

# ORDINANCE NO. 875

## AN ORDINANCE UPDATING PUBLIC CONTRACT AND PURCHASING PROCEDURES AND AMENDING CHAPTER 2.24 OF THE TROUTDALE MUNICIPAL CODE.

### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. That the City as a State of Oregon municipality is subject to the Oregon Public Contracting Code (the "Code") Oregon Revised Statutes (ORS) 279A, 279B, and 279C.
2. That it is the policy of the City that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, conducted in a cost efficient manner, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolutions.
3. That by Ordinance No. 220 on March 16, 1976, the Troutdale City Council (Council) was designated as the Local Contract Review Board and was granted to it all the powers conferred on the board by statute and all such additional powers as authorized by state law.
4. That by Ordinance. No. 761 on February 8, 2005, the Council established the Troutdale Municipal Code (TMC), Public Contracts and Purchasing Chapter 2.24 as the City's procurement rules pursuant to ORS 279A.065(2), rather than the City be subject to the Attorney General's promulgated administrative rules known as the Model Rules.
5. That to continue to preserve to the maximum extent allowed under State law the city's home rule authority over public procurement, the City desires to continue to adopt its own rules of procedure rather than be subject to the Model Rules adopted by the Attorney General under ORS 279A.065(5).
6. That in order to continue to maintain its own Rules, the City must in accordance with ORS 279A.065(6)(b), review its Public Contracting Rules, each time the Attorney General modifies its Model Rules in order to ensure that the City Rules remain consistent with applicable law.
7. That by Ordinance. No. 769 on November 8, 2005, the Council last updated the TMC Public Contracts and Purchasing Chapter 2.24.

8. That the Oregon Legislature has modified ORS 279A, 279B and 279C pertaining to public contracts and purchasing, and the Attorney General has modified the Model Rules.

9. That sitting as the Local Contract Review Board the Council is authorized to act on all such matters on behalf of the City, pursuant to ORS 279A.060, to adopt Public Contracting Rules.

10. That Oregon Legislature has modified Public Contracting Code to require all local contracting agencies to utilize a qualifications-based solicitation (QBS) for certain contracts with architects, engineers, and other and specialized professionals, for which the City must amend the City's public contracting rules in compliance with these legislative amendments.

11. That sitting as the Local Contract Review Board the Council has previously established class special procurements and exemptions to provide for the award of one or more contracts for one or more projects within certain classes without following the competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements that would otherwise be required under the circumstances and rules pursuant to ORS 279A.055(2), and may exempt certain public improvement contracts or classes of such pursuant to ORS 279C.335.

12. That sitting as the Local Contract Review Board the Council has determined to make amendments to the City's public contracting rules to update them in compliance with the Oregon Legislature amendments to the Oregon Public Contracting Code

13. That sitting as the Local Contract Review Board the Council finds it advisable and necessary to approve the updating the City Public Contracts and Purchasing Chapter 2.24 pursuant to ORS 279A.060, which will serve a valuable and necessary public purpose and is an authorized public purpose, and that doing so is in the best interest of the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

Section 1. The Public Contracts and Purchasing Chapter 2.24 of the Troutdale Municipal Code is amended to read as provided in Attachment A.

Section 2. The City hereby reserves to the maximum extent allowed under State law the city's home rule authority over public procurement.

Section 3. The City Council (Council) is hereby designated to continue as the Local Contract Review Board of the City pursuant to ORS 279A.060 and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the “Public Contracting Code”) and attached Rules.

Section 4. As the designated the Local Contract Review Board, actions taken by the Council governing public contracts and purchasing shall be deemed the actions of the Local Contract Review Board.

Section 5. Sitting as the Local Contract Review Board the Council, continues to declare that pursuant to ORS 279A.065(6) that the Attorney General’s promulgated administrative rules known as the Model Rules pursuant to ORS 279A.065(2) do not apply to City.

Section 6. Sitting as the Local Contract Review Board the Council, pursuant to ORS 279A.055 and 279A.070 hereby accepts, approves and adopts this Ordinance and Attachment A collectively known as the Troutdale Public Contracting Rules (the “Rules”).

Section 7. Sitting as the Local Contract Review Board the Council, pursuant to ORS 279B.085 and 279C.335 as specified in this Ordinance and Attachment A hereby accepts, approves and adopts the classes of special procurement and public improvement contract exemptions. Local Contract Review Board finds that the continued special solicitation methods for these classes of public contracts and exemptions and the methods approved for their award (1) are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, and (2) the awarding of public contracts under the exemption will result in substantial cost savings to City, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, or 279B.070 or under any rules adopted thereunder. Unless otherwise specified in a particular exemption rule, such contracts may be awarded in any manner that the City Manager deems appropriate to City’s needs, including by direct appointment or otherwise. Except as otherwise provided, the City Manager will make a record of the method of award.

Section 8. The former provisions of Chapter 2.24 of the Troutdale Municipal Code continue to apply to any public contract of the City which is in a procurement process as of the effective date of this ordinance. Contracting and purchasing actions that are first advertised, but if not advertised then entered into, prior to the effective date of this ordinance shall be administered under the provisions of the Troutdale Municipal Code in effect at the time those actions were initiated. This ordinance applies to any public contract solicited or advertised after the effective date of this ordinance.

Section 9. This Ordinance amends, restates, supersedes, replaces the Public Contracts and Purchasing Chapter 2.24 of the Troutdale Municipal Code in its entirety, and supersedes and repeals any and all ordinances, resolutions, and/or policies in conflict with this Ordinance. The Council may amend the Public Contracting Rules at any time in the same manner as that required for the Council to adopt an ordinance.

Section 10. In accordance with ORS 279A.065(6)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to ensure that the Rules remain consistent with applicable law.

Section 11. The City Manager, Ray Young, and Chief Purchasing Officer and Finance Director, Erich Mueller, (each an "City Official") are designated to act on behalf of and in the best interest of the City, and without further action by the Council or Local Contract Review Board, the City Official is hereby authorized, empowered and directed to execute and implement, on behalf of the City, this Ordinance and may exercise all authorities, powers and duties granted to a Contracting Agency under the Public Contracting Code and attached Rules, unless otherwise established by City policy, and to execute any and all other required and necessary documents to implement the intent of this Ordinance.

Section 12. Provisions of this Ordinance shall amend the Public Contracts and Purchasing Chapter 2.24 of the Troutdale Municipal Code, and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word and the sections of the Ordinance may be renumbered, or re-lettered, the City Recorder is authorized to correct any cross-references and any typographical errors.

Section 13. This Ordinance shall be effective March 1, 2022.

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**



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**Randy Lauer, Mayor**  
**Date: January 26, 2022**



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**Sarah Skroch, City Recorder**  
**Adopted: January 25, 2022**

Chapter 2.24 - PUBLIC CONTRACTS AND PURCHASING

2.24.010 - Title.

This chapter shall be titled "Public Contracts and Purchasing."

(Ord. 769 § 1 Att. A (part), 2006)

2.24.020 - Purpose.

The purpose of this chapter is to implement the public contracts and purchasing policies of the state of Oregon and the city of Troutdale and to utilize public contracting practices and methods which maximize the efficient use of city resources, and which:

1. Ensure the purchasing power of public funds are used in the best interest of the public and the city and arriving at best value;
2. Are accomplished in an ethical and cost efficient manner;
3. Encourages impartial and open competition;
4. Take full advantage of evolving procurement methods that suit the contracting needs of the city; and
5. Provide direction to city staff regarding purchasing practices and purchasing authority, results in a systematic and uniform administration of public contracts.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.030 - Local contract review board.

The Troutdale city council is designated the local contract review board. Actions taken by the city council governing public contracts and purchasing shall be deemed the actions of the local contract review board. The procedures governing city council adoption of ordinances and resolutions shall be the procedures governing the city council as a local contract review board. The local contract review board hereby delegates to the city manager such authorities and powers as set forth below. Except when this chapter, or the Public Contracting Code specifically requires the local contract review board to take action or exercise its discretion and delegation is not allowed, any act required or permitted to be performed by "agency," "head of a contracting agency," or "local contract review board" may be performed by the city manager.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.040 - Model rules not applicable.

- A. The model rules adopted by the attorney general in accordance with ORS 279A.065 do not apply to the city of Troutdale.
- B. The city will use the rules of procedure in this chapter for public contracts and purchasing.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.045 - State law.

Except where the provisions in this chapter expressly provide a different procedure or requirement, all public contracts shall comply with the provisions in Chapters 279A, 279B and 279C of the Oregon Revised Statutes, known as the Public Contracting Code, as applicable. Unless specifically prohibited by law, where the provisions in this chapter differ from the provisions in ORS 279A, 279B, or 279C, the provisions in this chapter shall govern. The city hereby reserves to the maximum extent allowed under State law the city's home rule authority over public procurement.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.050 - Authority of city manager.

- A. The city manager is the purchasing agent for the city pursuant the Troutdale Municipal Code 2.04.010, B.3, and is authorized to award all city contracts. Such awards must be in compliance with state law and this chapter, and funds must be available for the purchase. The city manager shall keep a record of all awarded city contracts, including bids solicited and received and determinations made.
- B. The city manager may delegate the authority granted in subsection A of this section to other city employees as designated purchasing officers (DPO), as deemed appropriate for the efficient accomplishment of city business.

(Ord. 769 § 1 Att. A (part), 2006)

(Ord. No. 801, § 1, 1-11-2011)

Editor's note— Ord. No. 801, § 1, adopted, Jan. 11, 2011, changed the title of section 2.24.050 from authority of city administrator to authority of city manager.

2.24.060 - Disposition of personal property.

The city shall dispose of personal property in accordance with Chapter 2.52 of the Troutdale Municipal Code.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.070 - Public notice of solicitations.

For the purposes of giving public notice of competitive sealed bidding and competitive sealed proposals, the newspaper of general circulation to be used shall be the Gresham Outlook, and any other publication(s) the city manager or DPO deems appropriate. If the estimated cost of the project does not exceed one hundred and twenty five thousand dollars (\$125,000), the city manager may authorize advertisements for public improvement contracts to be published electronically instead of in a newspaper of general circulation when it is determined that electronic

advertisements are likely to be cost-effective. Notices shall be published at least fourteen days prior to the solicitation closing date. For good cause documented in writing to the file, the solicitation period for construction can be limited to a minimum of five days and for goods or services, or can be limited to a minimum of seven days for personal services.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.080 - Small procurement.

- A. Any procurement of goods or services not exceeding ten thousand dollars (\$10,000), and any procurement of construction, public improvement or public works not exceeding ten thousand dollars (\$10,000), may be awarded in any manner deemed practical or convenient by the DPO, including by direct selection or award.
- B. A contract awarded under this section may be amended to exceed the dollars limitations of Section A only upon approval of the city manager or chief purchasing officer (CPO).
- C. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this section.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.085 - Cooperative Procurement

- A. Cooperative procurement is conducted by or on behalf of one or more contracting agencies or groups which allows the city to “piggy-back” on procurements and save time and the administrative costs of the solicitation process by utilizing existing multi-party contracts and price agreements and benefit from group discounts thereby obtaining volume pricing from previously competitively bids as the basis for selection of contractors to provide certain goods or services.
- B. The city may participate in cooperative procurements without competitive solicitation as provided in the Public Contracting Code which authorizes three types of cooperative or “piggy-back” procurements: (1) joint cooperative procurement; (2) permissive cooperative procurement; and (3) interstate cooperative procurement, as if the city had generated the solicitation and made the award on their own behalf.
- C. City participation in cooperative procurement group memberships may include, but is not limited to: Oregon Cooperative Purchasing Program (ORCPP), National Institute for Governmental Purchasing Intergovernmental Cooperative Purchasing (ICP) group, Houston-Galveston Area Council (HGACBuy), National Intergovernmental Purchasing Alliance Company (NIPA), National Joint Powers Alliance (NJPA), General Services Administration (GSA Advantage Program), King County Directors Association (KCDA), National Association of State Procurement Officials (NASPO ValuePoint) Cooperative Purchasing Organization, National Joint Powers Association (NJPA), OMNIA Partners

national cooperative purchasing program, and National Cooperative Purchasing Alliance (NCPA).

- D. The city may participate in other cooperative purchasing groups as determined by the CPO.

#### 2.24.090 - Intermediate procurement.

- A. Any procurement of goods or services exceeding ten thousand dollars (\$10,000) but not exceeding one hundred and fifty thousand dollars (\$150,000), and any procurement of construction, public improvement or public works exceeding ten thousand dollars (\$10,000) but not exceeding one hundred thousand dollars (\$100,000), may be awarded after seeking three informally solicited competitive price quotes or competitive proposals from prospective bidders. If three quotes or proposals are not reasonably available, fewer will suffice but the DPO shall make a written record of the efforts to obtain the quotes or proposals.
- B. A contract awarded under this section may be amended to exceed the dollar limitations of Section A only upon approval of the city manager or CPO.
- C. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.095 - Purchasing Considerations.

This section provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is city policy that public contracting activities should provide effective outcomes that represent optimal value to the city, and to the greatest extent feasible, be consistent with market practices, acquiring bids or proposals that result in the lowest overall ownership cost, taking into account the life cycle costing adjustments, and other aspects of service and product quality, as well as pricing.

- A. Any procurement of goods or services (other than personal services) may be entered into using the procedures in these rules for procuring services, namely competitive sealed proposal, small procurement, intermediate procurement, cooperative procurement, sole source procurement or emergency procurement.
- B. The city shall consider a variety of options to determine the most beneficial method of purchasing goods and services. A method may be beneficial to the city for a variety of reasons, including but not limited to: opportunity for best value, highest quality, timeliness, most efficient purchasing process, or a combination of these benefits.
- C. Unless otherwise prohibited in these rules, personal service contracts may be amended for scope or term for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract and the CPO determines

that use of the original contractor will significantly reduce the costs of, or risks associated with, the work, or the amendment is necessary to complete the work being performed, and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

D. Procedural variance from the rules may be necessary.

1. In some cases, the use of competitive procurement processes is either not practicable, advantageous, or in the city's best interest due to unforeseen circumstances, unreasonable costs, difficulty in locating vendors even after extensive searches, solicitation cost or where time constraints occur that are due to circumstances beyond reasonable control.
2. When it is reasonably expected to result in substantial cost savings to the city and to the public, or otherwise substantially promotes the public interest in a manner that could not practicably be realized by strictly complying with the technical requirements that are applicable under the competitive sealed proposal, small procurement, intermediate procurement, cooperative procurement, sole source procurement or emergency procurement source selection methods of this chapter, when it is advantageous to the city, the city manager or CPO may, at their discretion approve a procedural variance for the procurement.
3. The city manager or CPO are to exercise sound professional judgment taking into account price or any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility and other existing facts or circumstances that support a variance from the standard procurement process.
4. The city manager or CPO shall document the nature of the procedural variance and describe the method used for the selection in the particular procurement, which must be limited to the goods, services or personal services that are necessary and appropriate to remedy the conditions creating the variance.

E. Project procurement in phases may be necessary and in the best interest of the city when due to:

1. A project scope which is expected to evolve and expand over the course of the project;
2. Limitations in project management staffing capacities;
3. Limitations in available budget and funding sources;
4. Required construction seasonality limitations; or
5. Other facts or circumstances relevant to the particular project.

The city manager or CPO shall document the justification for the phased procurement to the file. Procurement for such projects conducted in justified phases shall not be deemed

contrary to ORS sections 279B.065(2), 279B.070 (2), 279C.412(2), or the requirements of this chapter.

2.24.100 - Formal procurement and exemptions.

- A. Any procurement of goods or services exceeding one hundred and fifty thousand dollars (\$150,000), and any procurement of construction, public improvement or public works exceeding one hundred thousand dollars (\$100,000), shall be awarded only after a formal competitive solicitation process unless otherwise provided for in this chapter.
  
- B. The following are exempt from the requirements of this chapter:
  - 1. Contracts made with other public agencies or the federal government;
  - 2. Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals;
  - 3. Contracts for equipment repair or overhaul if:
    - a. The service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing, or
    - b. The service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source, or
    - c. The service or parts required are known and available from a sole, specific source to match existing equipment, or;
    - d. Urgent circumstance require repairs be performed immediately;
  - 4. Contracts for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority, including but not limited to utility services;
  - 5. Contracts for subscriptions for periodicals, including journals, magazines, and similar publications;
  - 6. Contracts for the purchase of used personal property if the city manager or their designee determines that the award of the contract without competitive bidding will result in cost savings;
  - 7. Contracts for the investing of public funds or the borrowing of funds by the city when the investment or borrowing is contracted under a duly enacted statute, ordinance, charter, or constitutional provision;
  - 8. Contract amendments for additional work, including change orders, extra work, field orders, or other changes in the original specifications which increases the original contract price if:
    - a. The original contract was let by competitive bidding, unit prices or bid alternatives were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work, or
    - b. The amount of the aggregate cost increase resulting from all amendments does not exceed twenty percent of the initial contract. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding thirty-three percent of the initial contract. Amendments made

pursuant to subsection (B)(8)(a) of this section are not included in computing these aggregate amounts;

9. Contracts for the purchase of copyrighted materials where there is only one known supplier available for such material;
10. Contracts for the purchase of requirements for an anticipated need at a predetermined price if:
  - a. The contract is let by a competitive procurement process, and
  - b. The term of the contract including renewals does not exceed three years.When the price of goods and services has been established by a requirements contract under these provisions, the city manager may purchase the goods and services from the supplier without subsequent competitive bidding;
11. Contracts for the purchase of employee benefit plans and contracts as provided in ORS 243.105(1), ORS 243.125(4), ORS 243.221, ORS 243.275, ORS 243.291, ORS 243.303, ORS 243.565, and ORS 243.860 to 243.886;
12. Contracts for information technology hardware, software, data network communications, audio visual equipment, and telecommunications systems hardware and systems software, and related support, services and acquisition;
13. Contracts for telecommunications services, subject to the provisions of OAR 125-320-025;
14. Contracts for the purchase or lease of office copiers and telefax equipment;
15. Contracts for the purchasing or commissioning of works of art;
16. Contracts for goods purchased for resale to consumers;
17. Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is a party to the contract for which the original contract met the requirements of ORS Chapter 279, the contract allows other public agency usage of the contract, and the original contracting public agency concurs;
18. Contracts with temporary service or employment agencies;
19. Contracts with private developers for the design and construction for the upsizing, extension or improvement of public works infrastructure that is adjacent to or connected to public improvements that the developer is required to construct as a condition of development, provided that the construction is performed to city standards, the cost is limited by an agreed upon lump sum or not-to-exceed price, the developer requires its contractor to comply with all requirements of ORS 279C.800 et seq. (Prevailing Wage), to supply performance and payment bonds in favor of city, and to include in its contract with its contractor all terms required to be included in an Oregon public works contract;
20. Contracts with newspapers and other publications for the placement of advertisements or public notices, including web-based internet sites and other electronic formats and platforms;
21. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145;
22. Contracts for auditing services as required by ORS 297.425, the investment of funds by the city as authorized by law or banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive bidding selection procedures;

23. Contracts for the acquisitions or disposals of real property or interests in real property;
24. Social services contracts, agreements or other documents entered into, issued or established in connection with the making of program loans and similar extensions or advance of funds, aid or assistance by the city for the purpose of carrying out, promoting or sustaining activities or programs authorized by law;
25. Contracts with non-profit organizations with prior city manager review and approval;
26. Grants where the city receives moneys, property or other assistance, including, but not limited to, federal assistance, where use and administration of the grant is subject to regulations or agreements;
27. Energy savings performance contracts;
28. Conference meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and city-sponsored workshops and trainings;
29. Event sponsorship agreements. The city may directly pay to sponsor an event, whether or not the city receives goods or services in return for its payment;
30. 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, including, but not limited to, an attorney, court reporter, copy service, mediator, arbitrator, referee or other court appointed individual;
31. Membership dues, registration fees, and other fees for a professional or community organizations for the benefit of the city;
32. Seminar, training registration and conference fees for attendance at seminars, conferences and training courses hosted by outside entities;
33. Media services (e.g., television, radio, digital streaming services, or social media);
34. Agreements entered into for mutual aid, emergency aid, or disaster preparedness;
35. Procurement of public improvements to be performed by Portland General Electric;
36. Contracts involving federal funds, except as otherwise expressly provided in ORS 279C.800-279C.870, and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005-279C.670, federal statutes and regulations govern procurements, when federal funds are involved and the applicable federal statutes or regulations conflict with any provision of, or require additional conditions not otherwise authorized by, ORS Chapters 279A, 279B, and ORS 279C.005-279C.670 or these rules;
37. Contracts for hazardous material removal and oil clean-up. The city may directly purchase services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466;
38. Contracts for unplanned environmental cleanup. The city may directly purchase services where the additional work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original contract and such regulations or ordinances either were not cited in the original contract or were enacted or amended after submission of the successful bid or proposal;

39. Contracts for performing artists. The city may enter into a contract for performance art, whether vocal, instrumental, or visual, required by the city to provide a paid performance of performance art for an audience determined by the city;
40. Honoraria. The city may make a one-time payment or gratuity granted in recognition of a special service of an honoree;
41. Regional sole source manufacturers representative or dealers;
42. Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter 190; or
43. Other contracts or agreements to which the Public Contracting Code does not apply.

(Ord. 769 § 1 Att. A (part), 2006)

(Ord. No. 801, § 1, 1-11-2011)

#### 2.24.105 - Chief Purchasing Officer (CPO) Duties

- A. Subject to the direction and control of the city manager, and except as otherwise specifically provided by these rules, the CPO shall administer these rules.
- B. The COP duties shall include:
  1. Monitoring adopted budget levels for purchasing compliance with funds appropriated by the city council and maintain compliance with the local budget law;
  2. Supporting DPO purchases to ensure administrative compliance with this chapter;
  3. Ensuring that all contracts comply with applicable ordinances, laws and rules;
  4. Establishing and amending procedures for the efficient and economical management of contracts reasonably necessary to the administration of the city's contracts and accomplishing the purposes of this chapter;
  5. Waiving or correcting minor informalities in procurement procedures when it will best serve the interests of the city, taking into consideration price, experience, expertise, product functionality, suitability for a particular purpose, and contractor responsibility; and
  6. Approving purchases, contracts, and issue purchase orders as necessary and in place of either the DPO or the city manager.
- C. The city's Finance Director is delegated the role of CPO and is authorized to administer the requirements of this chapter.

#### 2.24.110 - Modification and withdrawal of offers—Cancellation of awards or contracts.

- A. An offeror may modify its offer in writing prior to the closing of the solicitation. Any modification must include the offeror's statement that the modification amends and supersedes the prior offer. The modification must be submitted to the same name and address and contain the same markings as required for the offer. The modification must be received by the city prior to the closing of the solicitation.

- B. An offeror may withdraw its offer by written notice prior to the closing of the solicitation. The withdrawal must be submitted to the same name and address as required for the offer. The withdrawal must be received by the city prior to the closing of the solicitation.
- C. An offeror may not modify nor withdraw its offer after the closing of the solicitation.
- D. An award or a contract shall not be cancelled based on a bid mistake made by the bidder.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.120 - Sole source procurement.

- A. The city council or its designee may award a contract for goods or services without competition when it determines in writing, based on written findings made under subsection B of this section, that the goods or services, or class of goods or services, are available from only one source.
- B. The determination of a sole source must be based on written findings that shall include one or more of the following:
  - 1. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
  - 2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
  - 3. That the goods or services are for use in a pilot or an experimental project;
  - 4. Other findings that support the conclusion that the goods or services are available from only one source.
- C. To the extent reasonably practical, the city shall negotiate with the sole source to obtain contract terms advantageous to the city.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.130 - Emergency procurement.

- A. Emergency means circumstances that could not have been reasonably foreseen; that create a substantial risk of loss, damage or interruption of services or a substantial threat to public funds, property, the environment, public health, welfare or safety; and that require prompt execution of a contract to remedy the condition, including but not limited to an authorized order from a governmental body requiring immediate action.
- B. The head of the purchasing authority may make or authorize a designee to make emergency procurements of goods, services or personal services in an emergency. The city manager or their designee shall document the nature of the emergency and describe the method used for the selection of the particular contractor. The scope of the emergency contract must be

limited to the goods, services or personal services that are necessary and appropriate to remedy the conditions creating the emergency.

- C. For an emergency procurement of construction, public improvement or public works, the head of the purchasing authority or their designee shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. The nature of the emergency and the method used for the selection of the particular contractor must be documented. In conducting the procurement, the city manager or their designee shall set a solicitation time period that the city manager or designee determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity. The scope of the emergency contract must be limited to work that is necessary and appropriate to remedy the conditions creating the emergency.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.135 - Electronic Procurement.

An electronic procurement system may be developed which may include posting of advertisements and receipt of offers, by electronic methods and other related procedures necessary to be undertaken by the city to electronically procure, enter into a public contract, administer a public contract and obtain the performance of a public contract.

#### 2.24.140 - Notice of intent to award.

- A. At least seven days before the award of a public contract, the city shall provide to each bidder or proposer notice of its intent to award a contract. Notice shall be in writing and mailed to the address provided by the bidder or proposer.
- B. Subsection A of this section does not apply to a contract awarded as a small procurement, an intermediate procurement, a sole source procurement, an emergency procurement, or a special procurement.

(Ord. 769 § 1 Att. A (part), 2006)

#### 2.24.150 - Protests of approvals of special procurements.

- A. Any person may file a protest of the approval of a special procurement if he believes such approval was in violation of state law or this chapter.
- B. A protest under this section:
  - 1. Must be filed in writing with the city manager no more than five days after the approval is made;

2. Must state the special procurement approval that is the subject of the protest, the reason why the approval was contrary to state law or this chapter, and the relief sought;
3. Will be considered and approved or disapproved by city manager.

C. The city manager shall notify the protester of their decision in writing.

(Ord. 769 § 1 Att. A (part), 2006)

(Ord. No. 801, § 1, 1-11-2011)

#### 2.24.160 - Protests of solicitations.

A. A prospective bidder, proposer, or offeror for a competitive sealed bid, competitive sealed proposal, or special procurement may file a protest if they believe 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 bidder, proposer, or offeror fails to file such a protest at least ten days before the closing of the solicitation or by the deadline otherwise set forth in the solicitation, the prospective bidder, proposer, or offeror may not challenge the contract on grounds under this section in any future legal or administrative proceeding.

B. A protest under this section must be filed in writing with the city manager and contain the following:

1. Sufficient information to identify the solicitation that is the subject of the protest;
2. 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;
3. Evidence or supporting documentation that supports the grounds on which the protest is based;
4. The relief sought.

C. If the protest meets the requirements of subsection B of this section and is timely filed, the city manager shall consider the protest and issue a decision in writing. Otherwise, the city manager shall promptly notify the prospective bidder, proposer, or offeror that the protest is untimely or that the protest failed to meet the requirements and give the reason for the failure.

D. Before seeking judicial review, a prospective bidder, proposer, or offeror must file a protest with the city and exhaust all available administrative remedies.

(Ord. 769 § 1 Att. A (part), 2006)

(Ord. No. 801, § 1, 1-11-2011)

#### 2.24.170 - Protests of contract award.

- A. A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if:
  - 1. The bidder or proposer is adversely affected because the bidder or proposer would be eligible to be awarded the public contract in the event the protest were successful; and
  - 2. The reason for the protest is that:
    - a. All lower bids or higher ranked proposals are nonresponsive,
    - b. The city has failed to conduct the evaluation of proposals in accordance with the criteria or process described in the solicitation materials,
    - c. The city has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive, or
    - d. The city's evaluation of bids or proposals or the city's subsequent determination of award is otherwise in violation of ORS Chapter 279A, 279B or 279C as applicable.
- B. The bidder shall submit the protest to the city manager in writing no more than seven days following the award of a public contract or a notice of intent to award a public contract, whichever occurs first. The protest shall specify the grounds for the protest to be considered by the city.
- C. Late protests shall not be considered.
- D. The city manager shall respond in writing to a protest. After the city manager issues the response, the bidder or proposer may seek judicial review in the manner provided in ORS 279B.415. When judicial review is sought, the city may not proceed with contract execution unless the city determines that there is a compelling government interest in proceeding or that the goods and services are urgently needed. If the city makes such a determination, it shall set forth the reasons for the determination in writing and immediately provide them to the complainant.

(Ord. 769 § 1 Att. A (part), 2006)  
(Ord. No. 801, § 1, 1-11-2011)

#### 2.24.180 - Personal services.

- A. Personal services include, but are not limited to, architectural, engineering, land surveying, auditing, financial, legal, planning, and technical inspection/testing services.
  - 1. Personal services are primarily for the provision of services that requires specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of services depends on attributes that are unique to the service provider.

2. Personal services performed in a professional capacity, including but not limited to services of an accountant, attorney, land-use-planning consultant, appraiser, public relations or communications consultant, community engagement consultant, graphic design consultant, natural resources consultant, information technology consultant, or facilitation consultant, services as a consultant; and for educational or training services.
  3. Personal services also include services performed that are specialized, creative, or research-oriented; including services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor.
  4. The CPO is delegated the discretion to decide whether a particular type of service falls within the definition of personal services as set forth in 1 through 3 of this Section A.
- B. Contracts for personal services (other than architect, engineer, photogrammetrist, transportation planner, land surveyor or provider of related services) may be entered into using the procedures in these rules for procuring services, namely competitive sealed proposal, small procurement, intermediate procurement, sole source procurement or emergency procurement.
- C. The city may enter into a contract directly with an architect, engineer, photogrammetrist, transportation planner, land surveyor or provider of related services without following the selection procedures set forth elsewhere in these rules if:
1. The city manager finds that an emergency exists; or
  2. The estimated fee to be paid under the contract does not exceed one hundred thousand dollars (\$100,000); or
  3. Where a project is being continued, where the estimated fee will not exceed two hundred and fifty thousand dollars (\$250,000), and the services to be performed under the contract must meet the following requirements:
    - a. The services consist of or are related to architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services that have been substantially described, planned or otherwise previously studied in an earlier contract with the same consultant and are rendered for the same project;
    - b. The estimated fee to be made under the contract does not exceed two hundred and fifty thousand dollars (\$250,000); and
    - c. The city used the formal selection procedure to select the consultant for the earlier contract; or
  4. Where a project is being continued and where the estimated fee is expected to exceed two hundred and fifty thousand dollars (\$250,000), the services to be performed under the contract meet the following requirements:
    - a. The services consist of or are related to architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services that have been substantially described, planned

- or otherwise previously studied under an earlier contract with the same consultant and are rendered for the same project;
  - b. The City used the formal selection procedure for the earlier contract; and
  - c. The city makes written findings that entering into a contract with the consultant, whether in the form of an amendment to an existing contract or a separate contract for the additional scope of services, will:
    - i. Promote efficient use of public funds and resources and result in substantial cost savings to the city; and,
    - ii. Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract.
5. The city may select a consultant for a contract under Section C2 from the following sources:
- a. The city's list of qualified consultants generated by soliciting interest from those potential consultants that may be interested in direct appointment and consultants that have adequately performed for city under prior contracts;
  - b. Another contracting agency's list of consultants that the contracting agency has created; or
  - c. Any consultants offering the required services that the city reasonably can identify under the circumstances.
- D. The city may use the informal selection procedure to obtain a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services if the estimated fee is expected not to exceed \$250,000.
1. City shall create a request for proposals (RFP) that includes at a minimum the following:
- a. A description of the project for which a consultant's related services are needed and a description of the services that will be required under the resulting contract;
  - b. The anticipated contract performance schedule;
  - c. That city will use pricing policies, proposals or other pricing information as part of the local contracting agency's screening and selection of prospective consultants;
  - d. The date and time proposals are due and other directions for submitting proposals;
  - e. How the city will rank proposals from prospective consultants, with a specific focus on: (1) which factors the local contracting agency will consider in evaluating proposals, including pricing policies, proposals or other pricing information; and (2) the relative weight the city will give each factor, disclosing at a minimum the number of available points for each factor or percentage each factor comprises in the total evaluation score and any other weighting criteria the city intends to use;
  - f. Criteria upon which the most qualified consultant will be selected may include, but are not limited to, the following:

- i. The amount and type of resources and number of experienced staff the Consultant has committed to perform the services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the services;
    - ii. Proposed management techniques for the services described in the RFP;
    - iii. The consultant's capability, experience and past performance history and record in providing similar services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;
    - iv. The consultant's approach to the services described in the RFP and design philosophy, if applicable;
    - v. The consultant's geographic proximity to and familiarity with the physical location of the Project;
    - vi. Volume of work, if any, previously awarded to a consultant, with the objective of effecting equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting a well-qualified consultant for the type of professional services required;
    - vii. A consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses; and
    - viii. Whether the consultant owes a liquidated and delinquent debt to the city or State of Oregon
  - g. An estimate of the cost of professional services the city requires for the procurement either being a specific estimate of that cost, or a range of estimated costs;
  - h. A statement directing proposers to the protest procedures; and
  - i. A sample form of the contract.
2. Provide the RFP to a minimum of five prospective consultants. If fewer than five prospective consultants are available, city shall provide the RFP to all available prospective consultants and shall maintain a written record of the city's efforts to locate available prospective consultants for the RFP. The city shall draw prospective consultants from the list generated in C5 of this section; and
  3. In the initial phase of the RFP, city will evaluate each prospective consultant on the basis of each consultant's qualifications to perform the services described in the RFP. At the end of the initial phase of the RFP, city will announce the evaluation scores of each consultant and rank each consultant according to the evaluation scores. City shall identify up to three of the highest ranked prospective consultants as being qualified to perform the services described in the RFP, and as being eligible to participate in the second phase of the RFP process;
  4. In the second phase of the RFP, city will request a pricing proposal from the highest ranked prospective consultants identified in the initial phase of the RFP. The pricing proposal:
    - a. Must consist of:

- i. A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
      - ii. A reasonable estimate of labor hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and
    - b. May include, at the local contracting agency's request, additional pricing information that is limited to:
      - i. A description of each task that the prospective consultant understands as comprising the professional services;
      - ii. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
      - iii. A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.
  - 5. City shall complete the evaluation of the highest ranked prospective consultants that have decided to provide price proposals. In the city's final evaluation of the prospective consultants who have provided price proposals, the city shall not assign more than fifteen percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal.
  - 6. If the city does not cancel the RFP after it reviews the qualifications of all prospective consultants and the price proposals received from the highest ranked consultants and ranks the highest ranked consultants from the second phase of the RFP, city will begin negotiating a contract with the highest ranked prospective consultant.
  - 7. City shall, either orally or in writing, formally terminate negotiations with the highest ranked consultant, if the city and the consultant are unable for any reason to reach agreement on a contract within a reasonable amount of time. City may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked Consultant until negotiations result in a contract. If negotiations with any of the top three prospective consultants do not result in a contract within a reasonable amount of time, city may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation.
- E. Except as provided in subsection B, C or D of this section, the city may enter into a personal services contract only by soliciting and evaluating proposals. Proposals shall be requested by public advertisement or by issuing a request for qualifications to establish a short list, followed by a request for proposals to the short-listed firms.
- 1. A public advertisement for personal services, when used, shall include the following:

- a. The scope of services sought;
  - b. The desired start date and completion date of the services;
  - c. The deadline for submitting a response;
  - d. Where copies of the solicitation documents may be obtained;
  - e. Other information the requester deems relevant.
2. A request for proposals shall include the following:
- a. The scope of services sought;
  - b. All required contractual terms and conditions;
  - c. The desired start date and completion date of the services;
  - d. The deadline and procedures for submittal of the proposal;
  - e. The process for evaluation of the proposal and selection of the recipient of the contract, including the relative importance of each evaluation factor;
  - f. A statement that the city reserves the right to seek clarifications of the proposed project approach, projected costs, or the assignment of resources, and reserves the right to negotiate a final contract which is in the best interest of the city;
  - g. A statement that the city reserves the right to reject any or all proposals if it would be in the public interest to do so;
  - h. Other information the requester deems relevant.
3. A request for qualifications, when used, shall include the following:
- a. The scope of services sought;
  - b. The particular personal services qualifications required;
  - c. A requirement for respondents to submit (as applicable) information concerning personnel availability and experience, workload, and similar work performed in the past;
  - d. The desired start date and completion date of the services;
  - e. The deadline and procedures for submittal of qualifications;
  - f. The process for evaluation of the qualifications and selection of those to be short-listed;
  - g. Other information the requester deems relevant.
4. The city shall select a consultant to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant's qualifications for the type of professional service required. City will solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a consultant.
5. Protests of personal services solicitations shall be administered in accordance with Section 2.24.160 of this chapter. Protests of personal services contract awards shall be administered in accordance with Section 2.24.170 of this chapter.
6. The procedures in this section also shall be used by the city for the final selection of a consultant for architectural, engineering, and land surveying services for local government public improvements procured through a state agency in accordance with ORS 279C.125.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.190 - Exemption from competitive bidding for a public improvement contract.

- A. The city council may exempt a public improvement contract or a class of public improvement contracts from competitive bidding upon approval of the following written findings, and before final adoption of the findings, holding a public hearing for which notification is published in the Daily Journal of Commerce and any other publication(s) the city deems appropriate at least fourteen days before the hearing, that:
  - 1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
  - 2. The awarding of public improvement contracts under the exemption will result in substantial cost savings to the city.
- B. In granting an exemption under this section, the city shall, when appropriate, use alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
- C. A public improvement contract may be exempted from competitive bidding if emergency conditions require prompt execution of the contract. If the city declares an emergency, any contract awarded under this subsection must be awarded within sixty days following declaration of the emergency.
- D. An exemption under this section may authorize or require the award of a public improvement contract by competitive proposals. A contract awarded under this subsection may be amended only upon approval of the city manager.

(Ord. 769 § 1 Att. A (part), 2006)

(Ord. No. 801, § 1, 1-11-2011)

2.24.200 - Negotiations with lowest bidder for a public improvement contract.

- A. If a public improvement contract is competitively bid and all responsive bids from responsible bidders exceed the city's cost estimate, the city may negotiate with the lowest responsive, responsible bidder prior to awarding the contract in order to solicit value engineering and other options to attempt to bring the contract within the city's cost estimate.
- B. A negotiation with the lowest responsive, responsible bidder under this section may not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.
- C. The records of a bidder used in contract negotiations under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.210 - Brand name specifications for a public improvement contract.

- A. Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt under subsection B of this section. Specifications may cite a brand name or mark for the purpose of indicating a desired type or quality of product, provided that the specifications allow for the use of approved equal products and such approval is not unreasonably withheld.
- B. The city manager or CPO may exempt certain products or classes of products from subsection A of this section upon any of the following findings:
  - 1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;
  - 2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the city;
  - 3. There is only one manufacturer or seller of the product of the quality desired; or
  - 4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible or like equipment or supplies.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.220 - Subcontractor disclosure for a public improvement contract.

The first-tier subcontractor disclosure form, when required by ORS 279C.370 for a public improvement contract, must be submitted to the city within two working hours after the date and time of the deadline when bids are due to the city .

(Ord. 769 § 1 Att. A (part), 2006)

2.24.230 - Bid security for a public improvement contract.

- A. A bid submitted in response to a solicitation for a public improvement contract shall be accompanied by a bid security in the amount of ten percent of the total bid amount.
- B. The bid security may be in the form of a bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check, or certified check.
- C. A public improvement contract in an amount estimated to be less than fifty thousand dollars (\$50,000) may be exempted from the requirements in subsections A and B of this section by the city manager or CPO . The city council may also exempt other contracts or classes of contracts from the requirements in subsections A and B of this section.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.240 - Performance and payment bonds for a public improvement contract.

- A. A successful bidder for a public improvement contract shall promptly execute and deliver to the city a performance bond and a payment bond, each in an amount equal to the full contract price.
- B. A cashier's check or certified check may be submitted in lieu of the required performance bond.
- C. A public improvement contract in an amount less than fifty thousand dollars (\$50,000) may be exempted from the requirements in subsections A and B of this section by the city manager or CPO. The city council may also exempt other contracts or classes of contracts from the requirements in subsections A and B of this section.

(Ord. 769 § 1 Att. A (part), 2006)

2.24.250 - Definitions.

- A. Unless the context or a specifically applicable definition requires otherwise, the terms used in this chapter shall have the meaning as defined in ORS Chapters 279A, 279B, and 279C.
- B. In addition to the definitions set forth in the Public Contracting Code, for purposes of this chapter the following definitions also apply:

“advantageous” means in the city’s best interests, as assessed according to the judgment of the city.

“best value” or “optimal value” means evaluation or assessment of performance factors and other aspects of service and product quality, as well as pricing, which may include, but not be limited to, combinations of quality, services, time, total cost of ownership considerations, and the probability of the vendor performing the requirements.

"compatible" or "like" means a product capable of being used efficiently and effectively with existing equipment, supplies, tools, parts, and/or employee training.

“complex systems” are defined as those systems which incorporate the procurement of materials or other components which are difficult, if not impossible, to create in an “equal” specifications basis for competitive bid.

“favorable terms” are contracts and purchases shall be negotiated on the most favorable terms in accordance with this chapter, other adopted ordinances, state and federal laws, policies and procedures.

“life cycle costing” means the total cost of ownership, including the total cost of acquiring, operating, maintaining, supporting, and if applicable, disposal.

“procurement” is 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.

“service contract” means a contract that calls primarily for the contractor's time and effort rather than for an end product, including but not limited to HVAC maintenance, janitorial services, and tree service.

“significant” is intended to mean substantial, but not necessarily the majority of the project as determined by cost.

“total cost of ownership” is a comprehensive accounting of the total cost of acquiring a good or service, including initial costs, energy and operational costs, regulatory costs, solicitation costs, longevity and efficacy of service, and disposal costs.

(Ord. 769 § 1 Att. A (part), 2006)