

Public Contracts

2.1400 **Public Contracts – City Policy.**

- (1) **Short Title.** The provisions of sections 2.1400 to 2.1451 of this code, and all administrative rules adopted thereunder may be cited as the City of Eugene Public Contracting Regulations.
- (2) **Purpose.** It is the policy of the city in adopting public contracting regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - (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 that suit the contracting needs of the city as they emerge within various industries.
- (3) **Interpretation.** In furtherance of the purpose of the objectives set forth in subsection (2), it is the city's intent that sections 2.1400 to 2.1451 be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C (the Oregon Public Contracting Code).

(Section 2.1400 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1405 **Public Contracts – Exemption from Public Contracting Regulations.**

The City of Eugene Public Contracting Regulations apply to all public contracts of the city except for the classes of contracts that are declared exempt from the Oregon Public Contracting Code, as set forth herein and as specifically described in the rules adopted by the purchasing agent.

(Section 2.1405 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1410 **Public Contracts – Regulation by City Council.** Except as expressly delegated under sections 2.1400 to 2.1451, the city council reserves to itself the exercise of all of the duties and authority of a contract review board under the Oregon Public Contracting Code.

(Section 2.1410 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1415 **Public Contracts - Authority of Purchasing Agent.**

- (1) **General Authority.** The city manager shall be the purchasing agent for the city and is hereby authorized to award all city contracts for which there is an appropriation. Subject to the provisions of sections 2.1400 to 2.1451 of this code, the purchasing agent may adopt and amend all rules, regulations, procedures and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the city's contracting needs. Without

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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) **Standards for Contracting Rules.** When adopting public contracting 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) Establish purchasing practices that assure, to the maximum extent economically feasible, purchase of materials, goods and supplies that may be recycled or reused when discarded.
- (3) **Delegation of Authority.** Any of the responsibilities or authorities of the purchasing agent under Sections 2.1400 to 2.1451 of this code may be delegated and sub-delegated by administrative order.

(Section 2.1415 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1420 Public Contracts – Definitions. The following terms used in sections 2.1400 to 2.1451 shall have the meanings set forth below, and if not defined here, the meanings set forth in the Oregon Public Contracting Code.

Concession agreement. 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.

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

Emergency. 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.

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Informal solicitation. A solicitation made in accordance with rules adopted by the purchasing agent to a limited number of potential contractors, in which the solicitation agent attempts to obtain at least three quotes or proposals.

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

Personal services contract. A contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of 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. The purchasing agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Purchasing agent. The city manager or a designee appointed by the city manager to exercise the authority of the purchasing agent under the city's public contracting regulations.

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

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

Solicitation agent. With respect to a particular solicitation or contract, the city manager or employee delegated responsibility for conducting the solicitation and awarding the contract.

Surplus property. 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. 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)

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surveying, (d) private telecommunication networks, or (e) communications of the city which take place on the city's side of on-premises equipment.

(Section 2.1420 added by Ordinance No. 20341, enacted and effective March 2, 2005; amended by Ordinance No. 20409, enacted May 27, 2008, effective June 30, 2008; and Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1425 Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.

- (1) Special Procurements.** Special procurement requests, approvals, and protests shall be made in accordance with rules adopted by the purchasing agent and ORS 279B.085.
- (2) Public Improvement Contract Exemptions.** Public improvement contract exemption shall be adopted in accordance with rules adopted by the purchasing agent and ORS 279C.335.
- (3) Commencement of Public Improvement Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a public improvement contract exemption pursuant to ORS 279C.335(5)(e).

(Section 2.1425 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1430 Public Contracts - Solicitation Methods for Classes of Contracts. The following solicitation methods and exempt classes of contracts are hereby established by the city council.

- (1) Requests for Proposals for Public Improvement Contracts.** The city may utilize a formal request for proposal (RFP) solicitation method for public improvement projects, in accordance with rules adopted by the purchasing agent for the use of RFPs and contracts awarded thereunder.
- (2) City funded privately-constructed public improvements.** The city may contribute funding to a privately constructed public improvement project (commonly known as a "PEPI") without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:
 - (a)** The city's contribution to the project may not exceed 25% of the total cost of the project;
 - (b)** The city must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
 - (c)** The general contractor for the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the project;
 - (d)** The funds contributed to the project 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;
 - (e)** The performance of the general contractor and the payment of labor for the project must be secured by performance and

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- payment bonds or other cash-equivalent security that is acceptable to the purchasing agent to protect the city against defective performance and claims for payment, unless the city's obligation to make a payment is conditioned upon final completion of the public improvement and proof of, or security for payment that is acceptable to the purchasing agent; and,
- (f) The contract for construction of the project 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 project.
- (3) **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded as described below and subject to rules adopted by the purchasing agent.
- (a) Design/build contracts. Contracts for the construction of public improvements using a design/build construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build 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.
- (b) Energy savings performance contracts. Unless the contract qualifies for award under another classification in this section 2.1430, contractors for energy savings performance contracts shall be selected under a request for proposals.
- (c) Construction Manager/General Contractor (CM/GC) contracts. Contracts for the construction of public improvements using a Construction Manager/General Contractor Construction Method shall be awarded pursuant to ORS 279C.337 and Attorney General Model Rules adopted thereunder.
- (4) **Special Procurement Class Exemptions.** Subject to regulation under rules adopted by the purchasing agent, 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.
- (a) Advertising. Contracts for the placing of notice or advertisements in any medium.
- (b) Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with rules adopted by the purchasing agent.
- (c) Animals. Contracts for the purchase of animals.

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- (d) 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.
- (e) 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.
- (f) Fuel and oil. Contracts for gasoline, diesel fuel, heating oil, lubricants and asphalt, subject to an intermediate procurement process.
- (g) Goods for resale. Contracts for goods purchased for resale to consumers.
- (h) Government regulated items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (i) Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145, and liability insurance contracts.
- (j) Manufacturer direct supplies. Contracts for goods purchased directly from the manufacturer, subject to rules adopted by the purchasing agent.
- (k) 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.
- (l) 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.
- (m) Sole source contracts. Contracts for goods or services which are available from a single source may be awarded without competition. Pursuant to ORS 279B.075, the purchasing agent shall adopt rules under which a determination of sole source availability may be made.
- (n) Sponsorship agreements. Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.
- (o) Structures. Contracts for the disposal of structures located on city-owned property, other than structures suitable for residential use.
- (p) Temporary extensions or renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
- (q) 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:

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1. 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;
 2. The proposed use of the property is consistent with the city's use of the property and the public interest; and
 3. 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.
- (r) 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.
- (s) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities, including in-kind telecommunications services pursuant to EC 3.415(6).
- (5) **Contracts Required by Emergency Circumstances**. The purchasing agent may declare that an emergency exists pursuant to ORS 279B.080. The purchasing agent shall notify the city council of the declaration of emergency for contract awards over the applicable intermediate procurement threshold.
- (6) **Surplus Property**. The purchasing agent shall adopt rules for the disposal of all surplus property. The purchasing agent's rules shall include rules under which nonprofit corporations may lease or purchase structures suitable for use as residential buildings that are declared surplus property and must be removed from city-owned property. The rules shall give preferences to nonprofit corporations who will use the structure to provide housing for persons of low income, or who are otherwise disadvantaged.
- (7) **Concession Agreements**. The purchasing agent shall adopt rules for the award of concession agreements.

(Section 2.1430 added by Ordinance No. 20341, enacted and effective March 2, 2005; amended by Ordinance No. 20409, enacted May 27, 2008, effective June 30, 2008; and Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1435 Public Contracts - Use of Brand Name Specifications for Public Improvements.

(Section 2.1435 added by Ordinance No. 20341, enacted and effective March 2, 2005; and repealed by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

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2.1440 Public Contracts - Bid, Performance and Payment Bonds.

(Section 2.1440 added by Ordinance No. 20341, enacted and effective March 2, 2005; and repealed by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1445 Public Contracts - Electronic Advertisement of Public Contracts. The purchasing agent is authorized to adopt rules allowing electronic publication of public contracts instead of publication in a newspaper of general circulation, if electronic advertisement is likely to be cost effective and will encourage meaningful competition.

(Section 2.1445 added by Ordinance No. 20341, enacted and effective March 2, 2005; and amended by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1447 Public Contracts - Labor Contract Conditions. All public contracts executed by the city wherein labor is required, except contracts for the purchase of goods, shall contain the following provisions:

- (a)** A statement that the contractor will comply with all provisions legally required of contractors on a public contract.
- (b)** A statement that the contractor will comply with all of the requirements of sections 4.615 to 4.655 of this code.
- (c)** A statement that, in the event of a willful violation of subsection (a) or (b) of this section, the city will penalize the contractor by debarring the contractor for one year as permitted by state law.
- (d)** A statement that if a contractor or subcontractor violates the provisions of subsections (a) or (b) of this section, the city manager may terminate the contract. Payment upon termination shall be made by the city according to rules adopted by the city manager.

(Section 2.1447 added by Ordinance No. 20409, enacted May 27, 2008, effective June 30, 2008.)

2.1450 Public Contracts - Appeal of Debarment or Prequalification Decision.

(Section 2.1450 added by Ordinance No. 20341, enacted and effective March 2, 2005; and repealed by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)

2.1451 Model Cost Accounting Guidelines. The model cost accounting guidelines developed by the Oregon Department of Administrative Services, pursuant to Section 3, Chapter 869, Oregon Laws, 1979, are hereby adopted as the city's cost accounting system to apply to public improvement projects exceeding \$5,000 and constructed with city's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$125,000, city shall also comply with the requirements of ORS 279C.305(3).

(Section 2.1451 added by Ordinance No. 20542, enacted October 27, 2014, effective November 30, 2014.)