the Solicitation Agent.
- 4.5 .6 CONTRACTS FOR CONTINUATION OF WORK.** Contracts of not more than \$150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract, if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
- 4.5 .7 SOLE SOURCE.** Contracts in any amount that are determined in accordance with the regulations in Article 8 to be available from a sole source.

- 4.6 HYBRID CONTRACTS.** The following classes of contracts include elements of construction of Public Improvements as well as personal services and may be awarded under a Request for Proposals, unless exempt from competitive Solicitation.
- 4.6 .1 DESIGN/BUILD AND CM/GC CONTRACTS.** Contracts for the construction of Public Improvements using a design/build or construction manager/general contractor construction method shall be awarded under a Request for Proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the city manager or the city manager's designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city.
- 4.6 .2 ENERGY SAVINGS PERFORMANCE CONTRACTS.** Unless the contract qualifies for award under another classification, contractors for energy savings performance contracts shall be selected under a Request for Proposals.
- 4.7 CONTRACTS FOR GOODS AND SERVICES.** Unless a contract for the Procurement of Goods and/or Services qualifies for award under another classification, the contract shall be awarded under the classifications described in this Section 4.7.
- 4.7 .1 ANY PROCUREMENT.** The Procurement of Goods or Services, or Goods and Services in any amount, may be made under either an Invitation to Bid or a Request for Proposals.
- 4.7 .2 PROCUREMENTS UP TO \$150,000.** The Procurement of Goods or Services, or Goods and Services for not exceeding \$150,000 may also be made under an Informal Solicitation for either Quotes or Proposals.
- 4.8 CONTRACTS SUBJECT TO AWARD AT SOLICITATION AGENT'S DISCRETION.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the city's needs, including by direct appointment or purchase.
- 4.8 .1 ADVERTISING.** Contracts for the placing of notice or advertisements in any medium.
- 4.8 .2 AMENDMENTS.** Contract amendments shall not be considered to be separate contracts if made in accordance with these regulations for the amendment of contracts.
- 4.8 .3 ANIMALS.** Contracts for the purchase of animals.
- 4.8 .4 CONTRACTS UP TO \$5,000.** Contracts of any type for which the Contract Price does not exceed \$5,000. The Solicitation Agent does not need to make a record of the method of award or any other Findings concerning any purchase or Procurement that

does not exceed \$5,000. A Contract awarded as a small Procurement may be amended only in accordance with these regulations.

- 4.8 .5 COPYRIGHTED AND LIBRARY MATERIALS.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature, music and library lending materials.
- 4.8 .6 EQUIPMENT REPAIR.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
- 4.8 .7 GOODS FOR RESALE.** Contracts for Goods purchased for resale to consumers.
- 4.8 .8 GOVERNMENT-REGULATED ITEMS.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- 4.8 .9 INSURANCE.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- 4.8 .10 NON-OWNED PROPERTY.** Contracts or arrangements for the sale or other Disposal of used abandoned property or other personal property not owned by the city.
- 4.8 .11 RENEWALS.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive Procurement procedures.
- 4.8 .12 SOLE SOURCE CONTRACTS.** Contracts for Goods or Services which are available from a single source may be awarded without competition, in accordance with the sole source procedures in Article 8.
- 4.8 .13 SPONSORSHIP AGREEMENTS.** Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.
- 4.8 .14 STRUCTURES.** Contracts for the Disposal (but not demolition) of structures located on city-owned property, other than structures suitable for residential use.
- 4.8 .15 TEMPORARY EXTENSIONS OR RENEWALS.** Contracts for a single period of one (1) year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for Public Improvements.
- 4.8 .16 TEMPORARY USE OF CITY-OWNED PROPERTY.** The city may negotiate and enter into a license, permit or other contract for the temporary use of city-owned property without using a competitive selection process if:

- (a) The contract results from an unsolicited Proposal to the city based on the unique attributes of the property or the unique needs of the proposer;
- (b) The proposed use of the property is consistent with the city's use of the property and the public interest; and
- (c) The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city's present or planned use of the property or the public interest.

4.8 .17 USED PROPERTY. A Solicitation Agent, for Procurements up to \$20,000, and the Purchasing Agent, for Procurements in excess of \$20,000, may contract for the purchase of used property by negotiation if such property is suitable for the city's needs and can be purchased for a lower cost than substantially similar new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the city. A record shall be made of the Findings that support any purchase over \$10,000.

4.8 .18 UTILITIES. Contracts for the purchase of steam, power, heat, water, telecommunications Services, and other utilities, including in-kind telecommunications Services pursuant to Eugene Code 3.415(6).

4.9 CONTRACTS REQUIRED BY EMERGENCY CIRCUMSTANCES.

4.9 .1 IN GENERAL. The Purchasing Agent may declare that an Emergency exists. The Purchasing Agent shall notify the city council of the declaration of Emergency as soon as reasonably possible. Upon the declaration of an Emergency, the Purchasing Agent may execute a contract.

4.9 .2 REPORTING. The Solicitation Agent shall make a record of (i) the nature of the Emergency; (ii) the method used for selection of the particular contractor, including a solicitation time period that the Purchasing Agent determines to be reasonable under the Emergency circumstances as well as Informal Solicitation and direct appointment methods in the case of extreme necessity; and (iii) the reason why the selection method was deemed in the best interest of the city and the public. A copy of the record shall be placed in the city's file.

4.9 .3 AWARDING OF CONTRACTS. A contract awarded under Emergency conditions must be awarded within sixty (60) days following the declaration of an Emergency unless the city council grants an extension of the Emergency period. When the delay associated with obtaining a payment or performance bond would result in injury or substantial property damage, the Purchasing Agent may waive, wholly or in part, the requirement for a payment or performance bond.

4.10 FEDERAL PURCHASING PROGRAMS. Goods and Services may be purchased without competitive procedures under a local government purchasing program administered by the GSA in accordance with the following rules of the Purchasing Agent.

- 4.10 .1 GSA PROGRAM.** The price of the Goods or Services must be established under Price Agreements between the federally approved vendor and GSA. The GSA must have issued a memorandum or other declaration that authorizes cities to make purchases under the Price Agreement, and the Procurement must be made in accordance with procedures established by GSA for Procurements by local governments.
- 4.10 .2 PURCHASING AUTHORIZATION.** When considering a purchase using the GSA program, contact the purchasing department.
- 4.11 COOPERATIVE PROCUREMENT CONTRACTS.** Cooperative Procurements may be made without competitive Solicitation as provided in Article 9.
- 4.12 SURPLUS PROPERTY.** Surplus Property may be disposed of under the surplus property Disposal procedures in Article 17.
- 4.13 CONCESSION AGREEMENTS.** The Purchasing Agent has adopted the following classifications and rules for the award of Concession Agreements.
- 4.13 .1 GENERAL.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the city concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.
- 4.13 .2 CLASSES OF CONTRACTS ELIGIBLE FOR AWARD WITHOUT COMPETITION.** The following Concession Agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, or using a competitive process.
- 4.13 .2 .1 Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by the city will not exceed \$5,000 in any fiscal year.
- 4.13 .2 .2 Single-Event Concessions.** Concessions to sell or promote food, beverages, merchandise or Services at a single public event shall be awarded based on any method determined by the Solicitation Agent to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
- 4.13 .2 .3 Sole Source.** Contracts in any amount that are determined in accordance with the regulations in Article 8 to be available from a sole source.
- 4.13 .3 COMPETITIVE AWARD.** Concession Agreements solicited by the city for the use of designated public premises for a term greater than a single event shall be awarded as follows:
- 4.13 .3 .1 Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the

Purchasing Agent has discretion to use either an Informal Solicitation or a Request for Proposals process. If the Proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the Solicitation as a Request for Proposals.

4.13 .3 .2 Major Concessions. Concession Agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a Request for Proposals.

4.14 EMERGING SMALL BUSINESS ENTERPRISES CONTRACTS. Competition for a contract may be limited to emerging small business enterprises certified under ORS 200.055 if the contract is estimated to cost \$100,000 or less and is funded by the Emerging Small Business Account established under ORS 200.180.

ARTICLE 5

CONTRACTOR ELIGIBILITY

PREQUALIFICATION, QUALIFIED POOLS, RESPONSIBILITY; CONFLICTS OF INTEREST; DEBARMENT

5.1 PREQUALIFICATION.

- 5.1 .1 USE OF PREQUALIFICATION.** The Solicitation Agent may require prequalification of potential contractors as a prerequisite to submitting a Bid or Proposal for a particular contract or for listing in a Qualified Pool. Prequalification for construction Services or Public Improvements shall be conducted in accordance with ORS 279C.430. For all other types of contracts, prequalification shall be conducted in accordance with ORS 279B.125.
- 5.1 .2 PREQUALIFICATION FORMS.** The Purchasing Agent shall approve standard forms for use in the prequalification of persons to perform construction Services. The form of prequalification for any other Procurement or type of Services may be prepared by the Solicitation Agent.
- 5.1 .3 INFORMATION TO APPLICANTS.** The Solicitation Documents for prequalification shall provide prospective applicants with information on the standards and process for prequalification, including the deadline, if any, for submitting applications and the time by which prequalification determinations will be made, the forms to be used for submitting prequalification applications, and a statement that no application will be considered unless it conforms to the application requirements described in the Solicitation Documents.
- 5.1 .4 RESPONSE TO APPLICATION.** Upon receipt of a prequalification application, the Solicitation Agent shall investigate the applicant as necessary to determine whether the applicant is qualified. In making its determination, the Solicitation Agent shall consider only the Standards of Responsibility applicable to the contract or type of contract for which qualifications are sought.
- 5.1 .5 PREQUALIFICATION DECISION.** The Solicitation Agent shall make a determination on prequalification of each applicant within thirty (30) days of the deadline for submitting applications, or if no deadline applies, within thirty (30) days of receipt of each application, unless a longer period is provided for in the Solicitation Documents. When prequalification is used for a specific contracting opportunity, the date of determination must be at least fifteen (15) days prior to the Closing of the related contract Solicitation. The Solicitation Agent shall issue a written notice of its decision to qualify or deny qualification to each applicant as soon as the decision is made. The notice shall include all of the following information:

- (a) A statement of whether the applicant has been prequalified, and if prequalification has been denied, the Standards of Responsibility that the applicant failed to meet which form the basis for denial. Unless the reasons are specified in the notice, the applicant shall be deemed to have been prequalified in accordance with its application;
- (b) A description of the contract or types of contracts for which the applicant is qualified to compete, the period of time for which the prequalification shall be valid, and any other conditions of the prequalification; and
- (c) A description of the applicant's right to appeal a denial of prequalification to the Board under these regulations.

5.1 .6 APPEAL OF DENIAL OF PREQUALIFICATION. Appeals of prequalification decisions will be conducted under the procedure described in Article 13.

5.1 .7 REVOCATION OF PREQUALIFICATION. If the Solicitation Agent subsequently discovers that a Person who was prequalified is no longer qualified, the Solicitation Agent may revoke the prequalification upon reasonable notice to the applicant, except that a revocation is invalid as to any contract for which an advertisement for Bids or Proposals has already been issued.

5.1 .8 PREQUALIFICATION AND STANDARDS OF RESPONSIBILITY.

5.1 .8 .1 Non-Waiver. The fact that a Person is prequalified to submit a response to a contract Solicitation is not a waiver of the Standards of Responsibility and the Solicitation Agent shall not award a contract to a Person who does not meet the Standards of Responsibility for a contract at the time of contract award.

5.1 .8 .2 Qualified Pools. The Standards of Responsibility for a Qualified Pool shall include, in addition to other items, the applicant's agreement to all terms and conditions of participation in the Pool.

5.1 .8 .3 Effect of ODOT and DAS Prequalification. The fact that a Person has been prequalified by ODOT or by DAS is a rebuttable presumption that the Person is qualified for the type of work described in the ODOT or DAS prequalification, but it does not waive the necessity for the Person to comply with the city's prequalification requirements, including, but not limited to, the requirement for proof of insurance or agreement to the terms of a Qualified Pool contract. A Person may submit its proof of prequalification with its application to establish its basic qualification for the type of work.

5.2 QUALIFIED POOLS.

5.2 .1 PURPOSE OF QUALIFIED POOLS. In lieu of prequalification on a contract-by-contract basis, the city may establish Qualified Pools that can be used on a continuous basis for the selection of contractors when direct appointment or Informal Solicitation is otherwise authorized by these regulations.

- 5.2 .2 CREATION OF QUALIFIED POOL.** To create a Qualified Pool, the Purchasing Agent may invite prospective contractors to submit their qualifications to the city for inclusion as participants in a pool of contractors qualified to provide certain types of Goods, Services, or projects, including personal services and Public Improvements.
- 5.2 .3 ADVERTISEMENT.** The invitation to participate in a Qualified Pool shall be advertised, at the discretion of the Solicitation Agent, by publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area, by electronic publication as permitted in these regulations or by any other method that the Purchasing Agent deems desirable to develop a sufficient pool of qualified vendors. The advertisement shall be made at the time of initial formation and whenever the Qualified Pool contract is subject to re-opening or renewal. If the pool is open to entry at any time, and is continuously advertised on the city's website, no additional advertisement shall be required.
- 5.2 .4 QUALIFICATION FOR PARTICIPATION.** A Qualified Pool shall be open for entry not less than once every three (3) years. Standards for participation in a Qualified Pool may include the applicant's financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the city. The city may also require, as a condition to participation, that the applicant furnish additional materials such as proof of licensure, insurance, insurance endorsements to protect the interests of the city, material concerning performance and fidelity bonds, and that the applicant agree to the terms and conditions of participation in the Qualified Pool. The qualifications for participation in each Qualified Pool shall be set forth in writing, but may be changed at any time, provided that all participants are notified of the change.
- 5.2 .5 CONTENTS OF SOLICITATION.** Requests for participation in a Qualified Pool shall describe the scope of Goods or Services or personal services for which the pool will be maintained, and the minimum qualifications for participation in the pool.
- 5.2 .6 USE OF QUALIFIED POOLS.** A Solicitation Agent may use a Qualified Pool to make direct appointments as authorized in these regulations or to obtain Quotes or Proposals for an Informal Solicitation, but shall not be limited to selection from a Qualified Pool. Participation in a Qualified Pool shall not entitle any participant to the award of a city contract.
- 5.2 .7 AMENDMENT AND TERMINATION.** The Solicitation Agent may discontinue a Qualified Pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the Qualified Pool.

5.2 .8 PROTEST OF FAILURE TO QUALIFY. The Solicitation Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal the Solicitation Agent's decision to the Contract Review Board in the manner described in Article 13.

5.3 RESPONSIBILITY.

5.3 .1 RESPONSIBLE OFFEROR; DETERMINATION BY SOLICITATION AGENT. A Responsible Offeror for a Public Contract is one who meets the Standards of Responsibility for the contract. Prior to awarding a city contract, the Solicitation Agent should determine that the apparent lowest or best Offeror meets the Standards of Responsibility.

5.3 .2 STANDARDS OF RESPONSIBILITY DEFINED. An Offeror meets the Standards of Responsibility if the Offeror has:

- (a) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;
- (b) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an Offeror if the Solicitation Agent finds the Offeror to be non-responsible under this paragraph;
- (c) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an Offeror if the Solicitation Agent finds the Offeror to be non-responsible under this paragraph;
- (d) Qualified legally to contract with the city;
- (e) Supplied all necessary information in connection with the inquiry concerning responsibility;
- (f) Not been Debarred by the city; and
- (g) Has complied with requirements under the Solicitation, if any, to make good faith efforts as prescribed in ORS 200.045(3) concerning small business enterprises.

5.3 .3 INVESTIGATION. The Solicitation Agent may investigate any Offeror or applicant for prequalification to determine whether the Offeror or applicant for prequalification meets the Standards of Responsibility, or to discover whether previously Debarred Persons or their principal owners, through a change of ownership or another adjustment in form or appearance, are seeking an award of a contract that would avoid application of the Standards of Responsibility or of a Debarment determination.

5.3 .4 RESPONSE TO INVESTIGATION. If a Person fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the Offeror not responsible.

5.3 .5 CONFIDENTIAL INFORMATION. The Solicitation Agent may refuse to disclose to the public information submitted by a Person which would qualify as confidential information exempt from disclosure under ORS 192.401 to 192.505 if such information is voluntarily submitted in response to the Solicitation Agent's investigation of the Person's capability to meet the applicable Standards of Responsibility and the Person submitting the information has clearly marked or otherwise identified in writing the information that is confidential.

5.4 CONFLICT OF INTEREST. Pursuant to Section 14 of the Eugene Charter of 2002, no elected city official may be financially interested in any contract the expenses of which are to be paid by the City. No contract shall be awarded to an elected city official which is in violation of the State ethics laws or city charter or code conflict of interest provisions.

5.5 DEBARMENT AND DISQUALIFICATION.

5.5 .1 DEBARMENT FROM PROCUREMENT OPPORTUNITIES. The city may debar a Person from consideration for award of the city's contracts for up to three (3) years for the reasons listed in subsection 5.5.2 after providing the Person with notice and a reasonable opportunity to be heard.

5.5 .2 GROUNDS FOR DEBARMENT. A Person may be debarred from consideration for award of the city's contracts for any of the following reasons.

- (a) The Person 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 a public or private contract or subcontract.
- (b) The Person 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 Person's responsibility as a contractor.
- (c) The Person has been convicted under state or federal antitrust statutes.
- (d) The Person has committed a violation of a 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 a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, 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.
- (e) The Person does not carry workers' compensation or unemployment insurance as required by statute.

5.5 .3 DECISION AND NOTICE. The city shall issue a written decision to debar a Person. The decision must:

- (a) State the reasons for the action taken; and

(b) Inform the debarred Person of the appeal rights under Article 13.

A copy of the decision must be mailed or otherwise furnished immediately to the debarred Person.

5.5 .4 NOTICE OF APPEAL. A Person that wishes to appeal Debarment shall, within three (3) Business Days after receipt of notice of Debarment, notify the city that the Person appeals the Debarment as provided in Article 13.

5.5 .5 PETITION TO CONSTRUCTION CONTRACTORS BOARD. In lieu of Debarment by the city, the city may petition the Construction Contractors Board to disqualify a Person from consideration for award of the city's Public Improvement contracts for the reasons listed in subsection 5.5.2. The Construction Contractors Board shall provide the Person with notice and a reasonable opportunity to be heard.

5.6 COMPLIANCE WITH TAX LAWS. The city may not enter into, renew or extend any contract for Goods, Services or Personal Services to any person who has not certified in writing, under penalty of perjury, that the person is, to the best of the person's knowledge, not in violation of any tax law described in ORS 305.380(4).

ARTICLE 6

GENERAL RULES FOR SOLICITATIONS

6.1 OBJECTIVE SPECIFICATIONS. Specifications for Goods, Services and Public Improvements shall be written to encourage open and fair competition among products, Services and contractors and shall not be Unnecessarily Restrictive. The Specification content must be determined in the sole discretion of the city.

6.1 .1 DEVELOPMENT OF SPECIFICATIONS. It is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, the city may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the city contracts. However, a Solicitation Agent shall take reasonable measures to ensure that no Person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or scopes of work, and no business with which the Person is associated, realizes a material competitive advantage in a procurement that arises from the city's use of the Solicitation Documents, Specifications, plans or scopes of work. The policy against the realization of a material competitive advantage from the character of the Specifications developed in conjunction with Persons outside the city does not proscribe advantages that result incidentally from a city's Specification of the characteristics of a product or work to meet the city's needs.

6.2 PREFERENCES; ESB/DBE; SUSTAINABILITY.

6.2 .1 PREFERENCE FOR OREGON GOODS AND SERVICES; NON-RESIDENT BIDDERS. For the purposes of awarding a Public Contract, the city shall:

- (a) Give preference to Goods or Services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal; and
- (b) Add a percent increase to the Bid of a non-Resident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides, as shown in the list published by DAS.

6.2 .2 PREFERENCE FOR RECYCLED PRODUCTS.

6.2 .2 .1 Recycled Materials. Notwithstanding provisions of law requiring the city to award a contract to the lowest Responsible bidder or best proposer or provider of a quotation, the city shall give preference to the Procurement of Recycled Products if the Recycled Product:

- (a) Is available;
- (b) Meets applicable contract Specifications and standards;
- (c) Can be substituted for a comparable non-recycled product; and
- (d) Does not cost more than five percent (5%) more than the non-recycled product.

6.2 .2 .2 Oil. The city shall purchase Lubricating Oil and Industrial Oil from the seller whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:

- (a) Not available within a reasonable period of time or in quantities necessary to meet the city's needs;
- (b) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
- (c) Available only at a cost greater than 105% of the cost of comparable virgin oil products.

6.2 .3 SUBCONTRACTING TO EMERGING SMALL BUSINESSES. The Solicitation Agent may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a Person that is certified under ORS 200.055 as disadvantaged, a minority, a woman or an emerging small business enterprise.

6.2 .4 AFFIRMATIVE ACTION; DISADVANTAGED BUSINESS ENTERPRISE PROGRAM. It is the policy of the city that Disadvantaged Business Enterprises (DBE) shall be afforded an equal opportunity to participate and compete in the competitive marketplace for city business.

6.2 .4 .1 Statement of Qualification. A Person may submit a statement to the Solicitation Agent that it is a minority or women business enterprise or as a disadvantaged business enterprise as defined in ORS 200.005. The Solicitation Agent, may, but shall not be required to, investigate the facts asserted in any statement.

6.2 .4 .2 Contracting for Affirmative Action. A Solicitation Agent may limit competition to Persons who submit a statement described in 6.2.4.1 that they are either a minority-owned women-owned or disadvantaged business enterprises for:

- (a) A Public Contract for Goods and Services, or
- (b) Any other Public Contract estimated to cost \$50,000 or less.

The Solicitation can be limited to business of a certain category or sub-category of classification.

6.2 .4 .3 DBE Directory. When requested by a vendor, the city shall add a designation in its vendor base to indicate the vendor's status as a state-certified or self-declared minority or women business enterprise, emerging small business enterprise or disadvantaged business enterprise.

6.2 .5 SUSTAINABILITY PRINCIPLES AND GUIDELINES.

6.2 .5 .1 Policy. It is the policy of the city to exercise sustainable purchasing practices, to the maximum extent possible. In accordance with the principles and guidelines included in this Section 6.2.5, the Purchasing Agent will seek Goods and Services that have a reduced impact on human health and the environment.

6.2 .5 .2 Sustainability Principles. The following principles shall serve as general guidance to the Purchasing Agent in the Procurement of Goods and Services:

- (a) Seek Goods that are produced in a closed-loop system of recycling. Seek Goods that are recyclable and/or made with recycled content.
- (b) Seek Goods and Services that are produced locally because they generally have less environmental impact than Goods and Services produced elsewhere as a result of the reduced amount of energy required for transport.
- (c) Minimize reliance on Goods that have negative impacts on local, regional, and global habitats through direct alteration, pollution, over-harvesting or overuse.
- (d) Avoid Goods containing toxic, persistent and bio-accumulative compounds.
- (e) Use all resources, including but not limited to energy, water and materials with increasing efficiency over time.

- (f) Minimize life-cycle costs and impacts, wherever it is reasonably feasible to determine life-cycle information.
- (g) Reduce greenhouse gas emissions in general, and in particular, to meet local, state, and national goals and regulations.
- (h) Select Goods and Services that enhance or, at a minimum, do not negatively compromise, the health of city residents.
- (i) Leverage existing efforts where environmental and sustainability related policies have already been completed. Whenever reasonably possible and practicable, all Procurements by the city should build upon and assist in the implementation of these completed efforts.

6.2 .5 .3 Sustainability Guidelines.

- (a) The city shall procure Goods and Services in accordance with the Sustainability Principles to the maximum extent practicable.
- (b) To the extent possible and practicable, the city shall include in a Solicitation of Services evaluation criteria that are consistent with the Sustainability Principles.
- (c) The city shall develop and thereafter include in all construction and Services contracts a Contractor Sustainability program form.

6.3 PRE-CLOSING CONFERENCES. The Solicitation Agent may hold a pre-Closing conference to answer questions regarding the project, Goods or Services sought, explain Solicitation requirements, conduct site tours or provide other information and assistance to prospective Offerors.

6.3 .1 ANNOUNCEMENT. The time and place of the conference shall be announced to all prospective Offerors in the Solicitation Notice and Solicitation Documents, including by Addendum, when applicable. The pre-closing conference shall be held no sooner than three (3) days after the publication of a Solicitation advertisement, but sufficiently before Closing to allow consideration of the information provided at the conference in preparing Offers, unless the Purchasing Agent determines that a shorter period is necessary.

6.3 .2 ATTENDANCE. The Solicitation Agent may require mandatory attendance at the pre-closing conference as a condition for submitting Offers. Pre-Closing conferences should be mandatory when used to provide information to potential Offerors that cannot be provided effectively using written materials. Such requirement shall be included in the Solicitation advertisement and in the Solicitation Documents. A list of attendees shall be documented in the Solicitation file.

6.3 .3 CONFIRMATION BY ADDENDA. Statements at the pre-Closing conference shall not change any part of the Solicitation unless confirmed to all prospective Offerors by means of a written Addendum to the Solicitation Documents.

6.4. BRAND NAME PRODUCTS; QUALIFIED PRODUCT LISTS.

6.4 .1 LIMITATION ON USE OF BRAND NAMES. Specifications for Contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, unless the Solicitation Agent makes a written record of the reasons why only a brand-name product will meet the need of the City, based on at least one of the following:

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts and the exemption will yield substantial savings to the city;
- (b) There is only one manufacturer or seller of the product of the quality required; or
- (c) Efficient utilization or maintenance of existing equipment, supplies or products requires purchase from one particular manufacturer, or by brand-name. Efficient utilization may include, but is not limited to, requirements for repair and replacement parts, or standardization of products used by a department or division.

6.4 .2 BRAND NAME OR EQUAL. Specifications that include a brand name (or the equivalent of a certain brand) may be used when no other practical method can be effectively used to identify the functions of an acceptable product or to ensure the quality of the product, given the nature, complexity and substance of the product.

- (a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the city because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the city.
- (b) The Solicitation Agent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
- (c) Nothing in this subsection 6.4.2 may be construed as prohibiting the city from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the city.
- (d) Any Solicitation using a “brand-name-or-equal” Specification shall describe the process by which Offerors may obtain approval of equivalent products at least seventy-two (72) hours prior to the Solicitation Closing.

6.4 .3 QUALIFIED PRODUCT LISTS.

6.4 .3 .1 Purpose. The Solicitation Agent may develop and maintain a qualified products list in instances in which the testing or examination of Goods before initiating a Procurement is necessary or desirable in order to best satisfy the requirements of the city. For purposes of this subsection, “Goods” includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

- 6.4 .3 .2 **Notice.** In the initial development of any qualified products list, the city shall give public notice, in the same way that Solicitations for Procurements are issued, of the opportunity for potential contractors, sellers or suppliers to submit Goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential contractors, sellers or suppliers to submit Goods for the testing and examination. Any potential contractor, seller or supplier, even though not solicited, may Offer its Goods for consideration.
- 6.4 .3 .3 **Test Results.** The city’s inclusion of Goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 to 192.505, the city may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier that offered the Goods for testing or examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 to 192.505, the city may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.
- 6.4 .3 .4 **Limitation on Effect of Product Qualification.** The inclusion of Goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective contractor, seller or supplier of Goods on the qualified products list.
- 6.4 .3 .5 **Denial.** If an application for inclusion in a list of qualified products is denied, or an existing prequalification of a product is revoked, the Purchasing Agent shall notify the applicant in writing that advises the applicant that it may file a protest of the denial or revocation in the same manner as for protests of Solicitations in Article 13.

6.5 REGISTRATION OF PERSON WHO OBTAINS SOLICITATION DOCUMENTS. Each Person who obtains a Bid packet, request for Proposal or other Solicitation documents, or who wishes to receive Addenda for a Solicitation shall register with the city. The registration must include the Person’s name, business address, address for delivery of Solicitation Addenda and such other information as the Solicitation Agent determines is necessary to conduct the Solicitation. The registration of Offerors shall be made available to the public for review. A Person who refuses to provide all required information shall not be entitled to receive Addenda or other notices under the Solicitation.

6.6. BID OR PROPOSAL SECURITY.

- 6.6 .1 **WHEN REQUIRED.** Pursuant to EC 2.1440, an Invitation to Bid or Request for Proposals for all contracts for Public Improvements shall require Bid security. Bid security may also be required, at the discretion of the Solicitation Agent, for any other Bid, Quote or Proposal.

6.6 .2 AMOUNT OF BID SECURITY. In the case of Bids or Quotes, the amount of Bid security required may not exceed ten percent (10%) of the base Bid or Quote (not including separately stated Bids for alternates). The Solicitation Agent shall also have discretion to require Proposal security in an amount equal to 10% of the estimated Contract Price for a Solicitation under which price is negotiable. Bid or Proposal security may be in the form of a surety bond, cashier's check, certified check, or irrevocable, direct-pay letter of credit.

6.6 .3 RETENTION OF BID OR PROPOSAL SECURITY. The security for a Bid or Proposal may not be held after the City executes a contract or, if earlier, the date of irrevocability of the Bid or Proposal under subsection 11.5.5 or 11.5.6.

6.6. .4 RETURN OF SECURITY. Upon the execution of the contract and delivery of all required payment and performance bonds and any required proof of insurance by the successful Offeror, each Offeror's Bid security shall be returned. The Offeror who is selected for award of a contract and who, within the schedule set forth in the Solicitation Documents, fails to enter into a contract and deliver the payment and performance bonds and the proof of insurance shall forfeit the Bid or Proposal security that accompanied the successful Offer. Any forfeit security shall be considered as liquidated damages and not a penalty for failure of the Offeror to execute the contract. Failure of an Offeror to negotiate in good faith for a contract following the submission of a Bid or Proposal shall constitute grounds for retention of Bid security, but the mere failure of a bidder or proposer to reach agreement with the city concerning any terms and conditions of the contract that were reserved for negotiation shall not be grounds for the retention of Proposal security. Notwithstanding the foregoing, Bid or Proposal security shall be returned upon expiration of the period for which the Bids or Proposals are irrevocable unless an Offeror agrees in writing to extend its Offer or, in the case of the Offeror selected for award, the execution of a contract is delayed by the Offeror.

6.7 REQUEST FOR CLARIFICATION OR TO PROPOSE SUBSTITUTION OR MODIFICATION. Every Invitation to Bid and Request for Proposals shall describe the process by which a potential Offeror may request in writing that the Solicitation Agent clarify any provision of the Solicitation Documents, or propose a change, modification or substitution, including, without limitation, a modification to contract terms or conditions or a modification of the plans or Specifications for a project. Unless the Solicitation period is shorter than one week, requests for changes or clarification shall be submitted at least five (5) days prior to the date of the Closing and the city shall respond to each request at least seventy-two (72) hours prior to the Closing. If the Solicitation is open for less than seven (7) days, potential Offerors shall be allowed at least one day after the Issue Date to submit requests for changes and the city shall issue its response to each request at least twenty-four (24) hours prior to the Solicitation Closing. A clarification to a potential Offeror, whether orally or in writing, does not change the Solicitation Documents and is not binding on the city unless the city amends the Solicitation Documents by Addenda. Failure to timely request clarification or submit a request for substitution or modification shall be deemed acceptance of all of the terms and conditions of the Solicitation Documents.

6.8 ADDENDA TO SOLICITATION DOCUMENTS.

- 6.8 .1 FORM.** Changes to Solicitation Documents, including documents used to obtain informal Quotes or Proposals, shall be made by written Addenda. Addenda to an Invitation to Bid may only be made as pre-closing Addenda as provided in subsection 6.8.3. In all other cases, Addenda may be issued as pre-closing Addenda or as post-closing Addenda. The acknowledgement by an Offeror of receipt of all Addenda shall be a condition of Responsiveness. Acknowledgement of Addenda issued prior to the Closing of an Invitation to Bid or Request for Proposals, shall be acknowledged on the Bid or Proposal form, or separately by letter, prior to the Solicitation Closing.
- 6.8 .2 DISTRIBUTION.** Addenda shall be sent by mail, fax, e-mail or any method reasonably likely to reach every prospective Offeror on file with the city at the addresses for receipt of Addenda in the registration records described in Section 6.5. Addenda will not be issued to Persons who are not eligible to submit Offers.
- 6.8 .3 TIMELINESS.** Pre-closing Addenda shall be issued at least seventy-two (72) hours prior to the Closing, unless otherwise stated in the Solicitation Document or issued for the purpose of extending the Closing. Post-closing Addenda or Addenda issued during an Informal Solicitation shall provide all potential Offerors with a reasonable period of time and opportunity to respond to the Addenda.

6.9 PRE-CLOSING MODIFICATION OF OFFERS AND WITHDRAWAL OF OFFERS.

- 6.9 .1 MODIFICATIONS.** A Bid or Proposal once submitted may be modified in writing by the Offeror prior to the time and date set for Solicitation Closing. Any modifications shall be prepared on the company's letterhead, signed by an authorized representative of the Offeror, and shall state that the new document supersedes or modifies the prior Offer. It is the Offeror's responsibility to ensure that the modification is received by the city prior to the date and time established for Solicitation Closing. The modification should be delivered in an envelope that is clearly marked with the Offeror's name, the Invitation to Bid or Request for Proposals number, the project name, if any, the date and time of Solicitation Closing, and identified as a "Bid Modification" or "Proposal Modification."
- 6.9 .2 WITHDRAWALS PRIOR TO SOLICITATION CLOSING.**
- (a) Offers may be withdrawn by written notification on company letterhead signed by an authorized representative of the Offeror and received prior to the date and time established for the Solicitation Closing. It is the Offeror's responsibility to ensure that the withdrawal is delivered to the city in an envelope that is clearly marked with the Offeror's name, the Invitation to Bid or Request for Proposals number, the project name, if any, the date and time of Solicitation Closing, and identified as "Bid Withdrawal" or "Proposal Withdrawal."
 - (b) Withdrawn Bids and Proposals shall be returned to the Offeror unopened.

6.10 RESPONSIVENESS AND MISTAKES.

6.10 .1 RESPONSIVENESS DEFINED. A “Responsive Bid” or “Responsive Proposal” means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed Procurement procedures and requirements.

6.10 .2 DISQUALIFICATION FROM CONSIDERATION. The city may not consider for award an Offeror whose Bid or Formal Proposal is not Responsive.

6.10 .3 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.

6.10 .3 .1 Defined. Any Offer received after the time and date set for Closing in the Solicitation Documents is late. Any request for withdrawal or modification of a Bid or Proposal received after the Closing is late.

6.10 .3 .2 Disposition. Late offers, late modifications, or late withdrawals shall not be considered. Late Bids and Proposals will be returned to the Offeror unopened, or if refused, kept in the Solicitation file unopened and marked as “received late.”

6.10 .4 MISTAKES IN BIDS.

6.10 .4 .1 General. Clarification or withdrawal of a Bid because of an inadvertent, nonjudgmental mistake in the Bid requires careful consideration to protect the integrity of the competitive bidding system and to ensure fairness. Except as otherwise provided in this rule, the Bid may not be corrected if the mistake is attributable to an error in judgment. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible, but only to the extent it is not contrary to the interest of the city or does not prejudice other bidders.

6.10 .4 .2 Mistakes Discovered by the Offeror Before Bid Opening. Mistakes discovered before Bid opening may be corrected as provided in 6.9.1.

6.10 .4 .3 Mistakes Discovered After Bid Opening But Before Award.

6.10 .4 .4 Minor Informalities.

6.10 .4 .5 Definition. Minor informalities are matters of form rather than substance or insignificant mistakes that can be waived or corrected without prejudice to other bidders or the city.

6.10 .4 .6 Examples. Minor informalities include, but are not limited to, a bidder’s failure to return the required number of signed Bid documents; or failure to sign in the designated signature block, so long as the Bid documents otherwise evidence an intent to be bound; or failure to acknowledge receipt of an Addendum to the Bid documents if it is clear that the bidder received the Addendum and intended to

be bound by its terms or if the Addendum did not affect price, quantity, quality, or delivery time.

- 6.10 .4 .7 **Not Included.** Minor informalities do not include mistakes that affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.
- 6.10 .4 .8 **Procedure.** If the city discovers a minor informality after opening but before award, the city may, in its discretion, correct or waive the minor informality if it is in its interest to do so and may request a written clarification from a bidder or make other determinations.
- 6.10 .4 .9 **Mistakes Where Intended Bid Is Not Evident.** The Solicitation Agent must reject a Bid in which a mistake is clearly evident on the face of the Bid form, and the intended Bid is not clearly evident or cannot be substantiated from accompanying documents or objectively verified through other means.

6.11 NEGOTIATION WHEN BIDS OR QUOTES EXCEED ESTIMATES. Whenever all Bids, or Quotes received under a price-based Solicitation method, exceed the Solicitation Agent's estimate for the project or Procurement, the Solicitation Agent may negotiate the Contract Price with the Responsible Offeror that has submitted the lowest Responsive Bid or Quote. The Solicitation Agent may negotiate changes to particular items of the Goods, supplies or materials that constitute value engineering or contractor performance terms that reduce price but do not affect function. For purposes of this Section 6.11, value engineering is a systematic and creative analysis of a contract item or task to ensure that essential function of the item is provided at an overall lower cost.

6.12 ELECTIVE NOTICE OF INTENT. In addition to notices of intent that are required to be issued under these regulations, the Solicitation Agent may issue a notice of intent to renew or award any contract for the purpose of allowing affected Persons to file a protest of the intended act. Publication may be made in a newspaper of general circulation in the Eugene/Springfield metropolitan area, or by electronic publication on the website where an advertisement for the contract would be posted. If given, a notice shall Offer persons who would be aggrieved by the action described in the notice with an opportunity to protest the action by submitting a written protest as described for protests of award under Article 13, which shall be the sole method for a Person aggrieved by the award to make a protest.

6.13 DISCRIMINATION IN SUBCONTRACTING PROHIBITED; REMEDIES. (ORS 279A.110).

6.13 .1 **PROHIBITION OF DISCRIMINATION.** An Offeror or contractor may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, a woman or an emerging small business enterprise certified under ORS 200.055.

6.13 .2 BREACH OF CONTRACT. Discrimination against a minority, women or emerging small business enterprise certified under ORS 200.055 under any city contract constitutes a breach of contract that permits the city to:

- (a) Terminate the contract; or
- (b) Exercise any of the remedies for breach of contract that are reserved in the contract.

6.13 .3 DEBARMENT AUTHORIZED. In addition to city's remedies for breach, violation of these regulations concerning discrimination shall be grounds for Debarment.

6.13 .4 LIMITATION ON ACTION. The city may not allege an occurrence of discrimination in subcontracting as a basis for Debarment more than three (3) years after the alleged discriminatory conduct occurred or more than three (3) years after the city, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

6.14 PUBLIC WORKS PROJECTS.

6.14 .1 PUBLIC WORKS ARE NOT ALWAYS PUBLIC IMPROVEMENTS. Public Works projects include, but are not limited to (i) roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by a Public Agency to serve the public interest; (ii) the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of Funds of a Public Agency; or (iii) the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25% or more of the square footage of the completed project will be occupied or used by a Public Agency. Any doubt about whether a project is a Public Works project should be referred to the purchasing department. Public Works do not include (i) the reconstruction or renovation of privately owned property that is leased by a Public Agency; or (ii) the renovation of publicly owned real property that is more than seventy-five (75) years old by a private Nonprofit Organization if certain criteria are met (as provided in Article 18). The regulations relating to Public Works do not apply to Public Works Exemptions.

6.14 .2 APPLICATION OF PREVAILING WAGE LAWS TO PUBLIC WORKS; EXEMPTIONS. The Prevailing Wage provisions of ORS 279C.800 to 279C.870 and these regulations apply to all Public Works projects except for the following:

- (a) Projects for which the contract price does not exceed \$50,000. In determining the price of a project, the city shall include the value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project. The city may not include the

- value of donated materials or work performed on the project by individuals volunteering without pay.
- (b) Projects for which no Funds of a Public Agency are directly or indirectly used. As used and defined herein, “Funds of a Public Agency” do not include:
 - (i) Funds provided in the form of a government grant to a Nonprofit Organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;
 - (ii) Building and development permit fees paid or waived by a Public Agency;
 - (iii) Tax credits or tax abatements;
 - (iv) Land that a Public Agency sells to a private entity at fair market value;
 - (v) The difference between the value of land that a Public Agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, conditions, restriction or other limitation, exclusive of zoning or land use regulations, that the Public Agency imposes on the development or use of the land and the fair market value of the land if the land is not subject to such limitations;
 - (vi) Staff resources of a Public Agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;
 - (vii) Staff resources of the public agency used to design or inspect one or more components of a project;
 - (viii) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a Public Improvement;
 - (ix) Value added to land as a consequence of a Public Agency’s site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the Public Agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or
 - (x) Bonds or loans from the proceeds of bonds issued in accordance with ORS chapter 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a Public Improvement.
 - (c) Projects that are privately owned, that use funds of a private entity, in which less than twenty-five percent (25%) of the square footage of a completed project will be occupied or used by a Public Agency and for which less than \$750,000 of Funds of a Public Agency are used.
 - (d) Projects for residential construction that are privately owned and that predominantly provide affordable housing.

6.14 .3 DIVIDING PROJECTS TO EVADE PREVAILING WAGE LAWS. The city may not divide a Public Works project into more than one contract for the purpose of avoiding

compliance with the prevailing wage laws. If a project is a Public Works project that is comprised of parts, some of which (i) include funds of a Public Agency; (ii) will be occupied or used by a Public Agency; or (iii) will be owned by a Public Agency and others that do not, the commissioner of BOLI shall divide the project, if appropriate, after applying the following considerations:

- (a) The physical separation of the project structures;
- (b) The timing of the work on project phases or structures;
- (c) The continuity of project contractors and subcontractors working on project parts or phases;
- (d) The manner in which the city and the contractors administer and implement the project;
- (e) Whether a single Public Works project includes several types of improvements or structures; and
- (f) Whether the combined improvements or structures have an overall purpose or function.

ARTICLE 7

PUBLIC NOTICES AND ADVERTISEMENTS

- 7.1 WHEN ADVERTISEMENTS REQUIRED.** Invitations to Bid, Requests for Proposals, and Requests for Qualifications shall be advertised as provided in this Article 7.
- 7.2 MANNER OF PUBLICATION.**
- 7.2 .1 GENERAL.** Unless another method of publication is required, any contracting opportunity, or any public notice required under these regulations may be advertised or given either by publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area, or by using an electronic publication protocol described in Article 14.
- 7.2 .2 PUBLIC IMPROVEMENTS OVER \$125,000.** Solicitation for Bids or Proposals for a Public Improvement contract that has an estimated cost of more than \$125,000 must be published in a trade newspaper of general statewide circulation in addition to local publication.
- 7.2 .3 ADDITIONAL ADVERTISING.** The provisions of subsections 7.2.1 and 7.2.2 are the minimum requirements for advertisements and notices. The Solicitation Agent may publish any advertisement or notice in such additional media as she or he deems desirable to encourage competition or participation.
- 7.3 TIME OF PUBLICATION.** The last publication date of a Solicitation requiring advertisement shall be at least five (5) days prior to the Solicitation Closing date and at least three (3) days prior to any pre-closing informational tour or conference. In addition, in accordance with ORS 279C.365(d), if the Solicitation is for Public Improvement, the last date of publication may not be less than five (5) days prior to the date of the Closing.
- 7.4 CONTENT OF SOLICITATION ADVERTISEMENT.** A Solicitation advertisement shall provide the following information to prospective Offerors:
- 7.4 .1 CLOSING.** The date and time of the Closing, after which Bids, Proposals, Statements of Qualifications or other Solicitation responses will not be received. If the Solicitation is for a Public Improvement contract with an estimated Contract Price of more than \$100,000, the Solicitation Closing must be on a Tuesday, Wednesday or Thursday between 2 p.m. and 5 p.m. unless the Solicitation is for the construction of highways, bridges or other transportation facilities.
- 7.4 .2 PREQUALIFICATION REQUIREMENTS.** The date that mandatory prequalification applications, if required, must be filed in accordance with these regulations and the class or classes of work for which Offerors must be prequalified.

- 7.4 .3 **SCOPE OF WORK.** A description of the project, the character of the work to be done, the Services to be provided or the material or thing to be purchased.
- 7.4 .4 **SPECIAL SUBCONTRACTING REQUIREMENTS.** Whether the contractor will be required to comply with any special requirements, concerning the hiring of subcontractors.
- 7.4 .5 **PRE-CLOSING CONFERENCES.** The date, time and place of any optional or mandatory pre-closing information tour or conference.
- 7.4 .6 **INSTRUCTION FOR OBTAINING SOLICITATION DOCUMENTS.** The manner in which copies of the Solicitation Documents may be obtained and the address of the office where plans and Specifications which are not included in the Solicitation Documents may be reviewed or copied.
- 7.4 .7 **SOLICITATION FEES.** The charge, if any, that will be made for copies of the Solicitation Documents.
- 7.4 .8 **CITY CONTACT.** The name and title of the Person designated for receipt of responses.
- 7.4 .9 **OPENING OF OFFERS.** The date, time and place that Bids or Proposals will be publicly opened.
- 7.4 .10 **PUBLIC WORKS STATEMENT.** A statement, if applicable, that the contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act.

ARTICLE 8

SOLE SOURCE CONTRACTS

8.1 DETERMINATION OF SOLE SOURCE. A sole source contract is a contract with a vendor who is the only Responsible source for the Goods, Services or Personal Services required by the city. A determination of sole source must be made by the Purchasing Agent based upon written Findings of the Solicitation Agent. The Solicitation Agent's Findings must demonstrate that the contractor is a sole source and that alternative Goods, Services, or Personal Services would be unsatisfactory for the city's needs based on factors that may include any of the following:

- (a) A record that no qualified vendors responded to a notice given as described in Section 8.2;
- (b) A written statement from a manufacturer established as a sole source that the product is only available to the city from a single point of sale;
- (c) Written evidence that the contract is for a patented product and that the proposed vendor is the exclusive holder of a right to sell the product;
- (d) Records of research that demonstrate that only one suitable source for the Goods or service exists and that alternate Goods or Services do not meet the city's requirements, including, without limitation, that efficient utilization of existing Goods requires the acquisition of compatible Goods or Services; or
- (e) A statement that the Goods or Services are for use in a pilot or experimental project.

8.2 MANNER OF NOTICE. The record that a contractor is a sole source may be established if no qualified alternative sources responded to a public notice of the city's requirements. The notice shall be published at least five (5) Business Days before contract execution and shall:

- (a) Describe the Goods, Services, or Personal Services sought;
- (b) State the estimated amount of the contract;
- (c) Request statements of ability to provide the identified Goods, Services or Personal Services from vendors who are qualified to compete for the contract, and
- (d) State that if no responses are received from qualified vendors within the time period specified in the notice, the Solicitation Agent will proceed with a sole-source award.

8.3 METHOD OF SELECTION. Sole source contracts may be awarded pursuant to direct negotiation with the sole source contractor, without competitive Solicitation.

ARTICLE 9

COOPERATIVE PROCUREMENTS

9.1 DEFINITIONS FOR COOPERATIVE PROCUREMENTS.

- 9.1 .1 **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 or public improvements in a cooperative procurement.
- 9.1 .2 **COOPERATIVE PROCUREMENT** means a Procurement conducted on behalf of more than one governmental body. "Cooperative Procurement" includes but is not limited to multiagency contracts and price agreements. "Cooperative Procurement" does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
- 9.1 .3 **COOPERATIVE PROCUREMENT GROUP** means a group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative Procurements.
- 9.1 .4 **INTERSTATE COOPERATIVE PROCUREMENT** means 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 Public Contracts and in which one or more of the participating governmental bodies are located outside Oregon.
- 9.1 .5 **JOINT COOPERATIVE PROCUREMENT** means a cooperative Procurement in which the governmental bodies or the Cooperative Procurement Group and the bodies' or group's contract requirements or estimated contract requirements for Price Agreements are identified.
- 9.1 .6 **ORIGINAL CONTRACT** means the initial contract or Price Agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.
- 9.1 .7 **PERMISSIVE COOPERATIVE PROCUREMENT** means a Cooperative Procurement in which the purchasing contracting agencies are not identified.
- 9.1 .8 **PURCHASING CONTRACTING AGENCY** means a governmental body that procures goods, services or public improvements from a contractor based on the original contract established by an Administering Contracting Agency.
- 9.2 **CITY AS LEAD AGENCY.** When preparing Solicitation Documents for Goods, Services or Personal Services, the Solicitation Agent is encouraged to consider whether the

Solicitation should provide a basis for permissive cooperative Procurements by other contracting agencies.

9.2 .1 GEOGRAPHIC PREFERENCES IN COOPERATIVE PROCUREMENTS. An Administering Contracting Agency must not permit the application of any geographic preference that is more favorable to Offerors who reside in the jurisdiction or locality favored by the preference than the preferences provided under ORS 279A.120.

9.3 JOINT COOPERATIVE PROCUREMENTS. The city may purchase Goods, Services or Public Improvements under a joint cooperative Procurement only if:

- (a) The Administering Contracting Agency's Solicitation procedure, Solicitation Documents and the original contract identifies the cooperative Procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements; and
- (b) No material change is made in the terms, conditions or prices of the contract between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the Administering Contracting Agency. A change is not material if it would be permitted as a contract amendment under Article 16 of these regulations.
- (c) A joint cooperative Procurement may not be a permissive cooperative Procurement.

9.4 PERMISSIVE COOPERATIVE PROCUREMENTS.

9.4 .1 ELIGIBILITY. The city may establish a contract, excepting therefrom a Public Improvement contract, through a permissive cooperative Procurement only if:

- (a) The Administering Contracting Agency's Solicitation procedure, Solicitation Documents and the original contract allow other contracting agencies to establish contracts or Price Agreements under the terms, conditions and prices of the original contract;
- (b) The contractor agrees to extend the terms, conditions and prices of the original contract to the city; and
- (c) No material change is made 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. A change is not material if it would be permitted as a contract amendment under Article 16 of these regulations.

9.4 .2 NOTICE OF INTENT. The city shall provide public notice of intent to use a permissive cooperative Procurement, in the manner provided in subsection 7.2.1, if the estimated amount of the Procurement exceeds \$250,000.

9.4 .2 .1 Contents of Notice. The notice of intent must include:

- (a) A description of the Procurement;

- (b) The estimated amount of the Procurement;
- (c) The name of the Administering Contracting Agency; and
- (d) A time, place and date by which comments must be submitted to the Solicitation Agent regarding the intent to make a purchase through a permissive cooperative Procurement.

9.4 .2 .2 Time of Notice. The notice shall be published at least three (3) Business Days before the deadline for submission of comments.

9.4 .2 .3 Responses to Notice. If the Solicitation Agent receives comments in the manner provided in the notice, the Solicitation Agent shall not proceed with the cooperative Procurement unless s/he determines that the Procurement is in the best interest of the city and provides a copy of the written determination to any vendor that submitted comments prior to execution of the contract.

9.5 INTERSTATE COOPERATIVE PROCUREMENTS.

9.5 .1 WHEN ELIGIBLE. The city may use an interstate cooperative Procurement only if:

- (a) The Administering Contracting Agency’s Solicitation procedure, Solicitation Documents and the original contract allows other governmental bodies to establish contracts under the terms, conditions and prices of the original contract; and
- (b) The Administering Contracting Agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the city.
- (c) For purposes of this section, an Administering Contracting Agency may be any governmental body, domestic or foreign, authorized by law to enter into contracts for the Procurement of Goods and Services for use by a governmental body.

9.5 .2 WHEN NOT ELIGIBLE. The city may not use an interstate cooperative Procurement for a Public Improvement contract.

9.5 .3 WHEN NOTICE REQUIRED. The city shall advertise a notice of intent to use interstate cooperative Procurement, in the manner provided in subsection 7.2.1, at any dollar threshold unless:

- (a) The city, or the cooperative Procurement group of which the city is a member is listed in the Solicitation Documents of the Administering Contracting Agency as a party that may establish contracts under the original contract, and
- (b) The Solicitation has been advertised in Oregon; the city, or the cooperative Procurement group of which the city is a member.

The notice required by this subsection shall provide potential vendors an opportunity to comment and shall contain the type of information required under subsection 9.4.2.1.

9.5 .4 RESPONSES TO NOTICES. If the Solicitation Agent receives comments in the manner provided in the notice, the Solicitation Agent shall not proceed with the Procurement unless s/he determines that the Procurement is in the best interest of the city and provides a copy of the written determination to any vendor that submitted comments prior to execution of the contract.

9.6 PROTESTS AND DISPUTES. The city shall not consider protests of a cooperative Procurement by another Person under a contract for which the city is the Administering Contracting Agency.

ARTICLE 10

INFORMAL SOLICITATION (Including Intermediate Procurements)

- 10.1 INFORMALLY SOLICITED QUOTES AND PROPOSALS.** When authorized by these regulations, a contract may be awarded using the Informal Solicitation procedures described in this Article 10.
- 10.2 RECORD OF CONTRACT REQUIREMENTS AND EVALUATION CRITERIA.** The Solicitation Agent shall make a written record of the contract requirements and criteria upon which the award will be based before conducting the Solicitation. This record shall be used to provide all potential Offerors with the same information concerning the contract requirements and the manner in which their offers will be evaluated.
- 10.3 CONTACT WITH POTENTIAL OFFERORS.** The Solicitation Agent's request for Quotes or Proposals may be by general or limited distribution to a certain group of vendors, by direct inquiry to Persons selected by the Solicitation Agent, or in any other manner that the Solicitation Agent deems suitable for obtaining a sufficient number of competitive Quotes or Proposals.
- 10.4 NUMBER OF OFFERS.** The Solicitation Agent shall attempt to obtain at least three Responsive Quotes or Proposals from Offerors who are qualified to perform the contract unless three Offers cannot be reasonably obtained. If less than three Quotes or Proposals are reasonably available, fewer will suffice, but the Solicitation Agent shall make a record of the efforts made to obtain the offers.
- 10.5 WHEN WRITTEN SOLICITATION REQUIRED.** The request for Offers and the receipt of Offers shall be made in writing in the following cases:
- 10.5 .1 CONTRACTS FOR GOODS, SERVICES OR PERSONAL SERVICES.** If the estimated Contract Price will exceed \$75,000, the Solicitation Agent shall request written Quotes or Proposals using a written description of contract requirements and award criteria.
- 10.5 .2 CONTRACTS FOR PUBLIC IMPROVEMENTS.** The Solicitation Agent shall request written Quotes for all Public Improvement contracts, and shall present the description of contract requirements and award criteria using written materials unless the information can be given by other means in a conference or oral presentation at which all potential Offerors are present and have an opportunity to ask questions. Notwithstanding the foregoing, when soliciting Quotes for a Public Works project, the Solicitation Agent must deliver all written materials, including written copies of the prevailing wage rates required by the Bureau of Labor and Industries.

10.6 BASIS FOR AWARD. Selection of contractors for Goods, Services and personal services shall be based on the Quote or Proposal that the Solicitation Agent considers most advantageous to the City. The selection criteria for Public Improvement contracts shall be based on Quotes but may include a consideration of other factors in addition to price, such as experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors. The Solicitation Agent shall make a written record of all Offerors, the prices quoted and, if the award was made on a basis other than price, a record of the evaluation of each Offer and the basis for award.

10.7 DISCUSSIONS AND NEGOTIATIONS. The Solicitation Agent may discuss the Solicitation requirements for any type of Informal Solicitation with potential Offerors and may discuss a Quote or Proposal with an Offeror to clarify its Quote or Proposal or to effect modifications that will make the Quote or Proposal Responsive to the Solicitation requirements. Except for Solicitations involving Public Improvements, after all initial Quotes have been received and recorded, the Solicitation Agent may negotiate with an Offeror to effect modifications that will make the Quote or Proposal more Advantageous to the city. A Solicitation Agent may not disclose the price or other terms of an Offer of one Offeror to another during discussions prior to contract award.

10.8 AMENDMENT. A contract awarded using an Informal Solicitation may be amended only as provided in Article 16.

ARTICLE 11

INVITATIONS TO BID

11.1 SOLICITATION DOCUMENTS. The Solicitation Documents shall provide sufficient information for prospective bidders to evaluate their interest and qualifications to supply the specified Goods or Services, to determine a Bid price, to evaluate all terms of the contract, and to submit Responsive offers. Prior to the submittal date, bidders shall have the opportunity to review all city background documents as described and in the manner as set forth in the Bid documents.

11.2 INFORMATION TO BE PROVIDED. The Solicitation documents, at a minimum, shall include the following:

11.2 .1 ADVERTISEMENT. A copy of the advertisement for the Solicitation.

11.2 .2 CONFERENCES AND INFORMATION. The date, time and place of the pre-closing conference, if any, and whether attendance at the conference is mandatory, and a list of information that Offerors should review, including, but not limited to, surveys, land records or site inspections, before preparing Bids.

11.2 .3 SOLICITATION CLOSING. The date and time after which Bids will not be received and the place at which the Bids may be submitted, and may, if permitted by these regulations, and in the sole discretion of the Solicitation Agent, direct or permit the submission and receipt of Bids by electronic means;

11.2 .4 BID OPENING AND CONTACT PERSONS. The name and title of the Person designated for receipt of Bids, the date, time and place for the public Opening of Bids, and the contact Person for the Solicitation, if different;

11.2 .5 PREQUALIFICATION. If prequalification is a requirement, the date that prequalification applications must be filed, the class or classes of work for which bidders must be pre-qualified and either a prequalification application with instructions, or a description of the manner in which prequalification applications and instructions may be obtained;

11.2 .6 SCOPE OF WORK: PROCUREMENT; SPECIFICATIONS. A description of the Goods or Services or Public Improvements desired, Specifications and drawings, delivery or performance schedule, inspection and acceptance requirements, and overall scope of work and other information, including the project management structure and the support or resources to be provided by the city,. If any plans or Specifications cannot be included in the Solicitation Documents, the documents should describe how such materials may be reviewed, or copied;

- 11.2 .7 PRICING STRUCTURE.** A description of whether Bid prices are to be calculated and set forth as unit prices, lump sum prices, hourly fees or in another fashion, including the manner in which Bids for alternates should be shown;
- 11.2 .8 POLICY AND PROGRAM COMPLIANCE.** A description of applicable policy and program requirements for the Solicitation, such as affirmative action, disadvantaged business enterprise or emerging small business requirements;
- 11.2 .9 SOLICITATION PROTESTS.** The manner and time in which protests that the Solicitation process is contrary to law or that a Solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name may be submitted, the name and title of the Person designated to receive protests, the manner in which the Solicitation Agent will respond to the protest, and the protester's rights of appeal to the city manager, if any;
- 11.2 .10 REQUESTS FOR CLARIFICATION AND MODIFICATIONS; ISSUANCE OF ADDENDA.**
- (a) The manner and time in which potential bidders may submit requests for clarification, substitution and modification to the Specifications, contract or other parts of the Solicitation Documents;
 - (b) The name and title of the Person designated to receive such requests,
 - (c) A description of the manner in which the city will respond to requests and issue written Addenda; and
 - (d) A statement that no statement, clarification or modification given by, or agreed to by any city official will be binding on the city unless set forth in written Addendum;
- 11.2 .11 MINIMUM QUALIFICATIONS.** Minimum qualifications, if any, related to experience, skill or training, special degrees or licenses required, special standards for materials or supplies, performance, timing and other factors that will be used to judge Responsibility and Bid Responsiveness.
- 11.2 .12 ASBESTOS ABATEMENT.** If relevant, information addressing whether a contractor or a subcontract must possess an asbestos abatement license under ORS 468A.720 and a place for the bidder to indicate its license number or the license number of its subcontractor;
- 11.2 .13 RESPONSIVENESS.** A statement that the city may, in its discretion, reject any Bid that attempts to change any contract term or conditions, or that does not evidence the Bidder's intent to abide by the Specifications, or that does not otherwise comply with all bidding requirements set forth in the Solicitation Documents or in the Oregon Public Contracting Code;
- 11.2 .14 SPECIAL REQUIREMENTS TO DETERMINE RESPONSIVENESS.** The Solicitation Documents shall set forth any special requirements and criteria that will be used to determine which bidders are Responsive Offerors.

11.2 .14 .1 Examples of Special Requirements. Examples of special requirements include, but are not limited to environmental impacts, transportation costs, volume weighing, trade-in allowance, depreciation allowances, cartage penalties and ownership or life cycle cost formulas

11.2 .14 .2 Product or Service Acceptability. The Solicitation Documents shall set forth the criteria to be used in determining product or Service acceptability. The Solicitation Agent may require the submission of 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 or Service prior to award for such characteristics as quality of workmanship;
- (b) Examination of such elements as appearance, finish, taste, feel ability to be recycled or reused; or
- (c) Other examinations to determine whether the product or Service conforms to the Solicitation Documents.

The acceptability evaluation is conducted only to determine that a Bid is Responsive to the Solicitation Documents. A bidder's product or service that does not meet the minimum requirements may be rejected in the city's discretion. Product or Service rejections are not considered bidder disqualifications and are not grounds for appeal under state law;

11.2 .15 CITY'S RIGHT TO CANCEL OR DELAY. A statement that the city may reject for good cause any or all Bids and/or cancel or delay or suspend the Solicitation or award at any time prior to execution of the contract upon the city's determination that it is in the public interest to do so, and a statement that the cost of submission of a Bid is not recoverable upon such rejection, delay or cancellation;

11.2 .16 BID; PERFORMANCE AND PAYMENT BONDS. Bid security requirements of Section 6.6, if any, and Performance and Payment bond requirements of Section 15.1, if any;

11.2 .17 THE CONTRACT. All terms and conditions of the Contract, including all Specifications;

11.2 .18 BID FORM. A Bid form that contains the following statements, to be acknowledged by execution, by the bidder:

11.2 .18 .1 Certificate of Non-Discrimination in Subcontracting. A statement that the bidder has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, a woman or an emerging small business enterprise certified under ORS 200.055.

- 11.2 .18 .2 Resident Bidder.** A statement indicating whether the bidder is a "Resident Bidder," as defined in ORS 279A.120.
- 11.2 .18 .3 Bid and Contract Acceptance.** A statement that bidders are responsible for noting and abiding by the terms and conditions included in the Solicitation Documents and Addenda, if any, and by the city's Public Contracting Regulations, and that, by signing and submitting a Bid, the bidder is acknowledging acceptance of, and the intent to abide by, the terms and conditions of the contract set forth in the Solicitation Documents.
- 11.2 .18 .4 Access to Plant or Place of Business.** The bidder's agreement that the Purchasing Agent may enter a contractor's or subcontractor's plant or place of business during normal business hours for the following purposes:
- (a) Inspect and/or test supplies or Services for acceptance by the City pursuant to the terms of the Contract; and
 - (b) Investigate the bidder's minority business certification or other bidder qualifications.
- 11.2 .18 .5 Public Works.** A statement that if the contract is for a public works project subject to the prevailing rates of wage under ORS 279C.800 to 279C.870, the Davis-Bacon Act (40 USC 3141 et seq.) or both, no bid will be received or considered by the city unless the bid contains agreement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840, the Davis-Bacon Act or both;
- 11.2 .19 MANNER OF BID.** The following information concerning the manner in which Bids must be submitted:
- 11.2 .19 .1 Documents.** Completed Bid forms and documents as specified or provided in the Bid package furnished to bidders must be typed or prepared in ink and signed by an authorized representative of the bidder. Alterations or erasures shall be initialed in ink by the Person signing the Bid.
- 11.2 .19 .2 Identification of Bids.** To ensure proper identification and special handling, Bids should be submitted in a sealed envelope appropriately marked with the name of the bidder, the Solicitation number, the name of the project or procurement being Bid, and the date and time of the Bid opening. The city shall not be responsible for the proper identification and handling of a Bid not in conformance with these requirements.
- 11.2 .19 .3 Receipt of Bid.** It is the bidder's responsibility to ensure that the Bid is received by the city prior to the stated Bid opening.
- 11.2 .19 .4 Pre-closing Modification and Withdrawal.** The Solicitation Documents shall include the information set forth in Section 6.9 of these regulations concerning

the manner in which Offerors may modify or withdraw their Bids prior to Closing; and

11.2 .20 BID AWARD AND PROTEST PROCESS. A description of the manner in which the city will issue its notice of intent to award and the manner in which aggrieved bidders may protest the award.

11.2 .21 ADDITIONAL REQUIREMENTS FOR PUBLIC IMPROVEMENTS.

11.2 .21 .1 Bid Closing. The Closing for a Public Improvement Solicitation may not be less than five (5) days after the date of the last publication of the advertisement. In addition, if the estimated Contract Price exceeds \$100,000, the Closing must be set between the hours of 2 p.m. and 5 p.m. on a Tuesday, Wednesday or Thursday unless the contract is for maintenance or construction of highways, bridges or other transportation facilities.

11.2 .21 .2 Submission and Receipt of Bid by Electronic Means. If the Solicitation is for a Public Improvement, the city, in its sole discretion may direct or permit the submission and receipt of Bids by electronic means.

11.2 .21 .3 Contractor's License. If the Solicitation is for a Public Improvement, a statement that a Bid for a Public Improvement contract may not be received or considered by the city unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board and a place for the bidder to submit all required license numbers or registration information.

11.2 .21 .4 First Tier Subcontractor Disclosure. The Invitation to Bid for a Public Improvement contract with an estimated Contract Price of \$100,000 or more must include the information and form described in Section 11.4 of these regulations, and a statement that a Bid will be considered non-Responsive and ineligible for award if the bidder does not submit a subcontractor disclosure form in the manner and within the time required by ORS 279C.370 (described in these regulations).

11.2 .21 .5 Drug Testing Certificate. Each Bid for a Public Improvement contract must contain a certification from each bidder that it has and will maintain during the performance of the contract, an employee drug testing program.

11.2 .21 .6 Wages for Public Works. If the contract is for a Public Works project 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. 276a) or both the state and federal prevailing rates of wage:

- (a) The Specifications for the work must contain a provision stating the existing prevailing rate of wage that must be paid to workers in each trade or occupation required for the Public Works employed in the performance

of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract; and

- (b) The Specifications must contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825(1) and that the fee shall be paid to the commissioner under the administrative rules of the commissioner upon the execution of the contract.

11.3 FEE OR DEPOSIT FOR BID DOCUMENTS. The city may require a deposit or charge for reasonable costs for Bid Documents and mailing. A deposit may also be required when, in the judgment of the Solicitation Agent, it is necessary to encourage the return of detailed plans, Specifications or other supporting information used by potential bidders in preparing the Bid.

11.4 FIRST-TIER SUBCONTRACTOR DISCLOSURE.

11.4 .1 SOLICITATIONS SUBJECT TO DISCLOSURE. First-Tier subcontractor disclosure requirements apply only to Invitations to Bid for Public Improvement contracts with a value estimated by the city of more than \$100,000.

11.4 .2 REQUIRED DISCLOSURE. Within two (2) working hours after the Closing, a bidder shall submit to the city a disclosure of the first-tier subcontractors that:

- (a) Will be furnishing labor or will be furnishing labor and materials in connection with the Public Improvement contract; and
- (b) Will have a contract value that is equal to or greater than five percent (5%) of the total project Bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project Bid.

11.4 .3 CONTENTS AND FORM OF DISCLOSURE. The disclosure of first-tier subcontractors must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR
DISCLOSURE FORM

PROJECT NAME: _____
BID #: _____
BID CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised Bid closing date and within two (2) working hours after the advertised Bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH

ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1) _____	\$ _____	_____
2) _____	\$ _____	_____
3) _____	\$ _____	_____
4) _____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a non-Responsive Bid. A Non-Responsive Bid will not be considered for award.

Form submitted by (bidder name): _____

Contact name: _____

Phone no.: _____

11.4 .4 ACCEPTANCE OF DISCLOSURE. The city shall accept the subcontractor disclosure. The city shall consider the Bid of any contractor that does not submit a subcontractor disclosure to be a non-Responsive Bid and may not award the contract to the contractor. The city is not required to determine the accuracy or the completeness of the subcontractor disclosure.

11.4 .5 PUBLIC RECORDS. The subcontractor disclosures are public records and must be made available for public inspection.

11.5 RECEIPT, OPENING AND RECORDING OF BIDS.

11.5 .1 RECEIPT. Upon receipt by the city, each Bid and modification shall be time stamped or marked by hand, not opened, and stored in a secure place until Bid opening. If Bids or modifications are opened inadvertently or are opened prior to the time and date set for Bid opening, the Bids shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the Bid file.

11.5 .2 OPENING AND RECORDING. Bids and modifications shall be opened publicly, immediately after the deadline for the submission of Bids and in the place designated by the Bid Documents. The Solicitation Agent, or designee shall determine and declare the precise time of day for purposes of establishing the Bid submittal deadline and the Bid opening, open each timely received Bid, read aloud the Bid prices, and record each bidder's name, Bid prices, resident status, Bid security presented, alternate or optional Bid prices, trade-in allowances, delivery terms and other information deemed essential by the Solicitation Agent, on a Bid tabulation sheet.

11.5 .3 AVAILABILITY. The opened Bids shall be available for public inspection subject to the need of the city to evaluate such Bids prior to Notice of Intent to Award, except to the extent the bidder designates trade secrets or other proprietary data to be confidential. City legal counsel shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon

Public Records Law. Material so designated shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

11.5 .4 MISTAKES. Mistakes may be corrected after Bid opening only as provided in Article 6.

11.5 .5 IRREVOCABILITY OF BID DURING TIME FOR CONSIDERATION. Unless otherwise specified in the Bid documents, Bids shall be valid and irrevocable for sixty (60) days after Bid opening, or, if shorter, until the city accepts and executes the contract.

11.5 .6 EXTENSION OF TIME FOR CONSIDERATION OF BIDS. If circumstances arise that require an extension of time for consideration of award after the Bids have been opened, the Solicitation Agent may request in writing that the bidders extend the time during which the city may accept their Bids.

11.6 BID EVALUATION.

11.6 .1 GENERAL; DETERMINATION OF STANDARDS OF RESPONSIBILITY. The Contract, if awarded, shall be awarded to the lowest Responsive and Responsible bidder who meets the Standards of Responsibility applicable to the Contract. Before making an award, the Solicitation Agent shall determine that the lowest Responsive bidder satisfies the Standards of Responsibility. The Solicitation Agent may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, "commercial contractor" has the meaning given that term in ORS 701.005.

11.6 .1 .1 Responsibility Determination Form. For Public Improvement contracts the Solicitation Agent shall determine the lowest Responsible bidder is not listed on the Construction Contractors Board's list of bidders who are not qualified to hold a Public Improvement contract. The Solicitation Agent shall also complete the Responsibility Determination Form provided below and submit it to the Construction Contractors Board within thirty (30) days after the award of the contract. The form shall be in substantially the following form:

RESPONSIBILITY DETERMINATION FORM

PROJECT NAME: _____

BID NUMBER: _____

Business Entity Name: _____

CCB License Number: _____

Form Submitted By (Contracting Agency): _____

Form Submitted By (Contracting Agency Representative's Name): _____

Title: _____

Date: _____

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within thirty (30) days after the date of contract award.)

The contracting agency has (check all of the following):

Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a Public Improvement contract.

Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:

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.

Has a satisfactory record of performance.

Has a satisfactory record of integrity.

Is qualified legally to contract with the contracting agency.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

Responsible under ORS 279C.375(2)(a) and (b).

Not responsible under ORS 279C.375(2)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

11.6 .2 REJECTION OF INDIVIDUAL BIDS. The Solicitation Agent may reject any Bid or any separate alternate Bid required or permitted by the Bid Documents that is not Responsive or any bidder that does not meet the Standards of Responsibility applicable to the Contract.

11.6 .3 WAIVER OF INFORMALITIES. The Purchasing Agent reserves the right to waive any informality in a Bid; reject any Bid not in compliance with the Bid Documents; reject any Bid not in compliance with these Regulations or state statute regarding Public Contracting; or reject all Bids as provided in these Regulations.

11.6 .4 BID TABULATION SHEET. The Solicitation Agent shall ensure that a written record is produced that indicates how each Bid responds to the criteria set forth in the Bid Documents. The Bid tabulation sheet shall be made available upon request for public review after the city has evaluated all Bids.

11.6 .5 REVIEW OF UNIT BID PRICES. Unit Bid prices or Bid alternatives will be reviewed for unbalanced pricing or Bid loading. Unbalanced Bids may be deemed non-Responsive.

11.6 .6 NEGOTIATION WITH BIDDERS. Except as provided in Section 6.11, for cases in which all Bids exceed the city's estimated Contract Price, there shall be no negotiations with any bidder prior to the award of a contract.

11.6 .7 NON-RESIDENT BIDDER. In the case of a non-Resident Bidder, the Solicitation Agent shall add a percentage increase to the Bid equal to the percentage, if any, of the

preference given to that bidder in the state in which the bidder resides. For the purposes of administering this section, the city shall rely on information published annually by the DAS.

11.6 .8 LOW TIE BIDS. Low tie Bids are Bids from Responsive and Responsible bidders that are identical in price, fitness, availability and quality and that meet all the requirements and criteria set forth in the Bid Documents. Low tie Bids shall be awarded as follows:

- (a) The city shall prefer Goods or Services that have been manufactured or produced in this state pursuant to ORS 279.021(1); or if still tied
- (b) The city shall then prefer the bidder whose principal offices or headquarters are located in Oregon; or if still tied
- (c) The city shall then select the successful bidder by drawing lots. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.
- (d) If none of the tied bidders is located in Oregon, award of the Contract shall be made by drawing lots. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.

11.7 AWARD.

11.7 .1 NOTICE OF INTENT TO AWARD. Unless otherwise provided in the Bid documents, the Solicitation Agent shall issue to all bidders, or post electronically or otherwise, a notice of the city's intent to award the Contract. The notice of award shall not be final until the later of the following:

- (a) Seven (7) days after the date of the notice, unless a longer period to file a protest of award is provided in the Solicitation Documents; or
- (b) Until the Purchasing Agent provides a written response to all timely filed protests, if any, that denies the protest and affirms the award; or until any appeal of the Purchasing Agent's decision regarding a protest has been reviewed by the city manager.

11.7 .2 PROMPT EXECUTION OF CONTRACT AND DELIVERY OF BONDS. Unless a longer period is provided in the Bid documents, successful bidder shall furnish insurance and deliver all required payment and performance bonds and execute the contract within ten (10) days after the date of issuance of the notice of intent to award. Failure to execute the contract or to provide the required information and bonds within the required timelines may result in the rejection of the Bid and the retention of Bid security.

11.7 .3 NON-RESIDENT BIDDER. If the Contract Price exceeds \$10,000 and the contractor is a non-Resident Bidder, the contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue the Contract terms of payment, length of Contract, and such other information as the Department of

Revenue may require. The city may not award a Public Improvement contract or a Public Works contract to a non-Resident Bidder that is an educational service district.

- 11.7 .4 DOCUMENTATION OF AWARD.** Following award, a record showing the basis for determining the successful bidder shall be made a part of the file, including the completed Bid tabulation sheet and written justification for any rejection of lower bidders or higher scored proposers.
- 11.7 .5 AVAILABILITY OF AWARD DECISIONS.** Tabulations of awarded Bids may be obtained from the Solicitation Agent in Person or upon written request specifying the Bid number or project name. Tabulations will be made available by facsimile or other means, at the option of the Solicitation Agent, upon request.
- 11.7 .6 AWARD OF MULTIPLE CONTRACTS.** Based on competitive bids, the City may award a public improvement contract or may award multiple public improvement contracts when specified in the invitation to bid.

11.8 CANCELLATION OF SOLICITATION.

- 11.8 .1 CANCELLATION IN THE PUBLIC INTEREST.** A Solicitation may be cancelled, wholly or in part, when it is determined by the Solicitation Agent to be in the public interest to do so. The reasons for cancellation shall be documented and made part of the Bid file. Cancellation may be made at any time prior to the city's execution of the contract.
- 11.8 .2 CANCELLATION WHEN BID PERIOD EXPIRES.** The Solicitation will be cancelled if the time for consideration of Bids has expired without a Bid award, unless an extension of time has been mutually agreed upon in writing between the city and one or more bidders including the apparent low bidder.
- 11.8 .3 NOTICE OF CANCELLATION.** When an invitation to Bid is cancelled prior to Bid opening, a written notice of cancellation shall be sent to all holders of Bid Documents. All Bids received shall be returned to bidders unopened. When a Solicitation is canceled after the Bids are opened but prior to award, the notice shall be sent to all Responsive bidders. After the notice of intent to award is given, notice is required to be given only to the successful bidder.
- 11.8 .4 RETENTION OF BIDS.** In the event that a Solicitation is cancelled after Bids are opened, all Bids received shall become part of the Bid file and the Bid bonds, if any, shall be returned.
- 11.8 .5 CANCELLATION OF AWARD.** The Solicitation Agent may cancel any award prior to execution of the Contract if the Solicitation Agent determines that cancellation or delay of the Contract project or Procurement is in the best interest of the city.

ARTICLE 12

REQUESTS FOR PROPOSALS

12.1 CONTENTS OF REQUEST DOCUMENTS. A Request for Proposals must contain the same materials and information as an Invitation to Bid. In addition, the Solicitation Documents must contain all of the following information:

12.1 .1 NEGOTIABLE CONTRACT PROVISIONS. Identify those contractual terms or conditions, if any, that the city wishes to reserve for negotiation with proposers, and may also:

- (a) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;
- (b) Contain or incorporate the form and content of the Contract that the city will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers.

12.1 .2 METHOD OF SELECTION. The Solicitation Documents shall describe the method of contractor selection that the city intends or reserves the right to use. The Solicitation Documents do not have to guarantee that any particular method will be used after first-tier evaluation, and may reserve to the Solicitation Agent the discretion to elect a method of selection after the completion of any tier of evaluation by issuing an Addendum to create a new or different tier of competition under which the Proposals that received the highest score for the evaluation tier just completed may proceed to the new tier of evaluation.

12.1 .3 EVALUATION CRITERIA. The Solicitation Documents must contain a description of the manner in which Proposals will be evaluated, including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Solicitation Agent will develop and provide notice of the criteria and evaluation methods to be used in each subsequent tier.

12.1 .4 TIME FOR CONSIDERATION. The Solicitation Documents must describe the period of time during which Proposals may be considered and will be irrevocable and may provide for extension of the time for consideration of Proposals for proposers who proceed into competitive range evaluations.

12.1 .5 TIME BETWEEN TIERS OF COMPETITION. A tier of competition may not begin until the later of: (a) the date after which protests of the competitive range for the tier just completed may not be accepted, or (b) the date on which the Purchasing Agent has issued a final determination on a competitive range protest.

12.2 DISCLOSURE OF PROPOSALS.

12.2 .1 BEFORE AWARD. Notwithstanding the public records law, ORS 192.410 to 192.505, Proposals, including contract solicitations for architectural, engineering or land surveying services, may be opened in a manner to avoid disclosure of 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 from and after the opening of the Proposals. 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. The fact that Proposals are opened at a meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the Proposals fails to give notice of, or provide for an executive session for, the purpose of opening Proposals.

12.2 .2 AFTER INTENT TO AWARD. Notwithstanding any requirement to make Proposals open to public inspection after the city's issuance of notice of intent to award a contract, the city may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a Proposal.

12.2 .3 PRIOR TO SOLICITATION CLOSING. If a Request for Proposals is canceled after Proposals are received, but prior to the Opening of the Proposals, the city may return a Proposal to the proposer that made the Proposal. The City shall keep a list of returned proposals in the file for the solicitation.

12.3 TOURS, DEMONSTRATIONS AND DISCUSSIONS. As provided in the Request for Proposals or in written Addenda issued thereunder, the city may conduct site tours, demonstrations, individual or group discussions and other informational activities with proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and Responsiveness to, the Solicitation requirements or to consider and respond to requests for modifications of the Proposal requirements. The city shall use procedures designed to accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.

12.4 METHODS OF SELECTION. For purposes of evaluation, when provided for in the Request for Proposals, or in written Addenda issued at any time during the Solicitation, the city may employ methods of contractor selection that include, but are not limited to:

- (a) An award or awards based solely on the ranking of initially submitted Proposals;
- (b) Discussions leading to best and final Offers, in which the city may not disclose private discussions leading to best and final Offers;
- (c) Discussions leading to best and final Offers, in which the city may not disclose information derived from Proposals submitted by competing proposers;
- (d) Serial negotiations, beginning with the highest-ranked proposer and negotiating with the second-ranked proposer only after the highest-ranked proposer is eliminated;

- (e) Competitive negotiations in which the city enters into separate but simultaneous negotiations with all proposers in a final competitive tier;
- (f) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked proposers;
- (g) A multi-step Request for Proposals requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the proposers whose technical submittals the city had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
- (h) Any combination of methods described in this paragraph, as determined by the Solicitation Agent to be most likely to result in selection of the contractor who will best serve the needs of the city.
- (i) Revisions of Proposals may be permitted after the submission of Proposals and before award during negotiations or during any competitive range evaluation.

12.5 POST-CLOSING ADDENDA. After the opening of Proposals, the city may issue or electronically post an Addendum to the Request for Proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the Addendum applies. The city shall send an Addendum that is issued by a method other than electronic posting to all proposers who are eligible to compete under the Addendum. The city shall issue or post the Addendum at least five (5) days before the start of the subject tier of competition or as otherwise determined by the city to be adequate to allow eligible proposers to prepare for the ensuing competition.

12.6. NOTICE OF COMPETITIVE RANGE. In the Request for Proposals, the city shall describe the methods by which the city will make the results of each tier of competitive evaluation available to the proposers who competed in the tier. The city shall include a description of the manner in which the proposers who are eliminated from further competition may protest or otherwise object to the Solicitation Agent's decision.

12.7. POSTING OF NOTICE OF INTENT. The city shall issue the notice of intent to award only to each proposer who was evaluated in the final competitive tier.

12.8 SELECTION FOR AWARD. If a contract is awarded, the city shall award the contract to the responsible proposer whose Proposal the city determines in writing to be the most advantageous to the city based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable preferences described in these Regulations and, when applicable, the outcome of any negotiations authorized by the Request for Proposals. Other factors may not be used in the evaluation. When the Request for Proposals specifies or authorizes the award of multiple Public Contracts, the city shall award Public Contracts to the Responsible proposers who qualify for the award of a contract under the terms of the Request for Proposals. The city may not award a Personal Services contract, a Public Improvement contract or a Public Works contract to a non-Resident Bidder that is an educational service district.

12.9 REQUEST FOR PRELIMINARY DOCUMENTS. The city may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation of a Request for Proposals.

12.10 CANCELLATION, DELAY, SUSPENSION OF SOLICITATION. The city may cancel, delay or suspend a Solicitation under a Request for Proposals, or cancel the award of a contract prior to execution, for the same reasons and in the same manner as is provided for cancellations of Solicitations under Invitations to Bid.

ARTICLE 13

PROTESTS AND APPEALS

13.1 PROTESTS OF SOLICITATION PROCEDURES.

13.1 .1 PROTESTS GENERALLY. Unless the city has used Informal Solicitation procedures, as described in Article and authorized by these regulations, a prospective Offeror for a Public Contract may file a protest with the city if the prospective Offeror believes that the Procurement process is contrary to law or that a Solicitation Document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective Offeror fails to timely file such a protest, the prospective Offeror may not challenge the contract for any of the foregoing reasons in any future legal or administrative proceeding.

13.1 .2 TIME FOR SUBMISSION OF PROTEST. Protests of a Solicitation shall only be considered when presented to the Purchasing Agent in writing in accordance with the following timelines. The Purchasing Agent shall not consider protests of Informal Solicitations.

- (a) Protests shall be submitted in writing, not less than ten (10) days prior to the Solicitation Closing; and
- (b) Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.

13.1 .3 IDENTIFICATION OF PROTEST. It is the protester's responsibility to ensure that the protest is received by the city within the stated timelines. The protest should be delivered in an envelope that is clearly marked with the protester's name and sufficient information to identify the Solicitation being protested, identified as a protest, and directed to the Person identified in the Solicitation Documents for receipt of protests. Faxed protests may not be accepted.

13.1 .4 ELIGIBILITY FOR CONSIDERATION. The Purchasing Agent shall consider the protest if the protest is timely filed and contains the following and provided the city did not use Informal Solicitation procedures:

- (a) Sufficient information to identify the Solicitation that is the subject of the protest;
- (b) The grounds that demonstrate how the Procurement process is contrary to law or how the Solicitation Document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
- (c) Evidence or supporting documentation that supports the grounds on which the protest is based; and
- (d) The relief sought.

- 13.1 .5 FORM OF DECISION.** If the protest is timely submitted and contains the required information, the Purchasing Agent shall consider the protest and issue a decision in writing. Otherwise, the Purchasing Agent shall promptly notify the prospective protesting Offeror that the protest is untimely or that the protest failed to meet the requirements of this Section 13.1 and give the reasons for the failure.
- 13.1 .6 TIME OF DECISION.** The Purchasing Agent shall issue a decision on the protest no fewer than three (3) Business Days before the Solicitation Closing, unless a written determination is made by the Purchasing Agent that circumstances exist that justify a shorter time limit.
- 13.1 .7 APPEAL.** If the Purchasing Agent is the city manager's designee, the Purchasing Agent's decision may be appealed to the city manager by notifying the city manager of the intent to appeal within three (3) Business Days after the date on which the Purchasing Agent sends its decision to the protestor's electronic or postal address specified in the written protest.
- 13.1 .8 FINALITY OF DECISION.** The decision of the city manager, or if no appeal is made to the city manager, of the Purchasing Agent, shall be the final determination of the city on the protest.
- 13.1 .9 DELAY OF SOLICITATION CLOSING.** If the city receives a protest from an Offeror in accordance with this Section 13.1, the Purchasing Agent may in his or her discretion extend the date of Solicitation closing if the Purchasing Agent determines an extension is necessary to consider the protest and, if necessary, to issue Addenda to the Solicitation Documents or otherwise cancel the Solicitation.

13.2 PROTEST OF COMPETITIVE RANGE DECISIONS AND AWARDS.

- 13.2 .1 DELAY OF EVALUATION OR AWARD.** The Solicitation Agent will not proceed with a subsequent tier or evaluation, or award a contract under an Invitation to Bid or Request for Proposals, or under an elective notice provided under subsection 6.14, until the period of time for filing a protest of competitive range determination, or award, as applicable, has expired, and the Purchasing Agent has responded to all timely filed protests of aggrieved Offerors.
- 13.2 .2 DEFINITION OF AGGRIEVED OFFEROR.** An Offeror is an aggrieved Offeror only if the city did not use Informal Solicitation procedures, the Offeror is one to whom a notice of selection of a competitive tier or range or notice of an intent to award has been, or should have been, sent, and such Person has been erroneously denied the award of a contract, or has been erroneously eliminated from competition because:
- (a) All higher-ranked Offers were non-Responsive or all higher-ranked Offerors clearly failed to meet the Standards of Responsibility;
 - (b) The evaluation of Offers was not conducted in accordance with the criteria or processes described in the Solicitation Documents;

- (c) With respect to Proposals submitted in response to an RFP for a Public Improvement contract, the Offeror was deemed non-Responsive or as failing to meet the Standards of Responsibility which resulted in the Offeror being erroneously not included in the competitive tier or range; or
- (d) The evaluation of Offers or subsequent determination of award was otherwise made in violation of the Oregon Public Contracting Code or these regulations.

13.2 .3 FILING OF PROTESTS. Unless a different protest period is provided in the Solicitation Documents, an aggrieved Offeror shall have seven (7) days after the date of issuance of the notice of intent to award to submit to the Purchasing Agent a written protest of the matter described in the award. The written protest must specify that the city did not use Informal Solicitation procedures, the grounds upon which the protest is based, demonstrate the basis for the protestor's status as an aggrieved Offeror, and include an electronic or postal address at which the protestor will receive the Purchasing Agent's response. Notwithstanding the foregoing, the period of protest may not be shorter than seven (7) days after the date of notice of award, unless the Purchasing Agent determines that the immediate execution of a contract is necessary to avoid a loss of funding for the Contract or that further delay in execution will result in injury, property damage or other serious adverse consequences.

13.2 .4 AUTHORITY TO RESOLVE PROTESTS. The Purchasing Agent shall consider a written protest and issue a written decision on the protest. The Purchasing Agent may not consider a protest that is filed in an untimely manner or that fails to allege facts that would support a finding that the protestor is an aggrieved Offeror. If the Purchasing Agent is the city manager's designee, the Purchasing Agent's decision may be appealed to the city manager by notifying the city manager of the intent to appeal within three (3) Business Days after the date on which the Purchasing Agent sends its decision to the proposer's electronic or postal address specified in the written protest. The decision of the city manager, or if no timely appeal to the city manager is made, the decision of the Purchasing Agent, shall be the final decision of the city on the protest.

13.2 .5 DELAY OF AWARD; CANCELLATION OF SOLICITATION. If the city receives a protest from an Offeror in accordance with this Section 13.2, the Solicitation Agent shall not submit the contract for execution until the protest is resolved through the final decision under subsection 13.2.4. In addition, the Purchasing Agent shall have discretion to delay or cancel an award or a Solicitation in response to a protest, regardless of the final decision on the protest, and may, but shall not be required to, re-issue the Solicitation, if the Purchasing Agent determines that such action best serves the city's interests.

13.3 DEBARMENT AND DISQUALIFICATION APPEAL.

13.3 .1 NOTICE OF RIGHT TO APPEAL. The city shall issue a written decision to debar a prospective Offeror or to refuse or revoke prequalification of a prospective Offeror and shall provide the decision to the prospective Offeror immediately. The decision

shall state the reasons for the action taken and inform the prospective Offeror of the right to appeal the decision to the Board as provided in this Section 13.3.

13.3 .2 FILING OF APPEAL. An appeal under this Section 13.3 must be filed with the Purchasing Agent at the office of the city's purchasing section by the Person affected by the determination within three (3) Business Days after the Person's receipt of notice of the determination of Debarment or denial or revocation of prequalification.

13.3 .3 NOTIFICATION OF CONTRACT REVIEW BOARD. Immediately upon receipt of such notice of appeal, the Purchasing Agent shall notify the Board of the appeal.

13.3 .4 PROCEDURE OF APPEAL. The procedure for appeal from a Debarment or denial, revocation or revision of prequalification shall be as follows:

- (a) Promptly upon receipt of notice of appeal, the city shall notify the appellant of the time and place of the hearing;
- (b) The board shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the Purchasing Agent;
- (c) At the hearing, the board shall consider de novo the notice of Debarment, or the notice of denial, revocation or revision of prequalification, the Standards of Responsibility upon which the decision on prequalification was based, or the reasons listed for Debarment, and any evidence provided by the parties;
- (d) The board shall set forth in writing the reasons for the decision;
- (e) The board may allocate the board's costs for the hearing between the appellant and the city. The allocation shall be based upon facts found by the board and stated in the board's decision that, in the board's opinion, warrant such allocation of costs. If the board does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the city, if the decision is overturned.

13.3 .5 LIMIT ON FILING FOR JUDICIAL REVIEW. Unless a shorter period of time is provided by state law, the decision of the board may be reviewed only upon a petition in the circuit court of Lane County filed within fifteen (15) days after the date of the Board's decision.

ARTICLE 14

ELECTRONIC PROTOCOLS

14.1 ELECTRONIC PUBLICATION.

14.1 .1 NOTICES AND ADVERTISEMENTS. (EC 2.1445). Except for Public Improvement contracts with an estimated price in excess of \$125,000, in lieu of publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area, the advertisement for an Invitation to Bid or Request for Proposals for a contract may be published electronically by posting on the city's website, provided that both of the following conditions are met:

- (a) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning Solicitations for projects of the type for which the Invitation to Bid or Request for Proposals is issued; and
- (b) The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area and will provide costs savings for the city, or that the use of electronic publication will be more effective.

14.1 .2 SOLICITATION DOCUMENTS AND ADDENDA. Addenda may be issued electronically only to those Offerors who have indicated an electronic address for the receipt of Addenda in the records maintained under subsection 6.5.

14.2 E-PROCUREMENT. The city may conduct all phases of a Procurement by electronic methods if and to the extent the city specifies in a Solicitation Document the manner in which a Person wishing to submit an Offer may participate in the Procurement.

14.2 .1 RULES GOVERNING ELECTRONIC PROCUREMENTS. The city must conduct all portions of an electronic Procurement in accordance with Article 14, unless otherwise set forth in this Rule.

- (a) The city must open an electronic Offer in accordance with electronic security measures in effect at the time of its receipt of the electronic Offer. Unless the city provides procedures for the secure receipt of electronic Offers, the Person submitting the electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- (b) The city's use of electronic signatures must be consistent with applicable state statutes and rules. The city must authorize, and may limit the use of electronic methods of conducting a Procurement based on the best interests of the city, as determined by the Purchasing Agent.

- (c) If the city determines the Bid or Proposal security is or will be required, the city should not authorize electronic Offers unless the city has another designated method for receipt of such security.

14.2 .2 PRELIMINARY MATTERS. As a condition of participation in an electronic Procurement, the city may require potential Offerors to register with the city before the date and time on which the city will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the city may use to attribute, authenticate or verify the accuracy of an electronic Offer, or the actions that constitute an electronic signature.

14.2 .3 OFFER PROCESS. The city must not consider electronic Offers unless authorized by the Solicitation Document. The city may specify that Persons must submit an electronic Offer by a particular date and time or that Persons may submit multiple electronic Offers during a period of time established in the electronic Advertisement. When the city specifies that Persons may submit multiple electronic Offers during a specified period of time, the city must designate a time and date on which Persons may begin to submit electronic Offers, and a time and date after which Persons may no longer submit electronic Offers. The date and time after which Persons may no longer submit electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit electronic Offers. When the city will accept electronic Offers for a period of time, then at the designated date and time that the city will first receive electronic Offers, the city must begin to accept real time electronic Offers on e-Bid or another Electronic Procurement System approved by the Purchasing Agent and must continue to accept electronic Offers in accordance with subsection 14.2.4 of this Rule until the date and time specified by the city, after which the city will no longer accept electronic Offers.

14.2 .4 RECEIPT OF ELECTRONIC OFFERS.

- (a) When the city conducts an electronic Procurement that provides that all electronic Offers must be submitted by a particular date and time, the city must receive the electronic Offers in accordance with this Rule.
- (b) When the city specifies that Persons may submit multiple Offers during a period of time, the city must accept electronic Offers, and Persons may submit electronic Offers, in accordance with the following:
 - (A) Following receipt of the first electronic Offer after the day and time the city first receives electronic Offers, the city must post on e-Bid, and update on a real time basis:
 - (i) The prices of the other bidders or the price of the most competitive Bidder;
 - (ii) The rank of each bidder (e.g., (i) “winning” or “not winning” or (ii) “1st, 2nd, or higher”);

- (iii) The scores of the bidders if the city chooses to use a scoring model that weighs non-price factors in addition to price; or
 - (iv) Any combination of (i), (ii) and (iii) above. At any time before the date and time after which the city will no longer receive electronic Offers, a Person may revise his/her electronic Offer, except that a Person may not lower its price unless that price is below the then lowest electronic Offer.
- (B) A Person may not increase the price set forth in an electronic Offer after the day and time that the city first accepts electronic Offers.
- (C) A Person may withdraw an electronic Offer only in compliance with this Rule. If a Person withdraws an electronic Offer, it may not later submit an electronic Offer at a price higher than that set forth in the withdrawn electronic Offer.

14.2 .5 FAILURE OF THE E-PROCUREMENT SYSTEM. In the event of a failure of e-Bid that interferes with the ability of Persons to submit electronic Offers, protest or to otherwise participate in the Procurement, the city may cancel or may extend the date and time for receipt of electronic Offers by providing notice of the cancellation or extension immediately after e-Bid becomes available.

14.2 .6 PUBLIC IMPROVEMENT CONTRACTS. In the event the city includes in Solicitation Documents for a Public Improvement that the Procurement will be conducted by electronic means, the city will designate the method by which the requirements of ORS Chapter 279C regarding written Bids, opening Bids publicly, first-tier subcontractor disclosure and inclusion of prevailing wage rates will be met.

ARTICLE 15

CONTRACTS

15.1 PERFORMANCE BONDS, PAYMENT BONDS, AND PUBLIC WORKS BONDS.

15.1 .1 **SOLICITATION AGENT MAY REQUIRE BONDS.** The Solicitation Agent may require good and sufficient performance and payment bonds even though the contract is of a class that is exempt from the requirement under these regulations.

15.1 .2 PERFORMANCE BONDS.

15.1 .2 .1 **General.** Except as otherwise provided in these regulations, all Public Contracts are exempt from the requirement for the furnishing of a performance bond.

15.1 .2 .2 **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a Public Improvement, the contractor must deliver a performance bond in an amount equal to the full Contract Price conditioned on the faithful performance of the contract in accordance with the plans, Specifications and conditions of the contract. The performance bond must be solely for the protection of the city and any public agency that is providing funding for the project for which the contract was awarded.

15.1 .2 .3 **Cash-In-Lieu.** The Purchasing Agent may permit the successful Offeror to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

15.1 .3 PAYMENT BONDS.

15.1 .3 .1 **General.** Except as otherwise provided in these regulations, all Public Contracts are exempt from the requirement for the furnishing of a payment bond.

15.1 .3 .2 **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a Public Improvement, the contractor must deliver a payment bond equal to the full Contract Price, solely for the protection of claimants under ORS 279C.600.

15.1 .3 .3 **Liability of City and Employees When Payment Bond Not Executed.** (ORS 279C.625). The city and the officers authorizing the contract shall be jointly liable for the labor and materials used in the performance of any work under the contract and for claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if:

- (a) A Public Contract is one for which a payment bond is required under as provided for in ORS 279C.380 and 279C.400; and
- (b) The contractor fails to pay for labor or materials or to pay claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund or the Department of Revenue; and
- (c) The officers of the city who authorized the contract fail or neglect to require the Person entering into the contract to execute the payment bond.

15.1 .4 PUBLIC WORKS BONDS.

15.1 .4 .1 General. Before starting work on a contract or subcontract first advertised or solicited on or after January 1, 2006, for a Public Works project, a contractor or subcontractor, unless exempt under ORS 279C.800 to 279C.870, shall file with the Construction Contractors Board a Public Works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor under Public Works projects. Before permitting a subcontractor to start work on a Public Works project, the contractor shall verify the subcontractor has also filed a Public Works bond with the Construction Contractors Board.

15.1 .4 .2 Statement Certifying Public Works Bond Filed. Before starting work on a contract for a Public Works project, the contractor shall provide the city with a written statement certifying contractor and any subcontractor have filed a Public Works bond as required in subsection 15.1.4.1.

15.1 .4 .3 Emergencies. In cases of emergency, or when the city interest or property probably would suffer material injury by delay or other cause, the requirement for filing the Public Works bond may be excused, if a declaration of the emergency is made in accordance with these regulations.

15.1 .4 .4 Disadvantaged, Minority, Women or Emerging Small Business Enterprise. A disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 may, for up to four (4) years after certification, elect not to file a Public Works bond. A business enterprise that elects not to file a Public Works bond shall provide the Construction Contractors Board with written verification of its certification and written notice that it elects not to file the bond. Before starting work on the Public Works project, the business enterprise shall also provide the city with written notice of its election not to file the bond.

15.1 .4 .5 Public Works Not Exceeding \$100,000. A contractor or subcontractor may elect not to file a public works bond for any public works project for which the contract price does not exceed \$100,000.

15.1 .5 DESIGN/BUILD CONTRACTS. If the Public Improvement contract is with a single Person to provide both design and construction of a Public Improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related Services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

15.1 .6 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACTS. If the Public Improvement contract is with a single Person to provide construction manager and general contractor Services, in which a guaranteed maximum price may be established by an amendment authorizing construction period Services following preconstruction period Services, the contractor shall provide the bonds required by subsection (1) of this section upon execution of an amendment establishing the guaranteed maximum price. The city shall also require the contractor to provide bonds equal to the value of construction Services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

15.1 .7 SURETY; OBLIGATION. Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the city or to the public agency or agencies for whose benefit the bond is issued, as specified in the Solicitation Documents, and shall be in a form approved by the Purchasing Agent.

15.1 .8 EMERGENCIES. In cases of Emergency, or when the interest or property of the city probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any Public Improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of Section 4.9, unless the city council requires otherwise.

15.2 ENVIRONMENTAL CONDITIONS.

15.2 .1 STATEMENT OF ENVIRONMENTAL AGENCIES. Every contract for work involving the disturbance of buildings or real property should contain a description of federal, state and local agencies that have enacted laws (including, without limitation, ordinances, statutes, rules or regulations) dealing with environmental conditions that may cause pollution or affect the preservation of natural resources and that affect the performance of the contract.

15.2 .2 CONTRACTUAL ALLOCATION OF ENVIRONMENTAL CONDITION RISKS. The city: may allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the Solicitation Documents and in the contract. Unless the risk of environmental conditions has been allocated contractually, environmental conditions shall be handled in accordance with the provisions of Section 16.2.

15.3 PRICE AGREEMENTS. (ORS 279B.140).

15.3 .1 ENFORCEABLE AGREEMENT. A Price Agreement constitutes a firm Offer by the contractor regardless of whether any order or purchase has been made or any performance has been tendered under the Price Agreement. Unless the Price Agreement otherwise provides, a Price Agreement is enforceable for the period stated in the Price Agreement and, notwithstanding ORS 72.2050, obligations thereunder are not revocable by the contractor.

15.3 .2 CITY’S RIGHT TO PURCHASE AND TERMINATE. Under a Price Agreement, no quantity unreasonably disproportionate to any stated estimate or, in the absence of a stated estimate, to any normal or otherwise comparable prior requirements may be demanded, unless otherwise expressly provided in the Price Agreement. However, the city may amend or terminate a Price Agreement or an order under a Price Agreement under any of the following circumstances:

- (a) Any failure of the city to receive funding, appropriations, limitations, allotments or other expenditure authority, including the continuation of program operating authority sufficient, as determined in the discretion of the city, to sustain purchases at the levels contemplated at the time of contracting; or
- (b) Any change in law or program termination that makes purchases under the Price Agreement no longer authorized or appropriate for the city’s use.

15.3 .3 NOT EXCLUSIVE. A Price Agreement does not constitute an exclusive dealing commitment on the part of the city or the contractor unless the Price Agreement expressly so provides.

15.4 MANDATORY PROVISIONS FOR ALL CITY CONTRACTS. Every Public Contract of the city shall require the contractor and all subcontractors to comply with all provisions legally required on a Public Contract, including the following provisions:

15.4 .1 RIGHT TO AUDIT RECORDS.

15.4 .1 .1 Cost or Pricing Data. The Purchasing Agent may, at reasonable times and places, audit the books and records of any Person who has submitted cost or pricing data in connection with a contract to the extent that such books and records relate to such cost or pricing data. Each contract shall also require any Person who receives a contract for which cost or pricing data are required, to maintain the books and 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 authorized by the Purchasing Agent in writing.

15.4 .1 .2 Contract Audit. The Purchasing Agent shall be entitled to audit the books and records of the contractor or any subcontractor to the extent that the books and records relate to the performance of the contract. The contract shall also require the contractor and each subcontractor to maintain books and records for a period of three (3) years from the date of final payment under the contract or subcontract, as applicable, unless a shorter period is authorized by the Purchasing Agent in writing.

15.4 .2 FAIR EMPLOYMENT PRACTICE PROVISIONS.

15.4 .2 .1 Non-Discrimination Requirements. During the performance of the contract, the contractor and each subcontractor shall agree to comply with sections 4.615 to 4.655 of the Eugene Code, 1971, and as follows:

- (a) The Contractor and each subcontractor will not discriminate against any employee or applicant for employment because of an individual's race, religion, color, sex, national origin, marital status, familial status, age, sexual orientation or source of income, a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, or because an individual is a person with a disability which, with reasonable accommodation by the employer does not prevent the performance of the work involved, unless based upon a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.
- (b) The contractor and all subcontractors employing 15 or more individuals will develop and implement an affirmative action plan to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, age or national origin. Such plan shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- (c) The contractor and each subcontractor will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Human Rights Commission setting forth the provisions of this nondiscrimination clause.

15.4 .2 .2 Reporting. The contractor and each subcontractor will, prior to commencement and during the term of the contract, provide to the City such documentation, and permit any inspection of records as may be required or authorized by rules adopted by the city manager to determine compliance with Subsection 15.4.2.1.

- 15.4 .2 .3 Violations.** If upon an investigation conducted pursuant to rules adopted by the city manager in accordance with section 2.019 of the Eugene Code, 1971 there is reasonable cause to believe that the contractor or any subcontractors of the contractor have failed to comply with any of the terms of Subsections 15.4.2.1 or 15.4.2.2, a determination thereof shall be made by the city manager. Such determination may result in the suspension, cancellation or termination of the principal contract in whole or in part and/or the withholding of any funds due or to become due to the contractor, pending compliance by the contractor and/or its subcontractors, with the terms of Subsections 15.4.2.1 and 15.4.2.2. Such determination may further result in debarment of the contractor in accordance with these rules.
- 15.4 .2 .4 Failure to Comply.** Failure to comply with any of the terms of Subsections 15.4.2.1 and 15.4.2.2 shall be a material breach of the contract.
- 15.4 .2 .5 Inclusion of Fair Employment Practices Provisions in Contracts with Subcontractors.** The contractor shall include the provisions of Subsections 15.4.2.1 through 15.4.2.4 in contracts with subcontractors so that the provisions will be binding upon each subcontractor.
- 15.4 .2 .6 Contractor Defined.** As used in this Section 15.4.2, “contractor” means all persons, wherever situated, but excluding local, state or federal units of government or their officials, from whom the city purchases Goods and/or Services costing \$2,500 or more in any fiscal year.
- 15.4 .3 NON-RESIDENT CONTRACTORS.**
- 15.4 .3 .1 Non-Resident Defined.** As used in this section, “non-Resident contractor” means a contractor that: (a) has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the Offer for the contract, (b) does not have a business address in this state and (c) stated in the Offer for the contract that it was not a “resident bidder” under ORS 279A.120.
- 15.4 .3 .2 Report to Department of Revenue.** If the contractor is a non-Resident contractor and the Contract Price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total Contract Price, terms of payment, length of contract and such other information as the department may require before the contractor may receive final payment on the Public Contract. The city shall satisfy itself that the requirement of this subsection has been complied with before the City issues a final payment on a Public Contract.
- 15.4 .4 RIGHT TO INSPECT PLANT.**

- 15.4 .4 .1 Time for Inspection.** The Purchasing Agent may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded.
- 15.4 .4 .2 Contractual Provisions.** Contracts may provide that the City may inspect supplies and Services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to the contract requirements.
- 15.4 .4 .3 Procedures for Trial Use and Testing.** The Purchasing Agent may establish operational procedures governing the testing and trial use of equipment, materials, and the application of resulting information and data to Specifications or Procurement.
- 15.4 .4 .4 Location.** When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the Person performing the inspection or testing.
- 15.4 .4 .5 Time of Testing or Inspection.** Inspection or testing of supplies and Services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times during normal business hours.
- 15.4 .4 .6 Inspection of Construction Projects.** On-site inspection of construction shall be performed in accordance with the provisions of the contract.
- 15.4 .5 TERMINATION IN THE PUBLIC INTEREST.**
- 15.4 .5 .1 Termination Provisions.** Every contract shall contain a provision that allows the city to terminate the contract for any reason considered by the city to be in the public interest. Reasons for termination in the public interest include but are not limited to:
- (a) The contractor cannot complete the work for reasons beyond the control of either the contractor or the city;
 - (b) Necessary materials are not available;
 - (c) A lack of funds;
 - (d) A phenomenon of nature of catastrophic proportions or intensity;
 - (e) Executive orders of the President related to national defense;
 - (f) Congressional or state acts related to funding or changes in applicable laws; or
 - (g) The presence of other circumstances or conditions such that it is impracticable within a reasonable time to complete the work.
- 15.4 .5 .2 Payment When Contract Is Terminated.** When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed under the

contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

15.4 .5 .3 Payment for Construction Services. The city may provide in a contract for construction Services, detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason considered to be in the public interest.

15.4 .6 CONDITIONS CONCERNING PAYMENT, CONTRIBUTIONS, LIENS, WITHHOLDING. Every Public Contract shall contain a condition that the contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

15.4 .7 RECYCLING OF YARD Waste. Every Public Improvement contract for lawn and landscape maintenance shall contain a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective.

15.4 .8 CONDITIONS CONCERNING PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION.

15.4 .8 .1 Medical Care. Every Public Contract shall contain a condition that the contractor shall promptly, as due, make payment to any Person, copartnership, association or corporation furnishing medical, surgical and hospital care Services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the Services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the Services.

15.4 .8 .2 Workers Compensation. Every Public Contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

15.4 .9 CONDITION CONCERNING HOURS OF LABOR. Every Public Contract other than a Public Improvement contract shall contain a condition that the contractor shall pay employees for overtime work performed under the Public Contract in accordance with

ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)

- 15.4 .9 .1 Personal Services Contracts.** In the case of Personal Services Contracts, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under Personal Services Contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 et seq. from receiving overtime.
- 15.4 .9 .2 Contracts for Services.** Contracts for Services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement, in ORS 279B.020(1)(b)(B) to (G), or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one (1) day or in excess of forty (40) hours in any one (1) week, whichever is greater.

15.5 ADDITIONAL PROVISIONS FOR PUBLIC IMPROVEMENT CONTRACTS.

- 15.5 .1 DRUG TESTING PROGRAM.** Every Public Improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place.
- 15.5 .2 DEMOLITION CONTRACTS TO REQUIRE MATERIAL SALVAGE.** Every Public Improvement contract for demolition shall contain a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective.
- 15.5 .3 CONDITIONS CONCERNING PAYMENT OF CLAIMS BY PUBLIC OFFICERS; PAYMENT TO PERSONS FURNISHING LABOR OR MATERIALS; AND COMPLAINTS.**
- 15.5 .3 .1 Prompt Payment; Payment of Laborers by City; Effect on Surety.** Every Public Improvement contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or Services furnished to the contractor or a subcontractor by any Person in connection with the Public Improvement contract as the claim becomes due, the city may pay such claim to the Person furnishing the labor or Services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- 15.5 .3 .2 Interest on Late Payments.** If the contract is for a Public Improvement it shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a Person furnishing labor or

materials in connection with the Public Improvement contract within thirty (30) days after receipt of payment from the city or a contractor, the contractor or first-tier subcontractor shall owe the Person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from the city or from the contractor, but the rate of interest may not exceed thirty percent (30%). The amount of interest may not be waived.

15.5 .3 .3 Right of Laborer to File Claim with Construction Contractors Board. Every Public Improvement contract and every contract related to the Public Improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a Person furnishing labor or materials in connection with the Public Improvement contract, the Person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

15.5 .4 CONDITION CONCERNING HOURS OF LABOR. Every Public Improvement contract subject to ORS Chapter 279C must contain a condition that a Person may not be employed for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and
- (c) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

15.5 .5 CONTRACTOR'S RELATIONS WITH SUBCONTRACTORS.

15.5 .5 .1 Prompt Payment Clause. Each Public Improvement contract shall include a clause that requires the contractor to include in each subcontract for property or Services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

- (a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the contractor by the city under the contract; and
- (b) An interest penalty clause that obligates the contractor, if payment is not made within thirty (30) days after receipt of payment from the city, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the city or contractor when payment was due. The interest penalty shall be:
 - (A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
 - (B) Computed at the rate specified in ORS 279C.515 (2).

15.5 .5 .2 Prompt Payment by Subcontractors. Each Public Improvement contract shall require the contractor to include in each of the contractor’s subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of this section in each of the first-tier subcontractor’s subcontracts and to require each of the first-tier subcontractor’s subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

15.6 ADDITIONAL PROVISIONS FOR PUBLIC WORKS CONTRACTS.

15.6 .1 CONTRACTUAL PROVISIONS REGARDING PREVAILING RATES OF WAGE AND FEE FOR ADMINISTRATION OF LAW.

15.6 .1 .1 Inclusion of Prevailing Wages and Statement for Public Works Contracts . The Specifications for every contract for Public Works, shall contain a provision stating the existing prevailing rate of wage that may be paid to workers in each trade or occupation required for the Public Works employed in the performance of the contract either by the contractor or subcontractor or other Person doing or contracting to do the whole or any part of the work contemplated by the contract. The contract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage.

15.6 .1 .2 Inclusion of Prevailing Wages and Statement for Public Works Contracts Involving Application of Davis-Bacon Act. The Specifications for every contract for Public Works shall contain a provision stating the existing state

prevailing rate of wage and, if federal prevailing wages apply pursuant to the Davis-Bacon Act (40 U.S.C. 3141), the federal prevailing rate of wage required under the Davis-Bacon Act that may be paid to workers in each trade or occupation required for the Public Works employed in the performance of the contract either by the contractor or subcontractor or other Person doing or contracting to do the whole or any part of the work contemplated by the contract. If the Davis-Bacon Act applies, the Specifications shall include information showing which prevailing rate of wage is higher for workers in each trade or occupation. When a Public Works project is subject to ORS 279C.800 to 279C.870 and the Davis-Bacon Act, the contractor and every subcontractor shall pay the higher of state or federal prevailing wage.

15.6 1 .3 Inclusion in Specifications of Provision Regarding Public Works Bond. The Specifications for every contract for Public Works shall contain a provision stating the contractor and every subcontractor, unless exempt under ORS 279C.800 to 279C.870, must have a Public Works bond filed with the Construction Contractors Board before starting work on the project, and must provide the city with the statement certifying the Public Works bond has been filed, as required by 15.1.4.2.

15.6 .1 .4 Inclusion in Contract of Provision Regarding Public Works Bond. Every contract for Public Works must contain a provision requiring the contractor:

- (a) To have a Public Works bond filed with the Construction Contractors Board before starting work on the project, unless the contractor is exempt under ORS 279C.800 to 279C.870;
- (b) To include in every subcontract a provision requiring the subcontractor to have a Public Works bond filed with the Construction Contractors Board before starting work on the project, unless the subcontractor is exempt under ORS 279C.800 to 279C.870; and
- (c) To provide the city with the statement certifying the Public Works bond has been filed, as required by 15.1.4.2.

15.6 .1 .5 Fee To Be Paid to BOLI. The Specifications for every contract for Public Works shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner.

15.6 .2 LIABILITY FOR VIOLATIONS. If a public agency fails to include a provision that the contractor and any subcontractor shall comply with ORS 279C.840 in the advertisement for Bids, the request for Bids, the contract Specifications, the accepted Bid or elsewhere in the contract documents, the liability of the public agency for unpaid minimum wages, is joint and several with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840.

ARTICLE 16

CONTRACT ADMINISTRATION

16.1 CONDUCT OF INSPECTIONS.

16.1 .1 INSPECTORS. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No change of any provision of the Specifications or the contract may be required by the inspector without written authorization of the Purchasing Agent, unless otherwise specified in the Solicitation Documents. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirement of the contract.

16.1 .2 PROCEDURE FOR INSPECTION. The location, timing and manner of inspections shall be as provided in the contract and under the provisions of subsection 15.4.4.

16.2 ENVIRONMENTAL CONDITIONS.

16.2 .1 ENVIRONMENTAL CONDITION DEFINED. For purposes of this section, an environmental condition is any physical condition of property that must be reported, analyzed, removed or contained, or that requires other special handling under any law (including, without limitation, statutes, ordinances rules or orders) relating to the prevention of environmental pollution or the preservation of natural resources.

16.2 .2 RESPONSE TO UNANTICIPATED LAWS. If contractor is delayed or must undertake additional work by reason of existing laws not cited in a Public Improvement contract or due to the enactment of new or the amendment of existing laws relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the Offer under which the contract was made, the city may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use nonagency forces already under contract with the city;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit Offers for a new contractor to provide the necessary Services under the competitive requirements of these regulations; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

16.2 .3 RESPONSE TO UNANTICIPATED ENVIRONMENTAL CONDITIONS.

16.2 .3 .1 Immediate Notice to City. If a contractor encounters an environmental condition not referred to in the Solicitation Documents, not caused by the contractor and not discoverable by a reasonable pre-Bid visual site inspection,

and the condition requires compliance with applicable environmental laws, the contractor shall immediately give notice of the condition to the city.

16.2 .3 .2 Direction from City. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the contractor may not commence work nor incur any additional job site costs in regard to the discovery of an environmental condition without written direction from the city.

16.2 .3 .3 Contractor's Advice or Cost. Upon request by the city, the successful bidder shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the city for resolution.

16.2 .3 .4 City's Options. Within a reasonable period of time following delivery of an estimate under subsection 16.2.3.3 the city may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use nonagency forces already under contract with the city;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit Bids for a new contractor to provide the necessary Services under the competitive Bid requirements of this chapter; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

16.2 .4 CONTRACTOR'S RIGHTS UPON TERMINATION. If the city chooses to terminate the contract under this Section 16.2, the contractor shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The city shall have access to the contractor's Bid documents when making the city's determination of the additional compensation due to the contractor.

16.2 .5 CHANGE ORDERS. Any change order executed to provide for the handling of an environmental condition under this Section 16.2 shall include the appropriate extension of contract time and compensate the contractor for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The city shall have access to the contractor's Bid documents when making the city's determination of the additional compensation due to the contractor.

16.3 CONTRACT AMENDMENTS.

16.3 .1 AMENDMENT DEFINED. An amendment is any change or modification of any term or condition of a contract or any addition or deletion of any term or provision of a contract. Amendments include, but are not limited to change directives, change

orders, and any addition, deletion or modification that affects the nature, quantity, degree, or scope of the Goods or Services or improvements to be provided under a contract or the time of performance or price or that affects any provision concerning the rights or obligations of a party.

16.3 .2 WRITING AND SIGNATURE REQUIREMENTS. No amendment will be binding on the city unless set forth in writing and signed by an official who is duly authorized to bind the city in the manner described by the amendment.

16.3 .3 AMENDMENTS THAT INCREASE PRICE. Except in connection with a contract renewal or extension, no contract may be amended to increase the Contract Price unless the increase is directly related to an increase in the quantity or types of Goods or Services to be provided, a betterment in the quality of Goods or materials to be provided, or to compensate the contractor for delays occurring after the execution of the contract for which the city is responsible. Amendments that increase the Contract Price are further limited as follows:

16.3 .3 .1 Unit Price Established. Amendments that increase the quantity of Goods or Services to be provided under the contract and for which unit prices were established in the original contract (for example, by weight, volume, itemized equipment price lists, or hourly fees) shall be permitted without limitation, so long as the increase does not exceed the solicitation threshold for that class of contract.

16.3 .3 .2 Unit Price Not Established. Amendments that increase the Contract Price and that are not described in subsection 16.3.3.1 may not, in the aggregate, increase the total amount to be paid under the contract by more than twenty-five percent (25%) of the original Contract Price, so long as the increase does not exceed the solicitation threshold for that class of contract.

16.3 .3 .3 Amendments in Excess. The Purchasing Agent has discretion to approve amendments in excess of twenty-five percent (25%) of the original contract and beyond the solicitation threshold if it is determined that the amendment is required due to an unforeseen circumstance that could not be reasonably estimated for the original contract and it is in the city's best interest.

16.3 .4 TIME. The time of performance under a contract, or the term of an expiring contract, may not be extended by amendment except as provided in the original contract or on a temporary basis as provided in Section 4.8.

16.4 EXTENSION AND COMPENSATION WHEN CONSTRUCTION WORK SUSPENDED.

If a construction contract is not terminated but work under the contract is suspended by an order of the city for any reason considered to be in the public interest other than a labor dispute or any third-party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute, the contractor is entitled to a reasonable extension of the

contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs.

16.5 FINAL PAYMENT OF NON-RESIDENT CONTRACTORS. When a contract is awarded to a non-Resident contractor and the Contract Price exceeds \$10,000, the contractor is required to report to the Department of Revenue, on forms to be provided by the department, the total Contract Price, terms of payment, length of contract and such other information as the department may require before the contractor may receive final payment on the Public Contract. The city shall satisfy itself that this requirement has been complied with before the contracting agency issues a final payment on a Public Contract.

16.6 CONTRACT TERMINATION.

16.6 .1 TERMINATION FOR BREACH OR VIOLATION OF LAW. A contract may be terminated by the Purchasing Agent for breach or default by the contractor or if the contractor violated applicable law. In the event of such termination, the contractor shall be entitled to payment for the percentage of the contract completed, subject to adjustment for damages and compensable losses suffered by the City as a result of the breach or violation.

16.6 .2 COMPENSATION WHEN CONSTRUCTION CONTRACT TERMINATED FOR OTHER THAN BREACH OR VIOLATION. Unless the contract expressly provides otherwise, when a Public Contract for construction Services is terminated for a reason other than breach or default by the contractor, or as a result of the contractor's failure to comply with applicable laws, provision shall be made for the payment of compensation to the contractor. In addition to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of termination, the amount to be paid to the contractor:

- (a) Shall be determined on the basis of the Contract Price in the case of any fully completed separate item or portion of the work for which there is a separate or unit Contract Price; and
- (b) May, with respect to any other work, be a percent of the Contract Price equal to the percentage of the work completed.

16.6 .3 RESPONSIBILITY FOR COMPLETED WORK IF CONTRACT TERMINATED. Termination of the contract or a portion thereof shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any just claims arising from the work performed.

16.7 PROVISIONS APPLICABLE ONLY TO PUBLIC IMPROVEMENT CONTRACTS.

16.7 .1 SUBSTITUTION OF FIRST-TIER SUBCONTRACTORS.

16.7 .1 .1 Applicable Law. A contractor may substitute a first-tier subcontractor that was not disclosed with its Offer by submitting the name of the new subcontractor

and the reason for the substitution in writing to the city. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

- (a) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and Specifications for the Public Improvement project or the terms of the subcontractor's written Bid, is presented to the subcontractor by the contractor.
- (b) When the disclosed subcontractor becomes bankrupt or insolvent.
- (c) When the disclosed subcontractor fails or refuses to perform the subcontract.
- (d) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the Bid submittal.
- (e) When the contractor demonstrates to the city that the subcontractor was disclosed as the result of an inadvertent clerical error.
- (f) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the board.
- (g) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and Specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.
- (h) When the disclosed subcontractor is ineligible to work on a Public Improvement contract under applicable statutory provisions.
- (i) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305.
- (j) When the substitution is reasonably based on the contract alternates chosen by the city.

16.7 .1 .2 Effect of Violation. The city may refuse to allow a substitution of a first-tier subcontractor in violation of the law described in subsection 16.7.1.1, and may treat the unlawful substitution of a subcontractor as a breach of contract, however, the city has no responsibility for enforcement of the law.

16.7 .1 .3 Effect on Contract Requirements. The conditions concerning substitution of subcontractors in subsection 16.7.1.1 are state law minimums and do not prevent the city from contractually requiring the contractor to use specified key personnel or specified key subcontractors for the work.

16.7 .2 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a Public Improvement contract and owed by a contracting agency shall be paid

promptly. Therefore, payments under Public Improvement contract shall be made as provided in this subsection 16.7.2.

- 16.7 .2 .1 Progress Payments.** The city shall make progress payments on the contract monthly as work progresses on a Public Improvement contract. Payments shall be based upon estimates of work completed that are approved by the city. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein.
- 16.7 .2 .2 Progress Payment Due Date.** Progress payments are due on or before the earlier of: (a) thirty (30) days after receipt of the invoice from the contractor, or (b) fifteen (15) days after the payment is approved by the city (the “Due Date”).
- 16.7 .2 .3 Interest on Late Progress Payments.** The city shall pay to the contractor interest on the progress payment, not including retainage, commencing on the Due Date. The rate of interest charged to the city on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the Due Date, but the rate of interest may not exceed thirty percent (30%). Interest shall be paid automatically when payments become overdue. The city shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on Public Contracts. The city may not require the contractor to petition, invoice, bill or wait additional days to receive interest due.
- 16.7 .2 .4 Incomplete Invoices.** When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the city shall so notify the contractor within fifteen (15) days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven (7) days of being notified by the city, may not cause a payment to be made later than the Due Date that would have applied if the invoice had been complete when submitted unless interest is also paid.
- 16.7 .2 .5 Contractor’s Obligation to Notify Subcontractors of Progress Payments.** If requested in writing by a first-tier subcontractor, the contractor, within ten (10) days after receiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to the city or pay document provided by the city to the contractor specifically related to any labor or materials supplied by the first-tier subcontractor.
- 16.7 .2 .6 Disputes.** Payment of interest may be postponed when payment on the principal is delayed because of disagreement between the city and the contractor. Whenever a contractor brings formal administrative or judicial action to collect interest due under this section, the prevailing party is entitled to costs and reasonable attorney fees.

16.7 .3 RETAINAGE. The city shall reserve as retainage from any progress payment on a Public Improvement contract an amount not to exceed five percent (5%) of the payment.

16.7 .3 .1 Reduction of Retainage. As work progresses, the city may reduce the amount of the retainage, and the city may eliminate retainage on any remaining monthly contract payments after fifty percent (50%) of the work under the contract is completed if, in the city's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the contractor, and the application shall include written approval of the contractor's surety. However, when the contract work is ninety-seven and one-half percent (97.5%) completed the contracting agency may, at the contracting agency's 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. Upon receipt of a written application by the contractor, the contracting agency shall respond in writing within a reasonable time.

16.7 .3 .2 Forms of Retainage.

16.7 .3 .2 .1 Cash. Unless retainage is deposited or replaced as provided in this subsection 16.7.3.2, moneys retained by the city shall be retained in a fund by the city and paid to the contractor in accordance with these regulations.

16.7 .3 .2 .2 City's Right to Reimbursement for Expenses Incurred. If the city incurs additional costs as a result of the exercise of the options described in subsection (1) of this section, the city may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the city shall, upon demand, inform the contractor of all accrued costs.

16.7 .3 .2 .3 Contractor's Option to Replace Retainage with Bonds or Securities. The contractor may deposit bonds or securities with the city or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the city. In such event the city shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Interest on the bonds or securities shall accrue to the contractor.

16.7 .3 .2 .4 Contractor May Request Deposit in Interest Bearing Account. If the contractor elects, the retainage as accumulated shall be deposited by the city in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the city. Earnings on the account shall accrue to the contractor.

16.7 .3 .2 .5 Acceptable Bonds and Securities. Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of DAS, including but not limited to:

- (a) Bills, certificates, notes or bonds of the United States.
- (b) Other obligations of the United States or its agencies.
- (c) Obligations of any corporation wholly owned by the federal government.
- (d) Indebtedness of the Federal National Mortgage Association.

16.7 .3 .2 .6 Use of Surety Bonds with Approval of City. The contractor, with the approval of the city, may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the city in a form acceptable to the city. The bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The city shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Whenever the city accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.

16.7 .3 .3 Release of Retainage on Final Payment; Interest. The retainage held by the city shall be included in and paid to the contractor as part of the final payment of the contract price. The city shall pay to the contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due the contractor, interest to commence thirty (30) days after the work under the contract has been completed and accepted and to run until the date when the final payment is tendered to the contractor. The contractor shall notify the city in writing when the contractor considers the work complete and the city shall, within fifteen (15) days after receiving the written notice, either accept the work or notify the contractor of work yet to be performed on the contract. If the city does not, within the time allowed, notify the contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) days after the end of the fifteen (15) day period.

16.7 .4 CONTRACTOR'S ENTITLEMENT TO INTEREST ON WRONGFULLY WITHHELD PAYMENTS. 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 contract, the amount due plus interest at the rate of two times the discount rate, but not to exceed thirty percent (30%), on 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:

- (a) The due date of any progress payment received under the contract for the period in which such work was performed; or
- (b) Thirty (30) days after the date on which the claim for the payment under dispute was presented to the city by the contractor in writing or in accordance with applicable provisions of the contract.

Interest shall be added to and not made a part of the settlement or judgment.

16.7 .5 CONTRACTOR’S RELATIONS WITH SUBCONTRACTORS.

16.7 .5 .1 Contractor May Not Request Payment of Sums Withheld from Subcontractors. A contractor may not request payment from the city of any amount withheld or retained from a subcontract by the contractor in accordance with ORS 279C.580(5) until such time as the contractor has determined and certified to the city that the subcontractor has determined and certified to the contractor that the subcontractor is entitled to the payment of such amount.

16.7 .5 .2 City Not Party to Disputes. A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection ORS 279.580 does not constitute a dispute to which the city is a party. The city may not be included as a party in any administrative or judicial proceeding involving such a dispute.

16.8 PROVISIONS CONCERNING PUBLIC WORKS CONTRACTS.

16.8 .1 NOTIFYING BUREAU OF LABOR AND INDUSTRIES. The Solicitation Agent shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract for Public Works project has been awarded, unless the contract is exempt from the provisions of ORS 279C.800 to 279C.870. The notification shall be made within thirty (30) days of the date that the contract is executed. The notification shall include a copy of the disclosure of first-tier subcontractors that was submitted by the Contractor.

16.8 .2 CERTIFIED STATEMENTS REGARDING PAYMENT OF PREVAILING RATES OF WAGE.

16.8 .2 .1 Certification of Wage Rates and Payment. The contractor or the contractor’s surety and every subcontractor or the subcontractor’s surety shall file certified statements with the city in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the Public Works, and further certifying that no worker employed upon the Public

Works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

16.8 .2 .2 Retainage Until Certified Statements Filed. For Public Works contracts first advertised or solicited on or after January 1, 2006, the city shall retain twenty-five percent (25%) of any amount earned by the contractor on the Public Works project until the contractor has filed the certified statements. The city shall pay the contractor the amount retained within fourteen (14) days after contractor files the certified statements. The contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on a Public Works project until the first-tier subcontractor has filed the certified statements. The contractor shall verify the first-tier subcontractor has filed the certified statements before the contractor pays the subcontractor the amount retained, which shall be within fourteen (14) days after the first-tier subcontractor files the certified statements.

16.8 .2 .3 Verification Under Oath. The certificate and statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read the statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor's knowledge.

16.8 .2 .4 Inclusion of Payroll Records. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

16.8 .2 .5 Due Date for Filing with City. The contractor or subcontractor shall deliver or mail each certified statement required by this subsection 16.8.2 to the city. Certified statements for each week during which the contractor or subcontractor employs a worker upon the Public Works shall be submitted once a month, by the fifth Business Day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

16.8 .3 REQUESTS FOR COMMISSIONER DETERMINATIONS; DIVISION OF PROJECT. The Solicitation Agent may request a determination from the Commissioner of the Bureau of Labor and Industries about whether a project or proposed project is or would be a Public Works project on which payment of the prevailing wage rate is or would be required under ORS 279C.840 or a project that may or should be divided under ORS 279C827.

16.9 PROVISIONS CONCERNING PUBLIC BUILDINGS. Pursuant to applicable State laws and administrative rules, before entering into a public improvement contract for construction of a public building or for the reconstruction or major renovation of a public building, the City shall prepare a written determination of whether the inclusion of solar energy technology in the construction, reconstruction or major renovation of the public

building is appropriate. The City shall include in the determination the total contract price and the amount the City intends to expend on the inclusion of solar energy technology in the public building, utilizing the form developed by the State Department of Energy. This provision applies to the reconstruction or major renovation of a public building if the cost of the reconstruction or major renovation exceeds fifty percent (50%) of the value of the public building. "Public building" shall have the meaning set out in ORS 279C.527.

ARTICLE 17

SURPLUS PROPERTY.

17.1 GENERAL METHODS. Surplus Property, other than buildings or structures being separated from real property, may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of Disposal is in the best interest of the city. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the city. The Solicitation Agent shall maintain a record of the reason for the Disposal method selected, and the manner of Disposal. An advertisement required to be given under this Article shall be published in a newspaper of general circulation in the Eugene/Springfield metropolitan area or by electronic advertisement under Article 14, and in such other media as the Solicitation Agent deems necessary to promote competition for the property being disposed of.

17.1 .1 GOVERNMENTS. By transfer or sale to another city department or public agency.

17.1 .2 AUCTION. By publicly advertised auction.

17.1 .3 BIDS. By publicly advertised Invitation to Bid.

17.1 .4 LIQUIDATION SALE. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with these regulations for the award of Personal Services Contracts.

17.1 .5 FIXED-PRICE SALE. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms. The advertisement must be first published at least three (3) days prior to the date upon which Offers may be accepted.

17.1 .6 TRADE-IN. By trade-in, in conjunction with acquisition of other price-based items under a competitive Solicitation. The Solicitation shall require the Offer to state the total value assigned to the surplus property to be traded.

17.1 .7 DONATION. By donation to any organization operating within or providing a service to residents of the city which is recognized by the Internal Revenue Service as an organization described in IRC § 501(c)(3).

17.2 DISPOSAL OF PROPERTY WITH MINIMAL VALUE. Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost effective, including by Disposal as waste. The Solicitation Agent making the Disposal shall make a record of the value of the item and the manner of Disposal. Disposal of property to city employees under this subsection is strictly prohibited.

17.3 PERSONAL-USE ITEMS. An item (or indivisible set) of specialized and personal use, such as clothing, other than police officers' handguns, with a current value of less than \$100, may be sold to the employee or retired or terminated employee for whose use it was purchased at fair market value, as supported by a written record.

17.4 POLICE OFFICERS' HANDGUNS. Upon honorable retirement from service with the city, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the city at least thirty (30) days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer the city shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to thirty (30) days from the date of retirement to purchase the handgun for the appraised fair market value.

17.5 DISPOSAL OF SURPLUS RESIDENTIAL STRUCTURES.

17.5 .1 IMMEDIATE REMOVAL NOT REQUIRED. Upon a determination that a building located on city-owned property that has been acquired for a public project or park is determined as surplus, is suitable for use as a residence, and there is no immediate need for its removal from the property, the city shall issue a request for formal Proposals from Nonprofit Organizations interested in purchasing the building, with the building to remain temporarily on the city-owned real property. Proposals submitted under this subsection must meet the following criteria:

- (a) The proposed use must be compatible with that of abutting properties or City programs operating in proximity to the property;
- (b) The proposed use must comply with all applicable federal, state and local laws and regulations, and where necessary, receive approval of federal or state agencies;
- (c) The applicant must include a cost estimate from a licensed architect or licensed structural engineer itemizing the building modifications needed to meet applicable federal, state and local laws and regulations for the proposed use of the building;
- (d) The applicant must demonstrate that it has the current financial ability to perform the required building modifications identified under 8.1.3 above;
- (e) Preference will be given to Proposals which minimize the time the structure will remain on City-owned land;
- (f) The applicant must agree to lease the land on which the building is located at its fair market value for the period of time negotiated in the agreement, and to remove the building from the City-owned land at the end of the lease term at its own expense; and
- (g) The applicant must provide to the City a performance bond in an amount sufficient to accomplish the demolition of the building at the end of the lease term in the event the applicant does not voluntarily remove the building.

The City shall evaluate the Proposals based on the above criteria and make an award. If no Proposals are submitted, or if none of the Proposals meets the required criteria, the building shall be offered under the provisions of subsection 17.5.2 of this section.

17.5 .2 IMMEDIATE REMOVAL OF BUILDING REQUIRED. Upon a determination that a building located on city-owned property that has been acquired for a public project or park is determined as surplus, is suitable for use as a residence, and there is an immediate need for its removal from the property, the city shall issue a request for Formal Proposals to purchase and remove the building from the city-owned real property. These Proposals shall be evaluated by the city based on the following priority:

- (a) First priority shall be given to qualifying non-profit agencies (tax exempt 501(c)(3)) proposing to use the structure to provide low income housing;
- (b) Second priority shall be given to non-profit agencies (tax exempt 501(c)(3)) proposing to use the structure to provide educational or community service programs; and
- (c) Third priority shall be given to Proposals from all other persons, companies or agencies.

The city shall evaluate the Proposals based on the above priorities, in making an award. If no acceptable Proposals are received, the building will be offered to the department of public safety for training purposes. in the event the building is not suitable for department of public safety training purposes, the city may demolish the building.

ARTICLE 18

DEFINITIONS

18.1 DEFINITIONS. Capitalized terms used in these Regulations which are not proper nouns or not otherwise defined for specific purposes shall have the meanings set forth below.

ADDENDUM OR ADDENDA means a written document issued by the city to add, modify or delete a provision of a Solicitation Document.

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 or public improvements in a cooperative procurement.

BID means a binding, sealed, written Offer to provide Goods, Services or Public Improvements for a specified price or prices.

BOARD OR CONTRACT REVIEW BOARD means the city council.

BUSINESS DAY means a day on which the offices of the city are open to the public for routine municipal purposes.

CLOSING means, with respect to a Solicitation, the date and time after which Bids, Proposals, statements of qualifications or other Solicitation responses will not be received. The Closing date and time must be specified in the Solicitation Documents.

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

CONTRACT PRICE means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

CONTRACT REVIEW BOARD OR BOARD means the city council.

DAS means the Oregon Department of Administrative Services.

DEBARMENT means declaration by the Purchasing Agent under Article 5 that prohibits a potential contractor from competing for the city's Public Contracts for a prescribed period of time.

DIRECT CITY FUNDING means any revenue, money or that which can be valued in money derived from the city's immediate custody and control for the specific purpose of financing a project. Payment for all or part of a project with city property or other assets constitutes payment with city funds.

DISPOSAL means any arrangement for the transfer of property by the city under which the city relinquishes ownership.

EMERGENCY means circumstances that could not have been reasonably foreseen; create a substantial risk of loss, damage or interruption of Services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

ENERGY SAVINGS PERFORMANCE CONTRACT OR ESPC means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

FINDINGS mean statements of fact that provide justification for a determination to exempt a Public Improvement contract from competitive bidding. Findings must demonstrate that (i) it is unlikely that an exemption will encourage favoritism or substantially diminish competition and (ii) the awarding of a contract under the exemption will likely result in substantial cost savings. The Findings may include, but not be limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in Public Contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability and number of persons to bid; type, cost and amount of the contract; performance and funding sources.

FORMAL PROPOSAL means a Proposal submitted in response to an RFP.

FUNDS OF A PUBLIC AGENCY means Direct City Funding and Indirect City Funding and any other funds of a Public Agency. Funds of a Public Agency do not include:

- (a) A waiver of building and development permit fees by the city;
- (b) Funds provided in the form of a government Grant to a Nonprofit Organization, unless the government Grant is issued for the purpose of construction, reconstruction, major renovation or painting;
- (c) Tax credits or tax abatements;
- (d) Land that a Public Agency sells to a private entity at fair market value;
- (e) The difference between:
 - (i) The value of land that a Public Agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the Public Agency imposes on the development or use of the land; and
 - (ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph;

- (f) Staff resources of a Public Agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;
- (g) Staff resources of a Public Agency used to design or inspect one or more components of a project;
- (h) Monies derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a Public Improvement;
- (i) Value added to land as a consequence of a Public Agency's site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses a Public Agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or
- (j) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS Chapter 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a Public Improvement.

GSA means the United States General Services Administration.

GOODS means and includes any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

GRANT means an agreement under which 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, from a grantor for the purpose of supporting or stimulating a program or activity of the city and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or an agreement under which 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, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the city is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

A Grant does not include a Public Contract for a Public Improvement, for Public Works or for Emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract the city pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the city, moneys that the city has received under a Grant.

INDIRECT CITY FUNDING means that the city ultimately bears the cost of all or part of the project, even if the city is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. The city will "ultimately bear the cost" of all or part of a project in situations including, but not limited to:

- (a) Amortizing the costs of construction over the life of a lease and paying these costs with public funds during the course of the lease;
- (b) Subsidizing the costs of construction that would normally be borne by the contractor;
- (c) Using insurance proceeds that belong to the city to pay for construction. Insurance proceeds represent "money collected for the custody and control of the city" and therefore are public funds, whether the contractor obtains payment directly from the insurance company or the public agency; or
- (d) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the city.

Indirect City Funding does not include the city's election not to collect land rent that is due or system development charge credits.

INDUSTRIAL OIL means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

INFORMAL SOLICITATION means a Solicitation made in accordance with these regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three Quotes or Proposals.

INFORMAL PROPOSAL means an unsolicited Proposal, or a Proposal submitted in response to a request other than an RFP.

INVITATION TO BID OR ITB means, as the context requires, the process or the Solicitation Documents used to solicit Bids.

ISSUE DATE means the date on which Solicitation Documents are first available for review by potential Offerors.

LUBRICATING OIL means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

NONPROFIT ORGANIZATION means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

ODOT means the Oregon Department of Transportation.

OFFER means a binding commitment to enter into a contract upon the terms of the Offer upon acceptance by the Person to whom the Offer is made. As used in these regulations, the term Offer means and includes a Bid, Quote or Proposal.

OFFEROR means a Person who submits a Bid, Quote or Proposal to enter into a Public Contract with the city.

OREGON PUBLIC CONTRACTING CODE OR CODE means ORS chapters 279A, 279B and 279C.

PERSON means a natural Person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

PERSONAL SERVICES CONTRACT means a contract with an independent contractor predominantly for Services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such Services include, but are not limited to, the Services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. For any single contract or class of contracts, the Solicitation Agent shall have discretion to determine whether additional types of Services not specifically mentioned in this paragraph are personal services.

PRICE AGREEMENT means a contract for the Procurement of Goods or Services at a set price with:

- (a) No guarantee of a minimum or maximum purchase; or
- (b) An initial order or minimum purchase combined with a continuing contractor obligation to provide Goods or Services in which the city does not guarantee a minimum or maximum additional purchase. Pursuant to ORS 279B.140, a Price Agreement is binding on the contractor for the period stated in the agreement but does not constitute an exclusive dealing commitment on the part of the city unless the contract so provides.

PROCUREMENT means the act of purchasing, leasing, renting or otherwise acquiring Goods or Services. "Procurement" includes each function and procedure undertaken or required to be undertaken by the city to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Oregon Public Contracting Code.

PROPOSAL means a binding Offer to provide Goods, Services or Public Improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to an RFP or under an Informal Solicitation.

PUBLIC AGENCY means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter.

PUBLIC CONTRACT means a sale or other disposal, or a purchase, lease, rental or other acquisition by the city of personal property, Services, including personal services, Public

Improvements, Public Works, minor alterations, emergency construction or repair work or ordinary repair or maintenance necessary to preserve a public improvement. Public Contract does not include Grants.

PUBLIC IMPROVEMENT means a project for construction, reconstruction or major renovation on real property by or for the city.

Public Improvement does not include:

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

PUBLIC WORKS means and includes:

- (a) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by a Public Agency to serve the public interest;
- (b) A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a Public Agency; or
- (c) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which twenty-five percent (25%) or more of the square footage of the completed project will be occupied or used by a Public Agency.

Public Works does not include:

- (a) Public Works Exemptions;
- (b) The reconstruction or renovation of privately owned property that is leased by a Public Agency; or
- (c) The renovation of publicly owned real property that is more than seventy-five (75) years old by a private Nonprofit Organization if:
 - 1. The real property is leased to the private Nonprofit Organization for more than twenty-five (25) years;
 - 2. Funds of a Public Agency used in the renovation do not exceed fifteen percent (15%) of the total cost of the renovation; and
 - 3. Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 1, 2007.

PUBLIC WORKS EXEMPTIONS means Public Works projects for which the prevailing wage rate laws of the State of Oregon do not apply. Public Works Exemptions include:

- (a) Projects for which the Contract Price does not exceed \$50,000;

- (b) Projects for which no Funds of a Public Agency are used;
- (c) Projects that are privately owned that use funds of a private entity in which less than 25% of the square footage of the completed project will be occupied or used by a Public Agency and for which less than \$750,000 of Funds of a Public Agency are used; and
- (d) Projects for residential construction that are privately owned and that predominantly provide affordable housing.

The terms “privately owned”, “residential construction”, “predominantly” and “affordable housing”, as used in Public Works Exemptions are given the definitions set forth under ORS 279C.810.

PURCHASING AGENT means the city manager or designee appointed to perform all or any of the duties of the Purchasing Agent under these regulations.

QUALIFIED NONPROFIT AGENCY FOR INDIVIDUALS WITH DISABILITIES means a nonprofit activity center or rehabilitation facility that meets the requirements of ORS 279.835(5).

QUALIFIED POOL means a pool of vendors who are prequalified by the City to perform certain types of contracts.

QUOTE means an Offer made in response to an Informal Solicitation to provide Goods, Services or Public Improvements.

RECYCLED OIL means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

RECYCLED PAPER means a paper product with not less than:

- (a) Fifty percent (50%) of its fiber weight consisting of secondary waste materials; or
- (b) Twenty-five percent (25%) of its fiber weight consisting of post-consumer waste.

RECYCLED PRODUCT means Recycled Paper, Recycled Oil or any materials, Goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. “Recycled Product” includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.

REQUEST FOR PROPOSALS OR RFP means, as the context requires, the process or the Solicitation Documents used to Solicit Formal Proposals as described in Article 12, regardless of the name of the document. In some cases, the City may issue a Request for Proposals under the title of “Request for Qualifications.”

RESIDENT BIDDER means a bidder that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the Bid, has a business address in Oregon and has stated in the Bid whether the bidder is a “resident bidder.”

RESPONSIBLE, when used for an Offeror, means a Person who meets the Standards of Responsibility.

RESPONSIVE, when used in connection with an Offer, (including a Bid or Quote or Proposal) means an Offer that conforms in all material respects with the requirements set forth in the Solicitation Documents and all requirements of the Oregon Public Contracting Code and these Regulations. An Offer is not Responsive if it contains contract terms or provisions that are contrary to the terms and provisions set forth in the Solicitation Documents or indicates that the Goods and Services that will be provided do not conform to the contract Specifications.

SERVICES means all labor and Services (including construction and trade Services) other than personal services.

SOLICITATION means any invitation to one or more potential contractors to submit a Bid, Proposal, Quote, statement of qualifications or letter of interest to the city with respect to a proposed project, Procurement or other contracting opportunity.

SOLICITATION AGENT means, with respect to a particular Solicitation or contract, the city manager, or employee delegated responsibility for conducting the Solicitation and awarding the contract.

SOLICITATION DOCUMENTS means all informational materials issued by the City for a Solicitation, including, but not limited to, advertisements, instructions, submission requirements and schedules, award criteria, contract terms and Specifications, and all laws, regulations and documents incorporated by reference.

SPECIAL PROCUREMENT. A procurement made under a method of Solicitation other than as described in the Oregon Public Contracting Code, which has been approved by the Board under the process described in Section 3.

SPECIFICATION means any description of the physical or functional characteristics of, or of the nature of, Goods or Services to be procured by the city. A Specification may include a description of any requirement for inspecting, testing or preparing Goods or Services for delivery or incorporation into a project. A Specification may also include a description of the characteristics or nature of personal services.

STANDARDS OF RESPONSIBILITY means the standards of responsibility set forth in Section 5.3.2.

SUSTAINABILITY PRINCIPLES means the sustainability principles set forth in Section 6.2.5.2.

SURPLUS PROPERTY means personal property owned by the city which is no longer needed for use by the department to which such property has been assigned.

TELECOMMUNICATION SERVICES means two-way, switched access and transport of voice communications, but does not include:

- (a) services provided by radio common carrier;
- (b) one-way transmission of television signals;
- (c) surveying;
- (d) private telecommunication networks; or
- (e) communications of the city which take place on the city's side of on-premises equipment.

UNNECESSARILY RESTRICTIVE means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of the city.

ARTICLE 19

RULE MAKING; HANDLING OF VIOLATIONS; WAIVER

19.1. POLICY AND PROCEDURE FOR RULEMAKING. Unless a different procedure is specifically provided by the city council, amendments to these regulations shall be made in conformance with the procedures set forth in Section 2.019 of the Eugene Code, 1971.

19.2 HANDLING OF VIOLATIONS.

19.2 .1 DELAY OF AWARD. If the Purchasing Agent determines that a contract is about to be awarded or executed in violation of these regulations, the Purchasing Agent may delay award or execution until the violation is corrected.

19.2 .2 CONTRACT AWARDED IN VIOLATION. If the Purchasing Agent determines that a contract has been entered into in violation of these regulations or without proper authority, the Purchasing Agent may declare the contract invalid and return any contract deliverables, subject to payment of any amounts required to be paid to the affected contractor by state law.

19.2 .3 EMPLOYEE VIOLATIONS. Employees who willfully and knowingly violate the Public Contracting Regulations may be subject to disciplinary action up to and including dismissal.

19.3 GENERAL WAIVER. Except for violations of the Eugene Code, 1971 and state law, the Purchasing Agent may waive in writing any requirement in these regulations to the extent necessary to accomplish the purposes of Public Contract law stated in EC 2.1400.

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