



*Revised - FINAL AGENDA

(*Indicates Item Added)

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
FEBRUARY 14, 2005
6:30 p.m.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of the Regular Meeting of February 7, 2005

- 05032 Selection of HOME Program Option Under Washington County HOME Consortium Agreement
- 05033 Liquor License Renewals - Annual Renewals
- 05034 Boards and Commissions Appointments - Crocker and Doyle Appointments to Library Board
- 05035 Acceptance of Grant Award from the Metropolitan Area Communications Commission and Authorize Appropriations through a Special Purpose Grant Budget Adjustment Resolution (Resolution No. 3805)
- 05036 A Resolution Designating Several Parcels in the Vicinity of Cornell Oaks Corporate Center, that are Surrounded by the Corporate Boundaries of the City, to be Annexed to the City of Beaverton (Resolution No. 3806)

Contract Review Board:

- 05037 Bid Award – Sodium Fluoride for Fluoridation of Drinking Water
- 05038 Waiver of Sealed Bidding - Purchase of Mobile Data Terminals from the State of Oregon Contract #4416-PA

*05042 A Resolution Establishing the City of Beaverton Purchasing Code
(Resolution No. 3809)

PUBLIC HEARINGS:

Agenda Bill 05039 - Contract Review Board:

05039 Request for Exemption from Competitive Bidding for Public Improvement
Contracts Relating to the City's Water System (Resolution No. 3807)

05040 Land Use Compatibility Statement for Clean Water Services' National
Pollutant Discharge Elimination System Watershed-Based Waste
Discharge Permit

ACTION ITEM:

05041 Land Use Compatibility Statement for Clean Water Services' National
Pollutant Discharge Elimination System Watershed-Based Waste
Discharge Permit (Resolution No. 3808)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
FEBRUARY 7, 2005

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, February 7, 2005, at 6:40 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Dennis Doyle, Fred Ruby and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Assistant City Attorney Bill Kirby, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Deputy Police Chief Chris Gibson, Principal Planner Hal Bergsma and City Recorder Sue Nelson.

VISITOR COMMENT PERIOD:

Nancy Kramis, Beaverton, expressed appreciation to staff and said she supported Agenda Bill 05021, the Contract Award for Engineering Services for Small Drainage Projects and On-Call Services. She said this contract covered needed drainage improvements for her residential area on SW Canyon Lane. She said she lived in that area for 20 years and had a river running through her yard when it rained due to runoff from other properties. She described how they tried to deal with the runoff over the years. She thanked City Engineer Mark Boguslawski for his interest in their situation and for adding this project to the design contract. She said she and her neighbors supported this design contract and were eager to have this project built.

Mayor Drake said he had met Ms. Kramis during the West Slope Neighborhood annexation process. He said since that time he had heard from her and others in that neighborhood that they were pleased with City services.

Ms. Kramis said she testified against the annexation originally. She said at that time they were also involved with Tri-Met, Multnomah County, ODOT, Portland and Beaverton concerning an overpass that was going to be removed off of Highway 26 and rerouted through her old neighborhood. She said this was unacceptable as it was a dangerous situation. She said she was very appreciative of Mayor Drake's efforts concerning the speed hills that were installed with much more stringent conditions than what Multnomah County required. She said they were appreciative of the efforts of the City to enhance that neighborhood and to act as the liaison between them and the Oregon Department of Transportation (ODOT).

COUNCIL ITEMS:

Coun. Stanton said the Beaverton Arts Commission's GALA Reception for Showcase was well attended and the artwork was excellent. She said a Library staff member was one of the artists whose work was on display at the Showcase. She said the artwork would be displayed at the Library for the next two weeks.

Coun. Stanton distributed a copy of the presentation the Library's Volunteer Coordinator Jean Bass made to the Library Board last month. She said the high points of the presentation were: the Library utilized 350 volunteers annually; and over 14,000 hours were put in by volunteers that equaled 6.74 FTEs and \$240,000 annual savings. She encouraged citizens to volunteer at their local Library.

Coun. Doyle said Showcase was excellent this year. He said this Sunday, February 13, 2005, from 2:00 p.m. to 4:00 p.m. at the Library, the Beaverton Arts Commission and the Westside Cultural Alliance would be holding an arts reception and discussion. He said a featured artist, one of the Showcase judges, would be the speaker. He encouraged interested citizens to attend.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Bode, that the Consent Agenda be approved as follows:

Minutes of Regular Meeting of January 24, 2005

05018 Boards and Commissions Appointments to Board of Construction Appeals – Bob Burns and Stephen Winstead

05019 Authorize Mayor to Sign Amendment 1 to Intergovernmental Agreement (IGA) with TriMet for Rose Biggi Avenue Grade Crossing

05020 Authorize Mayor to Sign Intergovernmental Agreement (IGA) with the Oregon Department of Transportation for Rose Biggi Avenue (Millikan Way to Crescent Street)

Contract Review Board:

05021 Consultant Contract Award – 2005 Engineering Services for Small Drainage Improvement Projects and On-Call Services

Question called on the motion. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

PUBLIC HEARINGS:

Agenda Bill 05022 - Contract Review Board:

05022 A Resolution Approving Findings for Exemptions of Certain Classes of Public Contracts from Competitive Bidding or Competitive Proposal Requirements (Resolution No. 3804)

Finance Director Patrick O'Claire introduced Assistant City Attorney Bill Kirby and City Purchasing Agent Terry Muralt.

O'Claire said this issue involved adopting exemptions from competitive solicitation. He said Legislature in its last session significantly changed the ORS that promulgate the guidelines for public procurement. He said the changes were made to make the ORS clearer. He said the new statutes made the City's current Purchasing Manual ineffective, which meant the Council needed to readopt the Purchasing Manual and the exemptions. He said this public hearing was to readopt the exemptions previously adopted by Council in 2003 and 2004. He said the exact same exemptions were being adopted; there was one major change which was a general exemption for competitive solicitation for purchases up to \$50,000. He said the City's current policy was set at \$25,000 as the threshold before a formal competitive solicitation was required. He said the majority of other local agencies had increased to the \$50,000-or-higher threshold. He said the Purchasing Manual would come before Council at the next meeting.

Coun. Stanton said she was comfortable with going to the \$50,000 threshold. She asked if there were any substantive changes other than the \$50,000 threshold amount.

O'Claire said there were two minor changes. He said the exemption for contract amendments was expanded into three separate categories. He said two exemptions were added to note a preference for recycled material and to allow contracting with the Federal government.

Mayor Drake opened the public hearing

There was no one who wished to testify on this issue.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that Council acting as Contract Review Board approve Agenda Bill 05022, A Resolution Approving Findings for Exemptions of Certain Classes of Public Contracts from Competitive Bidding or Competitive Proposal Requirements. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

The Public Hearings for the four following annexation issues (Agenda Bills 05023, 05024, 05025 and 05026) were held simultaneously.

05023 A Public Hearing to Receive Public Input Regarding the Annexation of Several Parcels Located in the Vicinity of the Elmonica and Merlo Light Rail Stations to the City of Beaverton: Annexation 2004-0016

- 05024 A Public Hearing to Receive Public Input Regarding the Annexation of Several Parcels Located in the Vicinity of the Sunset Hwy/Cornell Road Area to the City of Beaverton: Annexation 2004-0017
- 05025 A Public Hearing to Receive Public Input Regarding the Annexation of Several Parcels Located in the Vicinity of the Millikan Way Light Rail Station Area to the City of Beaverton: Annexation 2004-0018
- 05026 A Public Hearing to Receive Public Input Regarding the Annexation of Four Parcels Located in the West Slope Neighborhood to the City of Beaverton: Annexation 2004-0019

Community Development Director Joe Grillo read a prepared statement defining the process that needed to be followed for this hearing (in the record)

Principal Planner Hal Bergsma said the Council directed initiation of these annexation applications by adopting Resolution No. 3794. He reviewed the City's island annexation policy (in the record). He said ordinances approving these four annexation applications were on the Council Agenda for first reading at this meeting; the second reading and Council approval were scheduled for Monday, February 28, 2005. He reviewed the notifications for these annexations (in the record). He showed the properties being considered for annexation that were displayed on a wall map (in the record).

Bergsma said the City's implementation of island annexation policies generated a great deal of controversy and opposition. He said the common theme from those who opposed annexation was that present service levels were adequate and it was unclear what additional or higher quality services the City could offer in exchange for higher property taxes. He said some services would remain the same after annexation. He said services that would change included police protection, local road maintenance, street light maintenance, sewer line maintenance for lines under 24 inches in diameter, storm water facilities, garbage hauler franchise, development review, building permitting/inspection, comprehensive planning, neighborhood traffic management, code enforcement, Citizen Participation Organization (CPO) support, and political representation becomes the responsibility of the Mayor and City Council in addition to the Board of County Commissioners.

Bergsma said a change in these services would mean a change in the quality of service. He said the City took pride in delivering high quality service to its citizens. He said the City provided 1.5 patrol officers per 1,000 population verses 1.0 officers in the urban unincorporated area provided by the Sheriff's Enhanced Service Patrol District. He said the City had regular maintenance programs for its streets, street lights, sewer and storm drainage facilities. He said garbage service was provided at lower rates and yard debris recycling was provided weekly rather than bi-weekly in the unincorporated area. He said the City had three code enforcement officers for a population of 80,000 verses two code enforcement officers for unincorporated Washington County with a population of 180,000. He said the City's Neighborhood Program established small geographic areas that are represented by a Neighborhood Association Committee, to allow citizen input on City issues. He said the County's structure relied on one large Citizen Participation Group to represent large community areas such as Cedar Hills and Bethany areas. He

said the City's development fees and permits were lower than the County's because the City subsidizes its development review program with General Fund revenues. Bergsma said there was a cost for the difference in service levels. He said that partially explained why the net difference between property tax rates in urban unincorporated areas around the City verses rates in the City, was \$2.72 per \$1,000 assessed valuation. He said other reasons for the difference were that many higher-value properties were located in the County's Enhanced Patrol District and the Urban Rural Maintenance District, contributing to the tax base of those districts rather than the City's tax base. He said several operational facilities for the Beaverton School District, the Tualatin Hills Park and Recreation District, and the Tualatin Valley Water District were located on industrial property in the City which reduced potential tax revenues from the City's industrial areas. He said there was also the issue of City tax payers subsidizing tax payers in the urban unincorporated areas when City police officers respond to emergencies in the unincorporated areas; or by allowing free use of the City Library by all County residents when only City tax payers paid the cost of the bonds used to build the Library. He said the opponents of annexation stated that the quality of the services provided by the City did not differ significantly from the service they now receive and was not sufficient to justify higher taxes.

Bergsma concluded by stating the Council should determine what is in the best long-term interest of its businesses and citizens. He reviewed the reasons the Council adopted the policy on island annexations (to minimize confusion about boundaries, to improve service provision, to control development/redevelopment of properties that will eventually be in the City boundaries, to complete neighborhoods and to increase the City's tax base). He said staff recommendation was that Council conduct the combined public hearings, followed by the first reading of the ordinances for the annexation applications before Council.

Coun. Ruby referred to the wall map and asked for clarification that not all the large areas in purple were islands; tonight the Council was only considering those areas that were surrounded by existing Beaverton boundaries.

Bergsma replied that was correct. He said some of the large areas in purple were islands, such as Cedar Hills, but the Council had not directed initiating annexation of these areas. He said Mayor Drake publicly stated he had no intention of initiating annexation of large areas for at least a year. He said the City wanted to work with the County to determine whether to annex the areas and what would be the best way to proceed.

Coun. Ruby confirmed with Bergsma that if the City ever decided to annex any areas that were not islands, it would have to consider an alternate method of annexation.

Coun. Stanton said the City also provided street sweeping which was a service she liked. She said she thought in the next year the City would work with the County to "do the math" on these annexations and after that was done, something else would happen.

Mayor Drake said the intent was to balance some of the press reports and to give the County the opportunity to update its County 2000 Plan and then provide time for discussion and public input on that updated Plan.

Domonic Biggi, Beaverton, said he was testifying regarding annexation of his property on the corner of Millikan and Shannon. He said his family was not completely opposed to being annexed into the City. He said the annexation would raise the property taxes \$7,500 annually. He said the building on that lot was 70,000 square feet and was half-leased. He said if the annexation was approved, they would need to raise the rents and the market was not good right now. He asked that the Council consider this and allow them to come peacefully into the City.

Mark Perniconi, Vancouver, WA, said he represented the CE John Company, the owner of Lots 7 and 8 of Tektronix Business Park at Hocken and Millikan. He said past annexations were successful but in evaluating the Millikan Station Annexation it appeared to be a piecemeal attempt. He said if they were annexed at this time, while the larger Tektronix Campus next to them was not, they would be put at a significant competitive disadvantage. He said they would not object to the annexation if the whole area was brought in at the same time. He said as a company they supported Beaverton's annexation policy and felt it made a lot of sense. He asked that the City not put undue pressure on its two largest employers.

Barbara Block, Vice President Administrative Services, Tektronix, Beaverton, introduced herself and John Kaye, Manager of Real Estate and Facilities. Ms. Block read the letter she sent to Council regarding proposed Annexation 2004-0018, Millikan Way Station Area (in the record). She said they were concerned that: annexation without the owner's consent was unfair; they were satisfied with the service level and cost of service from the County; and annexation would raise the property taxes. She asked that the City reconsider its policy and work with local businesses.

Bob Frisbie, Facilities Director, Maxim Integrated Products, Beaverton, said they were located at the corner of SW Jenkins and Murray. He asked that the Council not follow through on its policy of annexing those who do not want to be annexed to the City. He said their top concern was that it would raise their property taxes \$237,000 annually. He said they had an excellent and close working relationship with Washington County. He asked that the City work with the property owners.

Mayor Drake asked Mr. Frisbie if he understood they were not being annexed tonight.

Frisbie replied he understood but they were under the same exemption as Tektronix and concerned for the future.

George Kringelhede, Aloha, said he owned property on Baseline and this annexation was a mystery to him. He said he already paid taxes for services which were satisfactory. He said the utilities were also satisfactory. He asked how annexation would improve his services. He said he was adamantly opposed to being annexed.

Henry Kane, Beaverton, read from his January 10, 2005, letter (page 22 of his February 6, 2005 letter) "Island annexations have been upheld and determined not to violate Constitutional rights in Rivergate Residents Assn. v. PMALGBC, 70 OR Appeal 205...". He said he filed a letter dated February 3, 2005 with the City (in the record). He asked that the record be kept open for seven days.

Joe Voboril, Portland, said he was representing Costco regarding Annexation 2004-0016, Elmonica and Merlo Light Rail Stations. He said the City never explained to Costco what was happening on this issue and the only contact Costco received was the notice of the hearing. He questioned why Costco was being annexed when other larger areas were not. He said this attempt at "cherry picking" high-value properties in the unincorporated areas was legally flawed and bad public policy. He asked that the City stop the process and work with the property owner to educate them. He said the long-term consequences of disgruntled citizens would outweigh any short-term gains in tax revenue.

John N. Neilsen, Aloha, said he was speaking on behalf of his father, Kaare M. Nielson who owned property at 640 SW 173rd Avenue, Annexation 2004-0016. He said his father owned this property for 30 years and operates a small family business from there. He said they learned of the annexation from a sign posted on their lawn. He said he did not recall receiving a letter from the City. He said he did not want to be annexed to the City and felt it would be better to let this happen in the long-term future.

Bill Bugbee, Beaverton, said he was a resident of Cooper Mountain. He said he was not a targeted property for annexation at this hearing; however, he was concerned for the future. He said annexation would increase their property taxes and there would also be additional cost for having to connect to the sanitary sewer system. He said the people in his area were opposed to annexation. He said this policy would have to be solved by the Legislature and he encouraged everyone affected by this issue to contact their legislator and try to amend ORS 195 which is the governing policy for forced annexation.

Janiece Staton, Beaverton, said she was a property owner and resident of the El Monica Meadows housing development. She said she found no compelling reason for the annexation. She said she did not vote for anyone on the Council, but she now had to appeal to them because of taxation issues. She said this was "taxation without representation." She said she did not understand why properties across the street were not being annexed. She said she was adamantly opposed to the annexation and it was not necessary.

Coun. Stanton said "taxation without representation" was a phrase used because colonists were being taxed and had no representation. She said in this case taxation would not start until the next cycle and residents would be represented as of the date they were annexed. She said it was not the case that residents outside of the City were already being taxed by the City.

Coun. Ruby asked Bergsma if Cooper Mountain would be an island annexation.

Bergsma replied Cooper Mountain was not an island area. He showed where Cooper Mountain was located on the wall map. He said the island annexation method could not be used in that area.

Coun. Ruby said for areas that were not islands, if the City wished to annex them sometime in the future there would have to be an election; or statutory action which at this time was largely discredited. He said there was need for reform in Salem. He stressed they were only discussing annexing island areas.

Julia Brim-Edwards, Beaverton, Director of State and Public Affairs, NIKE, said NIKE's campus was not affected by the annexations being considered at this meeting, but there was an indirect effect. She said NIKE was a major employer, a home-grown company with over 5,000 employees, and had made significant contributions to the community. She said the City's change in annexation policy raised issues related to trust and the long-term business climate in the region. She said certainty was highly desirable for a business to make long-term plans for the future. She said regarding annexation, this certainty could be provided if the City reaffirmed the right of property owners to consent to annexation. She said this guarantee could be provided at the State and local level. She said NIKE had immediate issues that were raised by the City's action which could not wait for an annexation study. She said the City was annexing a street tonight that was adjacent to their property and they may want to submit additional testimony.

Robert Aylwin, Tigard, asked that the record be kept open. He said he lived in an area that was being considered for annexation next month. He said under ORS 195 the City and County should have consulted with the area CPO prior to initiating the interim services agreement and that was not done. He said to change the City's annexation policy, caused people to lose credibility in their public officials and representatives. He said the road by his neighborhood was owned by ODOT and the City did not maintain it. He said this street annexation was done to deny them the right to vote on this issue.

Sheriff Rob Gordon, Washington County, said the Beaverton Police Department was a fine organization and any neighborhood would be well served by them. He said he was not speaking for or against any annexations being considered. He urged the Council to be cautious in using statistics. He said the staff reports said the quality of police service would improve with annexation. He said the numbers were accurate but that was a quality not a quantity issue. He said in the past there were statements to Council and in staff reports that Beaverton Police Department provided service to these island areas. He said he and his staff looked at these islands and could not find the data to support that statement. He said at a previous annexation hearing it was said 65% to 70% of the police calls were taken by Beaverton Police. He said they found that out of 634 calls, there were three that were taken by Beaverton Police and those were errors in dispatching. He said this was not about one agency being a better provider than the other. He asked that people be cautious in what they said, because it negatively impacts both the Sheriff's Office and the Beaverton Police Department.

Peter Stiven, Beaverton, Portfolio Manager, OPUS Northwest Management, said he represented Bold, LLC, the owners of the Cornell West Office Building on NW Bethany Boulevard (Annexation 2004-0017). He said he submitted a letter to Council dated February 4, 2005, (in the record). He said they questioned the authority of the City, under ORS 222.750, to include non-City streets to create an island area. He said any consideration of annexation by the City was premature until the County 2000 Plan was updated and a permanent Urban Service Area Agreement has been established between Washington County and the City. He said there were no current service deficiencies for their property and annexation did not offer any substantial improvement in the service level. He said the market for office rentals along Sunset Highway was extremely difficult with high vacancy rates. He said the tax implications for these properties were significant for the property owner as well as the tenants.

Scott Brown, Wells Real Estate Funds, said they owned a property adjacent to the NIKE headquarters on the west side. He distributed a letter to Council which delineated his Company's objections to the annexation (in the record). He summarized the objections noted in his letter. He asked how it was fair that a few commercial properties were forcibly annexed, while other neighboring properties were not and instead would be studied. He said there was no justification for the City to annex this property. He asked that the City not proceed at this time and that it treat all properties alike.

No one else wished to testify.

Mayor Drake closed the public hearing.

RECESS:

Mayor Drake called for a brief recess at 8:15 p.m.

RECONVENE:

Mayor Drake reconvened the meeting at 8:30 p.m.

Mayor Drake said the public testimony portion of the hearing was closed. He asked if there were any questions of City staff. There were none.

ORDINANCES:

First Reading:

Mayor Drake said Agenda Bill 05029 regarding Millikan Way, would be considered separately at the request of Coun. Bode.

Coun. Bode MOVED, SECONDED by Coun. Stanton that the rules be suspended and the ordinances embodied in Agenda Bills 05027, 05028 and 05030, be read for the first time in full at this meeting and for the second time by title only at the next regular meeting of the Council, with the record to be held open for seven days. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

City Attorney Alan Rappleyea read the following ordinances for the first time by title only:

05027 An Ordinance Annexing Several Parcels Located in the Vicinity of the Elmonica and Merlo Light Rail Stations to the City of Beaverton: Annexation 2004-0016 (Ordinance No. 4338)

05028 An Ordinance Annexing Several Parcels Located in the Vicinity of the Sunset Highway and NW Cornell Road to the City of Beaverton: Annexation 2004-0017 (Ordinance No. 4339)

05030 An Ordinance Annexing Four Parcels Located in the West Slope Neighborhood to the City of Beaverton: Annexation 2004-0019 (Ordinance No. 4341)

Coun. Doyle MOVED, SECONDED by Coun. Ruby that the rules be suspended and the ordinance embodied in Agenda Bills 05029, be read for the first time in full at this

meeting and for the second time by title only at the next regular meeting of the Council, with the record to be held open for seven days. Couns. Arnold, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0:1) Coun. Bode said she abstained because she was the Manager of the Virginia Garcia Healthcare Clinic and has a business relationship with CE John Company.

City Attorney Alan Rappleyea read the following ordinance for the first time by title only:

05029 An Ordinance Annexing Several Parcels Located in the Vicinity of the Millikan Way Light Rail Station Area to the City of Beaverton: Annexation 2004-0018 (Ordinance No. 4340)

ACTION ITEM:

05031 Amicus Participation at the Court of Appeals in the City of Hillsboro's Appeal of Metro's Title 4 Decision.

Coun. Stanton MOVED, SECONDED by Coun. Bode that Council approve Agenda Bill 05031 Amicus Participation at the Court of Appeals in the City of Hillsboro's Appeal of Metro's Title 4 Decision. Couns. Arnold, Bode, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:40 p.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this day of , 2005.

Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Selection of HOME Program Option Under
Washington County HOME Consortium
Agreement

FOR AGENDA OF: 02-14-05 **BILL NO:** 05032

Mayor's Approval:

L. DeFoe-Lodland
Mayor

DEPARTMENT OF ORIGIN: Mayor's Office

DATE SUBMITTED: 01-31-05

CLEARANCES: CDBG
Finance
Attorney

John
POC
AA

PROCEEDING: Consent

EXHIBITS:

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
-----------------------------	------------------------	-------------------------------

HISTORICAL PERSPECTIVE:

Since 1993, the City of Beaverton has been part of the Washington County HOME Consortium which receives Federal HOME Investment Partnership funds from the U.S. Department of Housing and Urban Development (HUD) to promote decent, safe and affordable housing for low income Americans. Under the City's 2003-2005 HOME Consortium Cooperation Agreement with Washington County, the City has the ability to choose from among three different operating models for the program, and must notify the County which Option identified in the Agreement will be selected for the coming program year. In 2004-2005, the City selected Option Three.

INFORMATION FOR CONSIDERATION:

The Consortium Agreement lays out three options for Beaverton's participation in the HOME program:

Option One: This is the way the HOME program operated before the 2003-2004 Program Year Washington County administers all HOME funds on behalf of the Consortium. The City of Beaverton is represented on the Project Review Committee, which makes funding recommendations to the Washington County Board of Commissioners. The County retains all administrative funds.

Option Two: The City of Beaverton receives a proportionate share of the Consortium's HOME funds as defined by HUD's formula, selects its own projects independent of the County's Project Review Committee and administers all projects funded with Beaverton HOME funds. The City is responsible for the ongoing monitoring of Beaverton HOME projects, but retains only about half the proportionate share of the Consortium's administrative funds, because of the County's responsibilities as lead jurisdiction in preparing reports and plans for HUD.

Option Three: The City of Beaverton designates projects within Beaverton to be funded by a proportionate share of the Consortium's HOME funds independent of the County's Project Review Committee. Washington County would be responsible for project implementation and administration,

as well as accountability to HUD, and the County would retain all administrative funds.

Beaverton's proportionate share for 2005-2006 is anticipated to be \$308,418, down from \$326,060 last year.

Because it allows the City to determine funding for a proportionate share of the Consortium's HOME funds without establishing a new City program to implement and monitor projects, staff recommends the City continue operating under Option Three.

RECOMMENDED ACTION:

Council formally select Option Three for the 2005-2006 Program Year under the 2003-2005 HOME Consortium Cooperation Agreement, and direct staff to notify Washington County of the City's decision.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: LIQUOR LICENSE RENEWALS
ANNUAL RENEWALS

FOR AGENDA OF: 02/14/05 **BILL NO:** 05033

MAYOR'S APPROVAL:



DEPARTMENT OF ORIGIN:

Police

DATE SUBMITTED:

02/01/05

PROCEEDING: Consent Agenda

EXHIBITS: List of Applicants

BUDGET IMPACT

EXPENDITURE REQUIRED \$ 0	AMOUNT BUDGETED \$ 0	APPROPRIATION REQUIRED \$ 0
------------------------------	-------------------------	--------------------------------

HISTORICAL PERSPECTIVE:

Background investigations have been completed and the Chief of Police finds that the applicants meet the standards and criteria as set forth in B.C. 5.02.240. The City has published in a newspaper of general circulation a notice specifying the liquor license renewal requests.

INFORMATION FOR CONSIDERATION:

All of the following businesses have operated according to the City standards and criteria throughout the past year:

1. 7-Eleven Store #2352-18950B
6000 SW Hall Blvd
2. 7-Eleven Store #2352-22510B
9510 SW 125th
3. 7-Eleven Store #2352-23153C
4715 SW Murray Blvd
4. 7-Eleven Store #2352-25516A
10069 SW Nimbus
5. 7-Eleven Store #2352-27388D
8106 SW Hall Blvd
6. Abhiruchi S & N Indian Cuisine
3815 SW Murray Blvd
7. Albertson's Food Center #559
8155 SW Hall Blvd
8. Allen Market
5970 SW Hall Blvd
9. AM/PM # 4461
14555 SW TV Hwy
10. AM/PM #6070
10975 SW Bvtn-Hillsdale Hwy
11. AM-PM Mini Market
11925 SW Allen Blvd
12. Applebee's Neighborhood Grill & Bar
1220 NW 185th Ave.

Agenda Bill No: 05033

- | | |
|---|---|
| 13. Asia Supermarket
12350 SW Broadway St. | 31. Chang's Mongolian Grill II
1935 NW 167th Place |
| 14. Asian Gardens
14280 SW Allen Blvd. | 32. Chevron #1123
11015 SW Canyon Rd. |
| 15. Atlas International Food Market
11421 SW Scholls Ferry Rd. | 33. Chevron #1189
13675 NW Cornell Rd. |
| 16. Baja Fresh Mexican Grill
2625 SW Cedar Hills Blvd. | 34. Chevron #1192
14850 SW Murray Scholls Dr. |
| 17. Banya Japanese Restaurant
8166 SW Hall Blvd. | 35. Chili's Grill and Bar
12025 SW Canyon Rd. |
| 18. Beaches Restaurant & Bar
14655 SW Scholls Ferry Rd. | 36. Chili's Grill and Bar
1520 NW Bethany Blvd. |
| 19. Beaverton Grocery Outlet
3855 SW Murray | 37. China Bay Restaurant
13281 SW Canyon Rd. |
| 20. Benihana of Tokyo
9205 SW Cascade Ave. | 38. China Moon
10743 SW Bvtn-Hillsdale Hwy. |
| 21. Benjamins
9225 SW Allen Blvd. | 39. Chipotle Mexican Grill
3380 SW Cedar Hills Blvd. |
| 22. Best Mart
3565 SW Hall Blvd. | 40. Chuck E. Cheese
4145 SW 110th |
| 23. Big KMART Store #4455
3955 SW Murray Blvd. | 41. Circle K Store #2705452 dba BP
2420 SW Cedar Hills Blvd. |
| 24. Big Red's
11485 SW Scholls Ferry Rd | 42. Circle K Store #2705453 dba BP
75 NW 158th Ave. |
| 25. BI-MART #662
4750 SW Western Ave. | 43. Co-Ho Imports Oregon
10905 SW Denney Rd |
| 26. Broadway Saloon & Steakhouse
12434 SW Broadway #2 | 44. Copper Monkey
6540 SW Fallbrook Pl |
| 27. Broadway Wines
12424 SW Broadway | 45. Cost Less
11527 SW Canyon Rd. |
| 28. Canyon Pearl Restaurant
12275 SW Canyon Rd. | 46. Courtyard by Marriott
8500 SW Nimbus |
| 29. Canyon Road Shell
11850 SW Canyon Rd. | 47. D.J.'s Wines
6590 SW Fallbrook, #A |
| 30. Casa Colonial Bar & Grill
8640 SW Canyon Rd. | 48. Denny's Restaurant #6803
8787 SW Scholls Ferry Rd. |

- | | |
|--|---|
| 49. Dessert Noir Café and Bar
3205 SW Cedar Hills Blvd. #22 | 67. Hart Road Pizza & Pub
16300 SW Hart Rd. |
| 50. Diamond Head Grill
13435 SW TV Hwy. | 68. Highland Food Market
14470 SW Allen Blvd. |
| 51. Dolphin II
10860 SW Bvtn-Hillsdale Hwy | 69. Hilton Garden Inn
15520 NW Gateway Ct. |
| 52. Dotty's # 006
2654 SW Cedar Hills Blvd. | 70. Homewood Suites Hotel
15525 NW Gateway Ct. |
| 53. Dotty's # 017
14304 SW Allen Blvd. | 71. Hooter's Restaurant
11995 SW Bvtn-Hillsdale Hwy. |
| 54. Du Kuh Bee
12590 SW 1st St. | 72. Hot Plate Asian Cuisine
14795 SW Murray Scholls Dr. #112 |
| 55. Eastern Pearl Inc
8651 SW Canyon Dr. | 73. House of Good Fortune
14603 SW Teal Blvd. |
| 56. El Ranchito Alegre Inc.
12588 Gem Lane | 74. Hyundai Oriental Food & Gifts
3482 SW Cedar Hills |
| 57. Elmer's Restaurant
3455 SW Cedar Hills Blvd. | 75. I Love Sushi
3486 SW Cedar Hills Blvd. |
| 58. Ernesto's Italian Restaurant
8544 SW Apple Way | 76. Ickabods Tavern
12475 SW First |
| 59. Fred Meyer #00035
11425 SW Bvtn-Hillsdale Hwy | 77. Ikenohana
14308 SW Allen Blvd. |
| 60. Fred Meyer #00482
15995 SW Walker Rd. | 78. Izzy's Pizza
11900 SW Broadway |
| 61. Giovanni's Restaurant
12390 SW Broadway St. | 79. Jang Choong Dong
3492 SW Cedar Hills Blvd |
| 62. Golden Crown Restaurant
10655 SW Bvtn-Hillsdale Hwy. | 80. Jin Wah Restaurant
12175 SW Canyon Rd. |
| 63. Golden Fountain Restaurant & Lounge
12525 SW Canyon Rd. | 81. Juan Colorado Mexican Restaurant
14795 SW Murray Scholls Dr. #111 |
| 64. Great China Restaurant
8220 SW Hall Blvd. | 82. King's Restaurant
12800 SW Canyon Rd. |
| 65. HAKATAMON Japanese Restaurant
4130 SW 117th Ave., Suite H | 83. Koreana Restaurant
9955 SW Bvtn-Hillsdale Hwy #140 |
| 66. Hall Street
3775 SW Hall Blvd. | 84. La Fogata Mexican Restaurant
3905 SW 117 th Ave., Suite H |

- | | |
|---|--|
| 85. La Nortena
6109 SW 124 th St. | 103. Pal Do World #4
3975 SW 114th Avenue |
| 86. Lamthong Restaurant
12406 SW Broadway | 104. Papa's Pizza Parlor #8
15700 NW Blueridge Drive |
| 87. Latino Imports
3905 SW 117 th Ave., Suite D | 105. Peking Restaurant
11923 SW Canyon Rd. |
| 88. Lin's China Jade
4050 SW Cedar Hills Blvd | 106. Pepita's Mexican Restaurant & Cantina
4190 SW Cedar Hills Blvd |
| 89. Maguffy's Pub
3805 SW Murray Blvd | 107. Pho Van
11651 SW Bvtn-Hillsdale Hwy |
| 90. Malone's Bar and Grill
14709 SW Teal Blvd | 108. Pizza Schmizza
9206 SW Bvtn-Hillsdale Hwy. |
| 91. Marie Callender's #244
16261 NW Cornell Rd | 109. Pizzicato Gourmet Pizza
14845 SW Scholls Ferry Road #101 |
| 92. Marinepolis Sushi Land
4021 SW 117th Ave C | 110. Plaid Pantry # 126
3120 SW Cedar Hills Blvd |
| 93. Mayuri Indian Restaurant
16175 SW Walker Rd. | 111. Plaid Pantry # 14
13875 SW Farmington Rd |
| 94. McCormick's Fish House
9945 SW Bvtn-Hillsdale Hwy | 112. Plaid Pantry # 15
12775 SW Walker Rd |
| 95. McGrath's Fish House
3211 SW Cedar Hills Blvd | 113. Plaid Pantry # 170
16300 SW Hart Rd |
| 96. McMenamins
2927B SW Cedar Hills Blvd | 114. Plaid Pantry #214
8615 SW Canyon Rd. |
| 97. McMenamins
6179 SW Murray Blvd | 115. Progress Grocery & Deli
8624 SW Hall Blvd |
| 98. Mingo
12600 SW Crescent St. | 116. Pyung Yang Myunoak
12055 SW First Street |
| 99. Monteaux's Public House
16165 SW Regatta Lane | 117. Quik Shop Minit Mart #21
14295 SW Allen Blvd. |
| 100. Monty's Tavern
13095 SW Canyon Rd. | 118. Rama Thai Restaurant
12874 SW Canyon Road |
| 101. Nak Won Korean Restaurant
4600 SW Watson Ave | 119. Red Robin Burger & Spirits
4105 SW 117th St A |
| 102. Noodlin
3487 SW Cedar Hills Blvd | 120. Ringo's Tavern
12750 SW Farmington Rd |

- | | |
|---|--|
| 121. Rite Aid # 5322
12575 SW Walker Road | 139. Tanya's European Deli
3821 SW 117 th Ave. – Suite A |
| 122. Rite Aid # 5323
14625 SW Allen Blvd | 140. Tara Thai House
4545 SW Watson Ave |
| 123. Riverwood Pub
8136 SW Hall Blvd | 141. Thai Angel Restaurant
3829 SW Hall Blvd. |
| 124. Round Table Pizza
10150 SW Bvtn-Hillsdale Hwy | 142. Thai Apsara Restaurant
11793 SW Bvtn-Hillsdale Hwy |
| 125. Safeway #1073
6194 SW Murray Blvd | 143. Thai Kitchen
2840 SW Cedar Hills Blvd |
| 126. Safeway #2631
14555 SW Teal Blvd | 144. Thai Orchid
16165 SW Regatta Drive |
| 127. Sambi
10500 SW Bvtn-Hillsdale Hwy | 145. Thailand Restaurant
15915 NW Schendel Avenue #103 |
| 128. Santana's & Pho Saigon
3655 SW Hall Blvd. | 146. The Cheerful Sports Page
8590 SW Hall Blvd |
| 129. Saylor's Old Country Kitchen
4655 SW Griffith Drive | 147. The Olive Garden #1213
11650 SW Canyon Road |
| 130. Scholls & Allen Market
9460 SW Allen Blvd | 148. Tienda La Perla
12020 SW Allen Blvd. |
| 131. Shari's Restaurant
6035 SW Murray Blvd | 149. Town Center Shell
2355 NW Town Center Dr. |
| 132. Siam Restaurant
3800 SW Cedar Hills Blvd | 150. Trader Joe's #141
11753 SW Bvtn-Hillsdale Hwy |
| 133. Simple Pleasures
7881 SW Cirrus Dr. | 151. Treasure Island Buffet
15930 SW Regatta Lane |
| 134. Star Sushi Japanese Cuisine
2800 SW Cedar Hills Blvd. | 152. TYPHOON! Inc
12600 SW Crescent Street |
| 135. Stars Cabaret & Steakhouse
4570 SW Lombard | 153. Uptown Market
6620 SW Scholls Ferry Rd |
| 136. Sunset Bingo
4800 SW Western Ave | 154. Uwajimaya
10500 SW Bvtn-Hillsdale Hwy |
| 137. Sunset Lanes
12770 SW Walker Rd. | 155. Valley Lanes Bowling
9300 SW Bvtn-Hillsdale Hwy |
| 138. Sushi Palace
8860 SW Hall Blvd | 156. Walker Road Chevron
18335 NW Walker Rd. |

157. Waterhouse Shell
1220 NW Waterhouse

158. Winco #14
3025 SW Cedar Hills Blvd

159. Zupan's Market
8235 SW Apple Way

RECOMMENDED ACTION:

The Chief of Police for the City of Beaverton recommends City Council approval of the OLCC license renewals.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Boards and Commissions Appointments –
Crocker and Doyle Appointments to Library
Board

FOR AGENDA OF: 02-14-05 **BILL NO:** 05034

Mayor's Approval:



DEPARTMENT OF ORIGIN: Mayor's
Office/Neighborhood Program

DATE SUBMITTED: 02-08-05

CLEARANCES:

PROCEEDING: CONSENT AGENDA

EXHIBITS: Applications for new appointments

BUDGET IMPACT

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
----------------------------	-----------------------	-------------------------------

HISTORICAL PERSPECTIVE:

Ann Doyle and Ramona Crocker submitted applications for the two vacant positions on the City's Library Board. Mayor Rob Drake is forwarding their applications with the recommendation that they be appointed to the Library Board. Both terms will be effective immediately and expire on December 31, 2007.

RECOMMENDED ACTION:

Confirm recommended appointments to the Library Board.

From: Sue Nelson on behalf of Mailbox Citymail
Sent: Tuesday, January 25, 2005 10:25 AM
To: Megan Callahan
Subject: FW: Boards and Commissions Application

-----Original Message-----

From: bcaplication@ci.beaverton.or.us [mailto:bcaplication@ci.beaverton.or.us]
Sent: Tuesday, January 25, 2005 2:20 AM
To: Mailbox Citymail
Subject: Boards and Commissions Application

Boards and Commissions Application

Board/Commission Applying for:
First Choice: Library Advisor Board
Second Choice: -----

Name: Ramona H. Crocker
Employer:
Position:

Address:
City: Beaverton
Zip Code: 97008

Home Phone: .
Business Phone:
Email Address:

How did you hear of the opening? I heard of the vacancy when I attended the January board meeting.

Are you a City resident? yes

If yes, how long have you lived in the City? 14 years

May we keep your name on a list if not appointed at this time? yes

Briefly describe your background and experience: I grew up in the Midwest, taught junior high students English and reading (Arizona and Wisconsin) for 5 years, have worked in the high tech and medical industries for 20+ years. In my free time I volunteer in the community for nonprofits and the city, which I find educational, mutually beneficial, and personally rewarding.

List any special training, skills or experience you may have that are pertinent to the

Board/Commission to which you are applying: As a former teacher, I appreciate the vital role libraries play in serving as an information resource/enrichment tool during a person's formal education and beyond. In the past, I've helped with book drives (Friends of the Library) and volunteered in Technical Services at Beaverton's library.

!

Rec'd
2/4/05



BOARDS AND COMMISSIONS APPLICATION

DATE: 1/23/04

Board/Commission applying for:
1 st Choice <u>Library Board</u>
2 nd Choice

Name <u>Ann Doyle</u>	Employer	Position
Address		City <u>Beaverton</u>
		ZIP <u>97008</u>
Home Phone	Business Phone	
Email Address		

How did you hear of the opening? <u>Through a neighbor Dot Lukins</u>	
Are you a City resident?* If yes, how long have you lived in the City? <u>Yes, 19 years</u>	May we keep your name on a list if not appointed at this time? <u>Yes</u>

Briefly describe your background and experience:

20 years as an educator for Hillsboro School District, Beaverton School District, NW Regional ESD and Illinois.

5 years on the Beaverton Arts Commission.

A Beaverton resident for 19 years.

Volunteer for PAL

An avid reader

I believe the library is the heart of the community and the keeper of culture and history. Access to information is essential for a strong democracy.

*The Charter for the City of Beaverton, Chapter V, Section 19, C.2., provides that:
 "Unless waived by a majority vote of the entire council, a member of any committee, board or commission shall be a resident of the City"

List any special training, skills or experience you may have that are pertinent to the Board/Commission to which you are applying:

I have been a classroom teacher and student for more than 30 years. I have been an administrator for 6 years. I participate in assisting students meet content standards. I believe volunteerism is the only way we will be able to keep vital programs alive.

Discuss your motivation for serving on this Board/Commission:

Collaboration with school districts ^{and} other essential community programs such as the arts commission will only serve to strengthen programs. I am concerned about censorship as well as keeping young children from inappropriate web sites. Knowledge is power.

State your goals for the City:

Beaverton is a vibrant thriving community. It needs to continue seeking open minded vision that supports and welcomes all community members. All economic groups and ethnic groups must have a place to continue learning, finding resources and creating or continuing to ~~be~~ grow academically.

For additional information, please call the Neighborhood Program at 526-2543.

Return application to: Neighborhood Program, City of Beaverton

P.O. Box 4755

Beaverton, OR 97076-4755

Fax: (503) 526-2572

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Acceptance of Grant Award from the Metropolitan Area Communications Commission and Authorize Appropriations Through a Special Purpose Grant Budget Adjustment Resolution

FOR AGENDA OF: 02/14/05 **BILL NO:** 05035

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Finance *[Signature]*

DATE SUBMITTED: 02/01/05

CLEARANCES: Finance *[Signature]*
Info. Systems *[Signature]*
City Attorney *[Signature]*

PROCEEDING: Consent Agenda

EXHIBITS: Special Purpose Grant Budget Adjustment Resolution
Grant Award Notification From MACC

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$60,524	BUDGETED \$0*	REQUIRED \$60,524*

*The Appropriation Required is funded by the grant award from the Metropolitan Area Communications Commission and will be established through the attached special purpose grant budget adjustment resolution.

HISTORICAL PERSPECTIVE:

The City of Beaverton has been awarded Metropolitan Area Communications Commission (MACC) grants. MACC grants were established to assist local agencies to create interlinked, high-speed, wide area networks in the MACC area. The City submitted the following grant requests

- 1) \$14,550 reimbursement for the cost of replacing the UPS (uninterruptible power supply) in June 2004. The UPS provides emergency battery backup power to the computer center so that the systems can be systematically shut down.
- 2) \$33,887 to install computer data network monitoring equipment.
- 3) \$12,087 to replace core data network switches at City Hall, Library, and Operations buildings.

Based upon MACC's Notification Letter (copy attached), the City was awarded all four of the grant requests.

INFORMATION FOR CONSIDERATION:

The following is a further description of the grant requests.

- 1) UPS - The City's prior UPS was over fifteen years old and could not guarantee uninterruptible power to our computer communications center room in City Hall without significant expenditure (\$8,000) to replace its batteries. Testing the interruptible power supply was difficult because the unit did not have a bypass system to the main power system, which required staff to shut down the computer center in order to test the system. The UPS was replaced as part of the Information System Department's remodel that was completed last June. The grant request was to reimburse the City for this expenditure.
- 2) Network Monitoring Equipment – This equipment will enable the City to monitor network data traffic in identifying and preventing system overloads whether from internal traffic or external traffic entering the network. The equipment will also highlight any network issues as a result of security intrusion that staff will be able to see through the online display system.

- 3) Network Switches – These switches control all the network traffic in the City and should be replaced every three to four years in order to guarantee reliability.

RECOMMENDED ACTION:

Council, accept the \$60,524 special purpose grant award from MACC for upgrading the City's network and telephone systems and approve the attached Special Purpose Grant Budget Adjustment Resolution, which appropriates the grant funding.

RESOLUTION NO. 3805

A RESOLUTION APPROVING THE ACCEPTANCE OF A SPECIFIC PURPOSE GRANT AND THE ASSOCIATED APPROPRIATIONS IN THE INFORMATION SYSTEMS FUND OF THE CITY DURING THE FY 2004-05 BUDGET YEAR AND APPROVING THE APPROPRIATIONS FOR THE FUND

WHEREAS, the City Council reviews and approves the annual budget; and,

WHEREAS, during the year the Council may authorize the acceptance of special purpose grant funds and the associated appropriations through a special purpose grant budget adjustment resolution; and,

WHEREAS, a Special Purpose Grant from the Metropolitan Area Communications Commission was awarded in the amount of \$60,524, and the Council desires to appropriate the grant award in the Information Systems Fund; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1. The Finance Director is hereby authorized and instructed to adjust the Information Systems Fund Budget to reflect receipt of the special purpose grant revenue and the associated appropriations:

Information Systems Fund

Revenues:

Intergovernmental Revenue 603-03-0000-329 \$60,524

Expenditures:

Computer Equipment 603-30-0713-317 \$12,087

Equipment 603-30-0713-671 \$33,887

Contingency 603-30-0712-991 \$14,550

Adopted by the Council this _____ day of _____, 2005.

Approved by the Mayor this _____ day of _____, 2005.

Ayes: _____

Nays _____

ATTEST:

APPROVED:

Sue Nelson, City Recorder

Rob Drake, Mayor

MACC

METROPOLITAN AREA COMMUNICATIONS COMMISSION

REPRESENTING THE COMMUNITIES OF BANKS, BEAVERTON, CORNELIUS, DURHAM, FOREST GROVE, GASTON, HILLSBORO, KING CITY, LAKE OSWEGO, NORTH PLAINS, RIVERGROVE, TIGARD, TUALATIN AND WASHINGTON COUNTY
Cable TV Franchise Regulation • Telecommunications Advice and Support • Public Communications Network (PCN)

December 14, 2004

David Hughes
IT Manager
City of Beaverton
PO Box 4755
Beaverton, Oregon 97223-4755

Dear Mr. Hughes,

We are pleased to inform you that the Commission awarded your organization \$ 60,524 for Replacement of UPS, Network Monitoring Equipment, and Replacement of Core Switches at their meeting on December 9, 2004:

Prior to MACC's distribution of these funds, the following conditions must be met:

1. The enclosed PEG/PCN Grant Fund Agreement (hereafter "Agreement") must be signed by the appropriate party and returned to MACC no later than January 31, 2005; and
2. Your organization must provide MACC with all required reports (if any) for previous PEG/PCN Grants you've been awarded:

Note: If you fail to complete the conditions listed above by January 31, 2005, MACC will rescind your awarded grant and return the funds to the MACC PEG/PCN Grant Fund, to be available to applicants to the next grant cycle.

Once these conditions are met, we will send a check for your grant within fifteen (15) working days. In accordance with Section B of the Agreement, your organization will have 12 months to spend these grant funds (Section B.1.).

MACC monitors the use of grant funds, and therefore, may contact you to provide information as specified in the Agreement. This may include, but is not limited to, budget reports, proposal overviews, and/or other financial and technical information related to your grant expenditures. MACC also reserves the right to audit the expenditure of your grant award, including the process used by your organization to select competitive bids for consultants, suppliers, and contractors.

In addition, each grant recipient is required to provide MACC with a final report upon completion of your project and no later than thirty (30) days after the Grant Expenditure Period (listed in section B.1 of the Agreement). We may also ask for your participation with MACC to promote and publicize the grant awarded your organization at any time.

1

Thank you for your participation in the PEG/PCN Grant Program. We wish great success for your project and hope that this grant contributes to its success.

Please call Greg, or me, if you have any questions, or if we can assist you further.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Crest", written in a cursive style.

Bruce Crest
MACC Administrator

C: MACC Commissioners
MACC Staff

Encl.

PEG/PCN GRANT FUND AGREEMENT

This Agreement is entered into by and between the Metropolitan Area Communications Commission (hereinafter "MACC"), a joint commission of Oregon local governments, and The City of Beaverton, (hereinafter "Recipient").

MACC has obtained funding pursuant to a cable franchise granted to Comcast Cable, which has been used to establish a grant program for the support of Public, Educational, and Government (PEG) programming and to promote the use of the Public Communications Network (PCN); and

The Recipient has applied for a grant pursuant to the application process established by MACC, and is eligible to be awarded a grant based on its status as a PCN User or Designated Access Provider (DAP); and

The MACC Board of Commissioners has approved a grant award to Recipient subject to compliance with the grant program and signing of this Agreement in the amount of **\$ 60,524.00**

- \$ 14,550 for PCN: Replacement of Uninterruptible Power Supply (as described in the Summary of Grant Recommendations)
- \$ 33,887 for PCN: Network Monitoring Equipment (as described in the Summary of Grant Recommendations)
- \$ 12,087 for PCN: Replacement of Core Switches (as described in the Summary of Grant Recommendations)

Therefore, in mutual consideration of the promises and benefits made and conferred in this Agreement, the parties agree as follows:

A. General Terms and Conditions

1. Recipient shall comply with all applicable laws, ordinances, rules, regulations, policies and resolutions under all federal, state, local, and jurisdictional purview.
2. Recipient shall comply with all applicable guidelines within the purview of the recipient jurisdiction or agency involving purchasing, contracting, professional services agreements, bidding, proposal requests, and any other matter related to the receipt and expenditure of grant proceeds.
3. Recipient shall agree that these funds are not to be used in a way that would benefit non-MACC users or those outside the MACC service area.

- Grant funds shall not be transferred to another entity, nor used in a manner inconsistent with the purpose(s) expressed in the grant application.

B. Timeline for Expenditure of Funds

1. The twelve (12) month Grant Expenditure Period of agency's Awarded Grant:
Begins: January 1, 2005 Ends: December 31, 2005
2. Grants awarded for a single grant cycle must be spent within the Grant Expenditure Period.
3. Awards for more than one grant cycle must include specific plans for detailed annual expenditures for each fiscal year of the grant. All funds provided in this manner must be expended by the end of the identified grant period.
4. Recipients requiring additional time beyond the Grant Expenditure Period, must submit a request to MACC in the following manner:
 - a. The written request (no e-mail or fax) must be received by MACC at least sixty (60) days prior to the end of the Grant Expenditure Period. The MACC Commission will consider the request and Recipient will be notified at least ten (10) days prior to the Grant Expenditure Period (GEP).
 - b. The request shall explain:
 - The additional time needed to complete the awarded grant.
 - The reason for the additional time or cause for delay in completion the project.
 - Plans for project completion during the time extension.

C. Financial Report Required - Accounting

1. Reporting Requirements. Recipient shall report to MACC, in writing, no later than 30 days following the end of the GEP as described in Section B,. Such report shall include a specific statement describing each expenditure in sufficient detail to enable MACC to determine compliance with the grant awarded, applicable grant guidelines and legal requirements, and the total amount expended by the recipient.
2. Reconciliation of actual costs. Grants funds that are awarded, but not used within the required timeline, shall be returned to MACC within 30 days of the end of the Grant Expenditure Period.
 - a. If actual costs are lower than the amount of the grant awarded, the Recipient must return any and all unused funds to MACC within 30 days of payment of all invoices.

b. If the project is postponed or abandoned:

Within thirty (30) days of the earliest of the following:

1. The decision to postpone or abandon the project;
2. The end of the GEP; or
3. All invoices have been paid,

Recipient must:

1. Return any and all unused funds to MACC;
2. Provide MACC with a complete list of all materials purchased with the grant funds;
3. Provide MACC with a written plan for disposition of any purchased materials; such plan must include a timeline for completion of disposition and the manner in which all proceeds will be returned to MACC;
4. Obtain MACC's written approval for the disposition plan; and.
5. If Recipient does not comply, they will pay interest to MACC at the rate prescribed under applicable ORS (currently 9.0% APR) and will pay this interest commencing with the due date defined per C.2.C and ending when MACC is in receipt of the funds.

D. Ownership of Equipment

1. MACC retains title to all capital equipment purchased by a Designated Access Provider with grants from this fund.
2. Capital equipment, purchased with grant funds provided to a DAP, may be installed in facilities owned by a MACC member jurisdiction. These jurisdictions may request title to such equipment. The MACC Commission may act on such requests and transfer title of such equipment if in its sole discretion such transfer appear to be in the public interest.

E. Publicity of Grant Program - Recipient will assist with publicizing the benefits of the grant program with the media and/or others. Any publicity/media contact shall indicate that the project or equipment used in the production of the program "was made possible by Grant from the Metropolitan Area Communications Commission – PEG/PCN Grant Program, through funds provided by Comcast Corporation." Failure to comply with section E could result in suspension of future Grants for requesting agency.

F. Final Report

Failure to provide the following may disqualify Recipient from applying for and/or receiving any additional grant funds.

1. Each Recipient agrees to provide MACC with a narrative, written report on the accomplishments and benefits of the approved project upon its completion; and
2. The report must be received by MACC within 30 days of the GEP defined in B.1.

G. Modification of Agreement

This Agreement may be modified upon mutual written consent by both parties.

By signing below, the undersigned acknowledges and accepts all terms and conditions contained in this Agreement, the grant application upon which this Agreement is based, and applicable grant funding guidelines and legal requirements. The undersigned further represents that he/she is authorized to bind the grant recipient:

Recipient:

DAVID HUGHES
Name (Please Print)

I.S. Manager
Title

[Signature]
Signature

12/16/04
Date

Accepted by MACC:

Signature

Date

Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006

Web Page Address: www.maccor.org

Telephone Number: (503) 645-7365

FAX (503) 645-0999

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Designating Several Parcels In The Vicinity Of Cornell Oaks Corporate Center, That Are Surrounded By The Corporate Boundaries Of The City, To Be Annexed To The City of Beaverton

FOR AGENDA OF: 2/14/05 **BILL NO:** 05036

Mayor's Approval: [Signature]

DEPARTMENT OF ORIGIN: CDD [Signature]

DATE SUBMITTED: 2/01/05

CLEARANCES: City Attorney [Signature]

Planning Services HB

PROCEEDING: CONSENT AGENDA

EXHIBITS: Resolution
Exhibit A - Map

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
-----------------------------	------------------------	-------------------------------

HISTORICAL PERSPECTIVE:

The City Council and Mayor recently approved the "City of Beaverton Urban Service Area and Corporate Limits Annexation Policies" by adoption of Resolution No. 3785. This document directs staff to take a more assertive approach to annexing territory into the City. Oregon Revised Statutes section 222.750 authorizes cities to annex areas "When territory not within a city is surrounded by the corporate boundaries of the city or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water...". The owners of property or residents within the territory proposed for annexation need not consent. These are generally referred to as island annexations.

INFORMATION FOR CONSIDERATION:

To implement this more assertive annexation policy the Mayor and staff are recommending annexation of the territory indicated on the attached map. The territory contains a mix of developed and developable properties that are surrounded by the City. Annexation of these properties is consistent with your Council's objectives for island annexations as stated in Resolution No. 3785. City Police are currently patrolling the major streets in the area, which are in the City, and it would be more efficient if the properties along those streets are in the City.

ORS 222.111(2) indicates that a proposal for annexation of territory may be initiated by a city on the motion of its legislative body. Staff interprets that provision to require Council adoption of a resolution directing initiation of each proposed island annexation.

RECOMMENDED ACTION:

Approve by consent the attached resolution with map identifying the proposed annexation territory.

RESOLUTION NO. 3806

A RESOLUTION DIRECTING CITY INITIATION OF ANNEXATION OF TERRITORY

WHEREAS, the City of Beaverton has adopted Urban Service Area and Corporate Limits Annexation Policies; and

WHEREAS, the City's progress toward annexing its assumed urban services area has been slow; and

WHEREAS, previous incremental annexations have resulted in City limits that are odd and create confusion about their location, with many unincorporated "islands" surrounded by properties within the City; and

WHEREAS, the City desires to create more logical boundaries and create complete incorporated neighborhoods; and

WHEREAS, a more assertive policy toward annexation of certain types of properties could improve the City's ability to provide services to its residents efficiently and at a reasonable cost; and

WHEREAS, a more assertive annexation policy could result in more City control of development in adjacent unincorporated areas that could affect the City; and

WHEREAS, the Washington County 2000 policy is to have all urban unincorporated areas annexed by cities over time; and

WHEREAS, the City of Beaverton and Washington County have entered into an intergovernmental agreement defining an Interim Urban Services Plan and Map specifying the City's future annexation area over the next ten years; and

WHEREAS, the City is now identifying particular areas to implement the adopted Annexation Policies; therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON

Council directs the Mayor to pursue the annexation of territory identified on the map attached hereto as Exhibit A to this resolution.

Adopted by the Council this ____ day of _____, 2005.

Approved by the Mayor this ____ day of _____, 2005.

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

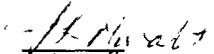
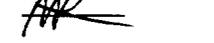
SUBJECT: Bid Award – Sodium Fluoride for
Fluoridation of Drinking Water

FOR AGENDA OF: 2-14-05 **BILL NO:** 05037

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Engineering 

DATE SUBMITTED: 2-1-05

CLEARANCES: Purchasing 
Finance 
City Attorney 

PROCEEDING: Consent
(Contract Review Board)

EXHIBITS: 1. Bid Summary

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$28,200	BUDGETED \$37,000	REQUIRED \$0

Funding is from budget account number 501-80-0743-419; Water Fund, Water System Maintenance Program, Chemical and Laboratory Supplies.

HISTORICAL PERSPECTIVE:

The Water Division of the Engineering Department is responsible for operation and maintenance of the City's water system. The Division budgeted for sodium fluoride for FY 2004-05 to be added to City drinking water as approved by the Council. The Water Division uses a drinking water grade of sodium fluoride meeting the specifications of the American Water Works Association Standard AWWA B701 and American National Standards Institute/National Science Foundation International ANSI/NSF 60. These widely recognized standards are used by the majority of public drinking water providers which fluoridate in the United States using sodium fluoride. The other two public water providers in Washington County, which fluoridate drinking water – Tualatin Valley Water District and the City of Forest Grove – both specify the same grade of sodium fluoride.

INFORMATION FOR CONSIDERATION:

Invitation to bid was advertised in the *Daily Journal of Commerce* on January 7, 2005. Three (3) bids were received and opened on January 25, 2005 at 2:00 p.m. in the Finance Conference Room. The lowest apparent bid was submitted by Univar USA, of Portland, Oregon, in the amount of \$28,200. Univar USA met all bid submittal requirements. The invitation to bid and specifications call for a one year contract with an option to renew for two additional one year periods with the total term not to exceed three years.

RECOMMENDED ACTION:

Council, acting as Contract Review Board, award a one year contract to Univar USA, of Portland, Oregon, in the amount of \$28,200, with an option to renew the contract a second year for the same amount, as the most responsive and responsible bid and authorize execution of a contract in a form approved by the City Attorney.

BID SUMMARY

CITY OF BEAVERTON

TO: Mayor & City Council

FROM: Purchasing Division

SUBJECT: Bid Opening

Bids were opened on JANUARY 25, 2005 at 2:00PM in the **FINANCE CONFERENCE ROOM**

For: SODIUM FLUORIDE - SOLVAY BRAND or EQUIVALENT

Witnessed by: Deme Perlmutter

VENDOR NAME AND CITY, STATE	YRLY BID AMOUNT
CHEMICAL CONSULTANTS - TIGARD, OR	\$60,000.00
CASCADE COLUMBIA - SHERWOOD, OR	\$28,320.00
UNIVAR USA - PORTLAND, OR	\$28,200.00

The Purchasing process has been confirmed.

Signed: *Larry L. Peralt*
Purchasing Division-Finance Dept.

The above amounts have been checked: YES NO

Date: 1-25-05

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

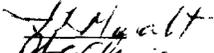
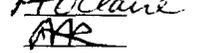
SUBJECT: Waiver of Sealed Bidding – Purchase of Mobile Data Terminals from the State of Oregon Contract #4416-PA

FOR AGENDA OF: 02-14-05 **BILL NO:** 05038

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Police

DATE SUBMITTED: 01-31-05

CLEARANCES: Purchasing 
Finance 
City Attorney 

PROCEEDING: Consent Agenda
(Contract Review Board)

EXHIBITS: Cover page of State Contract #4416-PA

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$151,490.20	BUDGETED \$175,000*	REQUIRED \$-0-

*Account Number: 001-60-0622-0631, \$70,000 was carried over from last fiscal year (2003/2004) for the purchase of 10 Mobile Data Terminal Computers (MDT's) and an additional \$105,000 was budgeted for in this current fiscal year (2004/2005) also for 10 MDT's which provides appropriation for a total of 20 MDT's .

HISTORICAL PERSPECTIVE:

The Beaverton Police Department is required to meet the Criminal Justice Information System authentication and encryption standards by September 2005. In order to meet these requirements the Mobile Data Terminal Computer Systems in the police cars need to have the computer processing unit capacity to handle the mobile client software that will meet the authentication and encryption standards. Near the end of last fiscal year, a state contract was being developed including several vendors of Mobile Data Terminal Computers. The state contract was awarded to several vendors including Motorola. Staff field tested the Motorola unit and found it to meet our needs. The purchase of Motorola MDT's will allow our equipment to be compatible with Washington County Sheriff's Office and Tigard Police Department, which has also purchased the Motorola MDT's.

INFORMATION FOR CONSIDERATION:

The Mobile Data Terminal Computer model MW800 from Motorola is available under an existing Price Agreement with the State of Oregon. Oregon law and the City's Purchasing rules permit an exemption from competitive solicitation if the purchase is made from an existing price agreement with another governmental agency.

Using the State of Oregon Contract #4416-PA for the Mobile Data Terminal Computers, the Beaverton Police Department received a quote from Motorola for the MW800 at \$7,574.51 each totaling \$166,639.22 for 22 units. Due to a drop in price as a result of the State of Oregon contract awarded to Motorola we are able to purchase 22 units versus the previously budgeted number of 20 units. The remaining appropriation balance of \$8,360.78 will be used to purchase vehicle mounting equipment to secure the units inside the patrol vehicles.

RECOMMENDED ACTION:

Council, acting as Council Review Board, authorize the purchase of 22 Motorola MW800 Mobile Data Terminal Computers in the amount of \$166,639.22 from the State of Oregon Contract.

Contract Summary

Mobile Data Computers and Associated Options and Services



Contract Administrator

A State Procurement Office
1225 Ferry Street SE, U140
Salem, Oregon
97301-4285

Contact: Weber, John
Phone: 1 (503) 373-1197
Fax: 1 (503) 373-1626
Email: john.p.weber@state.or.us

Final

<p>Contract # 4416-PA Revision # 3 Revision Date 12/27/2004</p>
<p>Contract Start Date 11/30/2004 Expiration Date 11/15/2005 Supplier Number 2735</p>

All dates are mm/dd/yyyy

Attachments Exist
Secondary Suppliers Do Not Exist

Supplier Address

MOTOROLA, INC.
4900 SW MEADOWS ROAD SUITE 475
Lake Oswego, Oregon
97035

Receiving Address

A Statewide Contract for State
Agencies and ORCPP/WSCP members
As Specified on the Purchase
Order
Any City, Oregon
97000

Purchasing Authority
Oregon Statutory
Authority

Exemption/Rule

Contract Filed At
DAS

Contact: FORMAN, DUANE B
Phone: 1 (503) 524-8363
Fax: 1 (503) 590-7143
Email: Duane.Forman@motorola.com

Contact: Name that appears on
Purchase Order
Phone: 1 (111) 111-1111
Fax:
Email:

This Document is a Summary of Price Agreement 4416. There are four (4) Attachments for this Price Agreement. Attachment one (1), contains: GENERAL PROPOSAL INFORMATION, QUALIFICATIONS AND REQUIREMENTS, ORCPP, AND WSPC PARTICIPATION, PRICE AGREEMENT TERMS AND CONDITIONS and STANDARD AND SPECIAL TERMS AND CONDITIONS. Attachments two, three and four (2-4) contains all pricing data applicable to this Price Agreement

Item #	Quantity / Unit	Description	Unit Cost
1	1 EACH	Computers, Parts and Supplies Ruggedized Vehicle Mounted Mobile Data Computers and Ruggedized Mobile Data Computers Mfg/Brand/Make - Motorola Model/Part/Item - see attachment	\$0.00
Delivery Required		Current Amendment Value	
Days Required for Delivery 60 days after receipt of purchase order		\$0	
Payment Terms Net 30		Previous Contract Value \$1,000,000	
FOB		Current Amended Value \$1,000,000	

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Request for Exemption from Competitive Bidding for Public Improvement Contracts Relating to the City's Water System

FOR AGENDA OF: 02-14-05 **BILL NO:** 05039

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Engineering *[Signature]*

DATE SUBMITTED: 02-03-05

CLEARANCES: City Attorney *[Signature]*
Finance *[Signature]*
Purchasing *[Signature]*

PROCEEDING: Public Hearing
(Contract Review Board)

- EXHIBITS:**
1. Request For Class Exemption From Competitive Bidding and Findings of Fact
 2. Resolution

BUDGET IMPACT

EXPENDITURE REQUIRED \$ 0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
------------------------------	------------------------	-------------------------------

HISTORICAL PERSPECTIVE:

The city of Beaverton supplies drinking water to approximately 62,000 people. To safeguard the city's drinking water system, the city regularly constructs improvements to protect against the system's destruction or contamination. Many of these public improvement projects are now funded from grant money supplied by the Department of Homeland Security.

Under traditional public contracting procedures, when the city intends to construct a public improvement through the use of an outside contractor, the city publishes an invitation to bid and awards a construction contract to the lowest responsive, responsible bidder. The process is open to the public and may often reveal sensitive information regarding a critical element of the city's water infrastructure.

After careful consideration, the city has determined that it is not in the best interest of the public or the city to award construction contracts relating to the city's water system under a traditional method of contractor selection. Some added measures of security are required to assure that sensitive information is not too widely disseminated.

INFORMATION FOR CONSIDERATION:

Under circumstances like this, Oregon law permits a contract review board to authorize an exemption from traditional procurement methods. In this instance, the city proposes the contract

review board authorize an alternative contracting method for awarding contracts relating to the construction of public improvement to the city's water system. The details and the justification for the requested class exemption are fully described in the attached Request for Class Exemption from Competitive Bidding.

The essence of the proposed exemption is that it would authorize the city to award construction contracts relating to its water system using an informal competitive quote process when use of a traditional invitation to bid process would likely reveal sensitive information regarding a critical element of the city's water infrastructure. The mayor and finance director must both approve the city's use of the exemption. Their approval will be based on a review of a written request made by the utility engineer describing how use of the traditional invitation to bid process would likely reveal sensitive information about the city's water system in the context of a specific project. Absent the mayor's and the finance director's approval, the city may not use the proposed exemption to award a public improvement contract. When use of the proposed exemption is authorized, the contractor solicitation process being proposed is the same informal competitive solicitation process now authorized for construction contracts valued at \$50,000 or less. That is to say, the city is requesting that for approved water system projects involving sensitive information, it be allowed to award public improvement contracts in any amount using written requests for quotes submitted to at least three prospective contractors.

Oregon law requires that when a contracting agency makes a request for a class exemption concerning public improvement contracts, as is the case here, a public hearing must be held to allow public comment on the request for exemption. After hearing and considering any public comments regarding the requested exemption, Oregon law permits a contract review board to authorize an exemption from competitive bidding if the board concludes (a) that the requested alternative contracting process proposed herein is unlikely to encourage favoritism in the awarding of public contracts, (b) is unlikely to substantially diminish competition for public contracts and (c) will result in substantial cost savings to the city.

RECOMMENDED ACTION:

Conduct public hearing, consider comments, approve findings and authorize proposed exemption.

**BEFORE THE CONTRACT REVIEW BOARD
OF THE CITY OF BEAVERTON, OREGON**

**REQUEST FOR CLASS EXEMPTION FROM COMPETITIVE BIDDING
AND FINDINGS OF FACT**

**Public Improvement Contracts
Relating to the City's Water System**

INTRODUCTION

The city of Beaverton hereby requests that the Beaverton Contract Review Board adopt the following findings and take other necessary action to exempt from competitive bidding the selection of a contractor for construction of public improvements relating to the city's water system when use of a traditional invitation to bid selection process would likely reveal sensitive information regarding a critical element of the city's water infrastructure. The exemption hereby requested is sought to become effective March 1, 2005.

The findings set out below are made in support of the conclusion that the requested alternative contracting process proposed herein is unlikely to encourage favoritism in the awarding of public contracts, is unlikely to substantially diminish competition for public contracts and will result in substantial cost savings to the city.

FINDINGS

A. Operational, budget and financial data.

1. *Operational, Budget and Financial Data.* The city of Beaverton supplies drinking water to approximately 62,000 people. To safeguard the city's drinking water system, the city regularly constructs improvements to protect against the system's destruction or contamination. The city's drinking water system is considered critical infrastructure under federal laws intended to respond to the existence of terrorist threats.

2. *Proposed Alternative Contracting Process.* The proposed exemption authorizes the city to award construction contracts relating to its water system using an informal competitive quote process when use of a traditional invitation to bid process would likely reveal sensitive information regarding a critical element of the city's water infrastructure. The Mayor and Finance Director both must approve the city's use of this exemption. Their approval must be based on review of a written request made by the Utility Engineer describing how use of the traditional invitation to bid process would likely reveal sensitive information about the city's water system in the context of a specific project. Absent the Mayor's and the Finance Director's approval, the city may not use the proposed exemption to award a public improvement contract. When use of the proposed exemption is authorized, the solicitation process used in lieu of the traditional invitation

to bid process is the same informal competitive solicitation process now authorized for construction contracts valued at \$50,000 or less. If use of the proposed alternative contracting procedure is authorized in a particular instance, the city may award public improvement contracts in any amount using written requests for quotes submitted to at least three prospective contractors.

3. *Text of Proposed Exemption.* If the city's request is approved, the text set out below will become part of the Beaverton Purchasing Code effective March 1, 2005:

49-0180 Water Infrastructure Contracts Involving Sensitive Information

A. General.

Public Improvement Contracts that relate to the city's water system may be awarded in accordance with the Intermediate Procurement procedures for competitive quotes established under BPC 49-0160 without regard to the estimated value of the contract if use of a competitive bid process would likely reveal sensitive information regarding a critical element of the city's water infrastructure.

B. Approval of Use of Exemption.

Prior to conducting a solicitation pursuant to this section, the city's Utility Engineer shall prepare written findings describing how use of a competitive bidding solicitation process would likely reveal sensitive information about the city's water system in the context of a specific project. The findings shall be submitted to the Mayor and the Finance Director for approval or disapproval. The city shall be authorized to conduct a solicitation pursuant to this section only if both the Mayor and Finance Director approve the findings prepared and submitted by the Utility Engineer.

B. Public Benefits. The proposed alternative contracting process is designed to strike the correct balance between the need for vigorous competition among prospective contractors seeking to do business with the city and the need for confidentiality regarding sensitive information about the city's water system. The public will benefit from the establishment of the class exemption since the exemption allows both needs—the need for competition and the need for confidentiality—to be met. Absent the establishment of the class exemption, the occasional need for confidentiality regarding sensitive information concerning the city's water system will not be as readily met, which would be to the potential detriment of the public.

C. Value Engineering. The alternative contracting process will permit staff to identify a cadre of potential contractors best able to perform the work required on a particular project. These contractors will then be contacted and asked to provide competitive quotes for work on the project. The selection criteria may be a combination of price, experience, expertise, availability, project understanding, contractor capacity, responsibility and similar factors. This solicitation process is the same as that now used for construction contracts valued at \$50,000 or less. This alternative selection process

adds value to the project because the process affords the opportunity to engage the lowest-cost contractor that is able to provide the city with first-rate performance, reliability and quality. In contrast, the traditional “low-bid” method assures only that the city pays the lowest contract price, but provides no added assurance that the low bidder is the best contractor available for a project.

D. Specialized Expertise Required. The alternative contracting process will provide the best opportunity to select an experienced contractor with the necessary specialized expertise. Although the traditional “low bid” method of contractor selection utilizes a prequalification process where contractors must meet a minimum standard of qualification, that method gives no weight to contractors who demonstrate qualifications that far exceed the minimum required standards. Selection of a highly qualified, as opposed to minimally qualified, contractor is likely to generate cost savings to the city and is likely to ensure a safer and more efficient construction process on any technically complex project.

E. Public Safety. The exemption is designed to respond to an important public safety need: safeguarding the public water system. The alternative contracting process will enable the city to select a contractor based on the contractor’s experience and qualifications, but without undue publication of sensitive information. In contrast, the traditional “low bid” method of contractor selection is done publicly and cannot give additional weight in the selection process to contractors whose record of accomplishment exceeds standard requirements.

F. Market Conditions. The proposed alternative contracting method mandates that the city obtain at least three competitive quotes and kept a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, the city must make a written record of the effort made to obtain those quotes. Where more than three contractors can be identified to compete for a particular contract, the city may request more than the minimum three quotes. These procedures are unlikely to encourage favoritism and should ensure that the city obtains competitive quotes for all its projects.

G. Funding Sources. Projects qualifying for use of this exemption may be funded from the city’s water fund or from grant money supplied by state or federal agencies, including the Department of Homeland Security.

CONCLUSION

For the reasons stated, the alternative contracting process proposed herein is unlikely to encourage favoritism in the awarding of public contracts, is unlikely to substantially diminish competition for public contracts and will result in substantial cost savings to the city.

RESOLUTION NO. 3807**A RESOLUTION APPROVING FINDINGS AND ESTABLISHING A CLASS EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACTS RELATING TO THE CITY'S WATER SYSTEM**

WHEREAS, Oregon law permits a contract review board to exempt classes of public improvement contracts from competitive bidding upon approval of findings submitted to the contract review board by the contracting agency seeking the exemption;

WHEREAS, the city of Beaverton has prepared and submitted findings to the Beaverton Contract Review Board in support of the city's request for a class exemption from competitive bidding relating to the city's water system; and

WHEREAS, notice of a public hearing regarding the city's request for an exemption from competitive bidding was published in the Daily Journal of Commerce on January 21, 2005, stating that a public hearing for the purpose of taking comments on the city's draft findings for an exemption from competitive bidding would be held at the city of Beaverton Council chambers of February 14, 2005; and

WHEREAS, a public hearing of the nature and purpose described above was held, at which time the public was offered an opportunity to appear and present comment on the proposed exemption; and

WHEREAS, the findings submitted to Beaverton Contract Review Board by the city seeking a class exemption provide sufficient information to support the conclusions that (1) it is unlikely the requested class exemption will encourage favoritism in the awarding of public contracts, and (2) it is unlikely the requested class exemption will substantially diminish competition for public contracts and (3) the awarding of public contracts pursuant to the class exemption will result in substantial cost savings to the public contracting agency; and

WHEREAS, the Beaverton Contract Review Board has determined that the findings offered in support of requested class exemption comply with the requirements of Oregon law; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF BEAVERTON, OREGON, AND THE CONTRACT REVIEW BOARD OF BEAVERTON, OREGON:

1. The Beaverton Contract Review Board hereby approves the written findings and conclusions offered by the city in support of the request that the Contract Review Board establish a class exemption from formal competitive bidding requirements, which findings and conclusions are set forth in full in Exhibit 1 to Agenda Bill 05039 of February 14, 2005; and

2. The city of Beaverton and the Beaverton Contract Review Board hereby establish a class exemption to become effective on March 1, 2005, as part of the Beaverton Purchasing Code, the exemption to read:

49-0180 Water Infrastructure Contracts Involving Sensitive Information

A. General.

Public Improvement Contracts that relate to the city's water system may be awarded in accordance with the Intermediate Procurement procedures for competitive quotes established under BPC 49-0160 without regard to the estimated value of the contract if use of a competitive bid process would likely reveal sensitive information regarding a critical element of the city's water infrastructure.

B. Approval of Use of Exemption.

Prior to conducting a solicitation pursuant to this section, the city's Utility Engineer shall prepare written findings describing how use of a competitive bidding solicitation process would likely reveal sensitive information about the city's water system in the context of a specific project. The findings shall be submitted to the Mayor and the Finance Director for approval or disapproval. The city shall be authorized to conduct a solicitation pursuant to this section only if both the Mayor and Finance Director approve the findings prepared and submitted by the Utility Engineer.

Adopted by the City Council this ___ day of February 2005.

Ayes: ___

Nays: _____

Adopted by the Beaverton Contract Review Board this ___ day of February 2005.

Ayes: ___

Nays: _____

Approved by the Mayor this ___ day of February 2005.

Attest:

Approved:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Land Use Compatibility Statement for Clean Water Services' National Pollutant Discharge Elimination System Watershed-based Waste Discharge Permit.

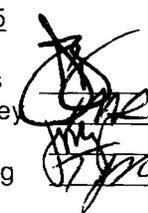
FOR AGENDA OF: 2/14/05 **BILL NO:** 05040

Mayor's Approval: 

DEPARTMENT OF ORIGIN: City Attorney

DATE SUBMITTED: 2/1/05

CLEARANCES: Operations
City Attorney
Planning
Engineering



PROCEEDING: Public Hearing

EXHIBITS:

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$ 0	BUDGETED \$ 0	REQUIRED \$ 0

HISTORICAL PERSPECTIVE:

Clean Water Services District is authorized by the Oregon Department of Environmental Quality (DEQ) under a National Pollution Discharge Elimination System ("NPDES") permit to operate individual waste treatment facilities ("WTFs") as well as a municipal separate storm sewer system ("MS4") and to discharge storm water. The MS4 permit covers an area of approximately 75,000-acres (117 square miles) including 400 miles of storm drains operated by CWS and an additional 570 miles of storm drains operated by cities within the CWS service area, including Beaverton.

Originally, Washington County approved the Land Use Compatibility Statement (LUCS) on a County wide basis. That decision was appealed to LUBA with the argument made that the County does not have the authority to sign the LUCS on behalf of the individual jurisdictions. To resolve that appeal, DEQ and CWS agreed to ask all of the affected jurisdictions to provide a LUCS for the MS4 portion of the permit.

INFORMATION FOR CONSIDERATION:

The MS4 permit authorizes the co-permittees, including the City, to operate the existing stormwater conveyance system and to expand that system to accommodate new development or redevelopment. It covers both the collection system, treatment facilities, and the various outfalls to the Tualatin River and its tributaries. The treatment facilities include those owned and operated by the co-permittees, including facilities constructed by private developers and turned over to the co-permittees. Without the permit, the co-permittees would be subject to liability under the CWA and state law for operating or expanding the system. This, in turn, would implicate construction or improvements to transportation systems (other than those covered by the ODOT permit) and land development activities where stormwater is not contained and treated on site. A companion agenda item is a resolution approving the LUCS with an attached staff report that makes findings that the MS4 is compatible with the City's comprehensive plan and land use regulations.

RECOMMENDED ACTION:

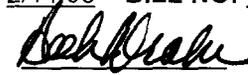
Conduct a public hearing

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Land Use Compatibility Statement for Clean Water Services' National Pollutant Discharge Elimination System Watershed-based Waste Discharge Permit.

FOR AGENDA OF: 2/14/05 **BILL NO:** 05041

Mayor's Approval: 

DEPARTMENT OF ORIGIN: City Attorney

DATE SUBMITTED: 2/1/05

CLEARANCES: Operations
City Attorney
Planning
Engineering



PROCEEDING: Action Item

EXHIBITS: Resolution
Land Use Compatibility Statement Findings

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED: \$0	BUDGETED: \$0	REQUIRED: \$0

HISTORICAL PERSPECTIVE:

Clean Water Services District is authorized by the Oregon Department of Environmental Quality (DEQ) under a National Pollution Discharge Elimination System ("NPDES") permit to operate individual waste treatment facilities ("WTFs") as well as a municipal separate storm sewer system ("MS4") and to discharge storm water. The MS4 permit covers an area of approximately 75,000-acres (117 square miles) including 400 miles of storm drains operated by CWS and an additional 570 miles of storm drains operated by cities within the CWS service area, including Beaverton.

Originally, Washington County approved the Land Use Compatibility Statement (LUCS) on a County wide basis. That decision was appealed to LUBA with the argument made that the County does not have the authority to sign the LUCS on behalf of the individual jurisdictions. To resolve that appeal, DEQ and CWS agreed to ask all of the affected jurisdictions to provide a LUCS for the MS4 portion of the permit.

INFORMATION FOR CONSIDERATION:

The MS4 permit authorizes the co-permittees, including the City, to operate the existing stormwater conveyance system and to expand that system to accommodate new development or redevelopment. It covers both the collection system, treatment facilities, and the various outfalls to the Tualatin River and its tributaries. The treatment facilities include those owned and operated by the co-permittees, including facilities constructed by private developers and turned over to the co-permittees. Without the permit, the co-permittees would be subject to liability under the CWA and state law for operating or expanding the system. This, in turn, would implicate construction or improvements to transportation systems (other than those covered by the ODOT permit) and land development activities where stormwater is not contained and treated on site. Attached is a resolution approving the LUCS with a staff report that makes findings that the MS4 is compatible with the City's comprehensive plan and land use regulations.

RECOMMENDED ACTION:

Approve the Resolution with the attached findings.

RESOLUTION NO. 3808

A RESOLUTION APPROVING A LAND USE COMPATIBILITY STATEMENT FOR CLEAN WATER SERVICES' NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WATERSHED-BASED WASTE DISCHARGE PERMIT.

WHEREAS, Clean Water Services District (CWS) is authorized by the DEQ under a National Pollution Discharge Elimination System (NPDES) permit to operate a municipal separate storm sewer system (MS4) and to discharge storm water; and

WHEREAS, DEQ has requested that individual cities within the jurisdiction of CWS approve the Land Use Compatibility Statement attached as Exhibit "1" to demonstrate that the MS4 permit complies with the cities comprehensive plan; and

WHEREAS, staff has reviewed the MS4 permit and drafted a staff report attached as Exhibit "2" and presented these finding before a public hearing before the Council, now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERTON, OREGON:

The Council hereby finds that the M S4 permit is compatible with the City's Comprehensive Plan as demonstrated by the findings attached and incorporated herein as Exhibit "2" and the Community Development Director is authorized to execute the Land Use Compatibility Statement attached as Exhibit "1" on behalf of the City.

ADOPTED by the Council this _____ day of _____, 2005.

APPROVED by the Mayor this _____ day of _____, 2005.

AYES: _____

NAYS: _____

ATTEST:

APPROVED:

SUE NELSON, CITY RECORDER

ROB DRAKE, MAYOR

**Department of Environmental Quality
LAND USE COMPATIBILITY STATEMENT (LUCS)**

WHAT IS A LUCS? The Land Use Compatibility Statement is the process used by the DEQ to determine whether DEQ permits and other approvals affecting land use are consistent with local government comprehensive plans.



State of Oregon
Department of
Environmental
Quality

WHY IS A LUCS REQUIRED? Oregon law requires state agency activities that impact land use be consistent with local comprehensive plans. DEQ Division 18 administrative rules identify agency activities or programs that significantly affect land use. These programs must have a process for determining local plan consistency.

WHEN IS A LUCS REQUIRED? A LUCS is required for nearly all DEQ permits, some general permits, and certain approvals of plans or related activities that affect land use. These activities are listed in this form. A single LUCS can be used if more than one DEQ permit/approval is being applied for concurrently.

A permit modification requires a LUCS when any of the following applies:

1. physical expansion on the property or proposed use of additional land;
2. a significant increase in discharges to water;
3. a relocation of an outfall outside of the source property; or
4. any physical change or change of operation of an air pollutant source that results in a net significant emission rate increase as defined in OAR 340-200-0020.

A permit renewal requires a LUCS if one has not previously been submitted, or if any of the above four permit modification factors apply.

HOW TO COMPLETE A LUCS:

<u>Step</u>	<u>Who Does It</u>	<u>What Happens</u>
1	Applicant	Completes Section 1 of the LUCS and submits it to the appropriate city or county planning office.
2	City or County Planning Office	Determines if the business or facility meets all local planning requirements, and returns to the applicant the signed and dated LUCS form with findings of fact for any local reviews or necessary planning approvals.
3	Applicant	Includes the completed LUCS with findings of fact with the DEQ permit or approval submittal application to the DEQ.

WHERE TO GET HELP: Questions about the LUCS process can be directed to the region staff responsible for processing the permit or approval. Headquarters and regional offices may also be reached using DEQ's toll-free telephone number 1-800-452-4011.

SECTION 1 - TO BE FILLED OUT BY APPLICANT *(may be filled in electronically using Tab key to move to each field)*

1. **Applicant Name:** City of Beaverton **Contact Person:** Barbara Fryer
Location Address: 4755 SW Griffith Drive **Mailing Address:** PO BOX 4755
City, State Zip: Beaverton, OR 97076 **City, State Zip:** Beaverton, OR 97076
Telephone: 503-526-2493 **Tax Account No:** _____ **Tax Lot No:** _____
Township: _____ **Range:** _____ **Section:** _____
Latitude: _____ **Longitude:** _____

Use the DEQ Location Finder (<http://deq12.deq.state.or.us/website/findloc>) to determine latitude/longitude.

2. **Describe the type of business or facility and services or products provided:**
MS4 Permit, see attached staff report.

3. Check the type of DEQ permit(s) or approval(s) being applied for at this time.

- | | | |
|--|---|---|
| <input type="checkbox"/> Air Notice of Construction | <input type="checkbox"/> Pollution Control Bond Request | <input type="checkbox"/> Clean Water State Revolving Fund Loan Request |
| <input type="checkbox"/> Air Discharge Permit (excludes portable facility permits) | <input type="checkbox"/> Solid Waste Compost Registration - Permit | <input type="checkbox"/> Water Quality NPDES/WPCF Permit (for onsite construction-installation permits use DEQ's Onsite LUCS form) |
| <input type="checkbox"/> Title V Air Permit | <input type="checkbox"/> Solid Waste Letter Authorization Permit | <input type="checkbox"/> Wastewater/Sewer Construction Plan/Specifications (includes review of plan changes that require use of new land) |
| <input type="checkbox"/> Parking/Traffic Circulation Plan | <input type="checkbox"/> Solid Waste Material Recovery Facility Permit | <input checked="" type="checkbox"/> Water Quality Storm Water General Permit |
| <input type="checkbox"/> Air Indirect Source Permit | <input type="checkbox"/> Solid Waste Transfer Station Permit | <input type="checkbox"/> Other Water Quality General Permit (Generals: 600 (if mobile), 700, 1200CA, 1500, 1700 (if mobile) are exempted) |
| <input type="checkbox"/> Solid Waste Disposal Permit | <input type="checkbox"/> Solid Waste - Waste Tire Storage Permit | <input type="checkbox"/> Federal Permit - Water Quality 401 Certification |
| <input type="checkbox"/> Solid Waste Treatment Permit | <input type="checkbox"/> Hazardous Waste/PCB Storage/Treatment/Discharge Permit | |

4. This application is for: permit renewal new permit permit modification other _____

SECTION 2 - TO BE FILLED OUT BY CITY OR COUNTY PLANNING OFFICIAL

5. The facility proposal is located: inside city limits inside UGB outside UGB

6. Name of the city or county that has land use jurisdiction (the legal entity responsible for land use decisions for the subject property or land use): City of Beaverton

7. Does the business or facility comply with all applicable local land use requirements?

- YES; attach findings to support the affirmative compliance decision (as required by Oregon Administrative Rules (OAR) 660, Division 31).
- NO; attach findings for noncompliance, and identify requirements the applicant must comply with before LUCS compatibility can be determined.

8. Planning Official Signature: _____ Title: Community Development Director

Print Name: Joe Grillo Telephone No.: 503-526-2493 Date: 2-2-05

*Planning Official Signature: _____ Title: _____

Print Name: _____ Telephone No.: _____ Date: _____

(*If necessary, depending upon city/county agreement on jurisdiction outside city limits but within UGB)

Please Note: A LUCS approval cannot be accepted by DEQ until all local requirements have been met. Written findings of fact for all local decisions addressed under Item No. 7 above **must be attached to the LUCS.**

CULTURAL RESOURCES PROTECTION LAWS: Applicants involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction, or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking, to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232

City of Beaverton
Land Use Compatibility Statement and Findings
for
Clean Water Services'
National Pollutant Discharge Elimination System
Watershed-Based Waste Discharge Program

Clean Water Services is a special district in Washington County, Oregon that serves (via intergovernmental agreement) as the permit holder to operate individual waste treatment facilities (WTFs) and municipal separate storm sewer system (MS4) and to discharge storm water under the National Pollution Discharge Elimination System (NPDES). The permit, authorized by the Oregon Department of Environmental Quality (DEQ) requires a Land Use Compatibility Statement (LUCS) to determine whether the DEQ permit and other approvals affecting land use are consistent with local government comprehensive plans.

Specifically, Oregon Administrative Rules (OAR) Chapter 340, Division 340, Section 0030 states that the provisions of this Division apply to DEQ programs and actions subsequently determined to have significant effects on land use pursuant to ORS 197.180 and OAR 660-030-0075. DEQ land use actions include the issuance of NPDES and WPCF Permits by the Water Quality Division. DEQ achieves compliance with the Statewide Planning Goals for land use programs and actions by assuring compatibility with acknowledged comprehensive plans.

When the affected local government has an Acknowledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:

- (a) Prohibited by the plan;
- (b) Allowed outright by the plan;
- (c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation; or
- (d) Allowed by the plan but subject to future goal considerations by the local jurisdiction. (OAR 660-031-0020)

For the purposes of this analysis, the City of Beaverton finds that a separate City permit (design review, tree plan, or other permit) is required for construction and installation of a storm water facility. Land use compatibility findings for this CWS permit do not authorize development or construction or installation of any facility within the city of Beaverton.

This NPDES permit is classified as a Class B Permit. In accordance with OAR 660-031-0020 and 660-031-0035(2), the review process shall assure either:

- (a) That prior to permit issuance, the agency determines that the proposed activity and use are in compliance with Statewide Planning Goals and compatible with the applicable Acknowledged comprehensive Plan; or
- (b) That the applicant is informed that;

- (A) Issuance of the permit is not a finding of compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan; and
- (B) The applicant must receive a land use approval from the affected local government. The affected local government must include a determination of compliance with the Statewide Planning Goals or compatibility with the Acknowledged Comprehensive Plan which must be supported by written findings as required in ORS 215.416(6) or 227.173(2). Findings for an activity or use addressed by the acknowledged comprehensive plan in accordance with OAR 660-031-0020, may simply reference the specific plan policies, criteria, or standards which were relied upon in rendering the decision and state why the decision is justified based on the plan policies, criteria or standards. (OAR 660-031-026(2))

As noted in the DEQ letter to Mr. Charles Logue, "DEQ believes that all co-permittees should provide a detailed Land Use Compatibility Statement (LUCS) from their appropriate planning jurisdictions." In the public notice, listed on DEQ's website, only Clean Water Services and Washington County are listed as co-permittees.

The permit authorizes the permittee to construct, install, modify, or operate a wastewater collection, treatment, control, and disposal system. The permittee is authorized to discharge to public waters adequately treated wastewaters only from the authorized discharge point or points established in Schedule A. Additionally, the co-permittees are authorized to implement a stormwater management program to reduce the contributions of pollutants in stormwater to the maximum extent practicable and to discharge stormwater to the waters of the State. These discharges must conform with all the requirements, limitation and conditions set forth in the attached schedules A through F (page 4 of 57 of File Number 108014).

Clean Water Services operates exclusive control over the four wastewater treatment facilities in Washington County. None of the facilities are within the City of Beaverton, thus this document will not apply to the four wastewater treatment facilities.

The MS4 permit requires the permittee to conduct monitoring to track the long-term progress of the Storm Water Management Plan (SWMP) towards achieving improvements in receiving water quality (Schedule B).

Schedule C requires CWS to submit a Temperature Management Plan. Activities listed as requirements on page 26 of 57 of File Number 108014, such as removing and planting vegetation within Locally Significant Wetlands and other Significant Natural Resources areas, will require additional permitting by the city of Beaverton.

Schedule D includes special conditions. Section 8 of this Schedule addresses the MS4. Within this context, each co-permittee is required to maintain adequate legal authority,

through ordinance(s), interagency agreement(s) or other means, to effectively implement and enforce the relevant provisions of this. This legal authority is to (i) control the contribution and quality of pollutants to the municipal storm sewer by storm discharges associated with industrial activity; (ii) prohibit illicit discharges to the municipal separate storm sewer; (iii) control the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (iv) control the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; (v) require compliance; and (vi) inspect, observe, and monitor to determine compliance and noncompliance with the conditions. The Storm Water Management Plan (SWMP) proposes to achieve these legal requirements through (a) adaptive management, (b) specific best management practices (BMPs) to reduce pollutants to the maximum extent practicable (MEP), (c) limit, to the MEP, discharges to receiving waters with established total maximum daily loads (TMDLs) and associated allocations, (d) evaluate additional discharges to receiving waters for which TMDL waste load allocations have not been established, and (e) public involvement.

Schedule E requires pretreatment activities for industrial users.

Schedule F includes standard conditions with regard to penalties for non-compliance, operation and maintenance of pollution controls, monitoring and records, reporting requirements, and definitions used in the permit.

The following findings evaluate whether the proposed MS4 permit is consistent with the city of Beaverton Comprehensive Plan (Plan), Development Code (Code) and the Municipal Code. The Plan policies and Code standards discussed herein address, either directly or indirectly, storm water issues. Consequently, they are relevant for the purposes of determining land use compatibility with the City's Plan and Code.

City of Beaverton Comprehensive Plan

The proposed NPDES permit includes the entirety of the City of Beaverton and its assumed urban service area. The City of Beaverton Comprehensive Plan is a five-volume set of documents:

- Volume I – Comprehensive Plan for the City of Beaverton
- Volume II – Background and Supporting Documents
- Volume III – Statewide Planning Goal 5 Resource Inventory Documents
- Volume IV – Transportation System Plan
- Volume V – Community Plans

Volume I – the Comprehensive Plan for the City of Beaverton, is the policy framework for decision making processes and is a means of directing community efforts towards sound future growth, better understanding between public and private efforts, and a livable community. Beaverton's Comprehensive Plan pertains only to lands within the city limits.

Chapter Five: Public Facilities and Services Element identifies the City's responsibilities for sanitary and storm facilities and drainage. Section 5.2 of Chapter Five identifies the city's public facilities plan, which includes the City of Beaverton Sanitary Sewer Master Plan, the Clean Water Services of Washington County Sewer System Master Plan, and the City of Beaverton Drainage Master Plan. Provision of sanitary sewer and storm drainage services is shared in conjunction with Clean Water Services.

Goal 5.3.1 states: *Ensure long-term provisions of adequate urban services within existing City limits and areas to be annexed in the future.*

Policy a) "The City shall maintain agreements with the special districts and the County to plan for the long-term provision of services within the City's Urban Services Area."

Policy b) "The City shall work cooperatively with service providers within its Urban Services Area in the development of master plans that are elements of the City's Public Facility Plan, so as to prescribe the most effective and efficient long-term methods of providing each service."

FINDING: The city's stated goals and policies are consistent with maintaining a mechanism to implement Section 8 of Schedule D regarding adequate legal authority. The goal and policies also furthers CWS' ability to implement the SWMP.

Chapter Five, Section 5.4 of the City's Comprehensive Plan, discusses the City's responsibility with regard to storm water and drainage. "Pursuant to the current intergovernmental agreement (IGA) with CWS, ownership and maintenance of facilities operated by CWS are transferred permanently to the City for all areas annexed to the City. The current IGA with CWS establishes certain maintenance service levels that the City follows and may be amended from time to time as allowed by the IGA." Also, as noted in this section, the City of Beaverton incorporates the CWS *Design and Construction Standards for Sanitary Sewer and Surface Water Management* in the City's *Engineering Design Manual and Standard Drawings*.

Goal 5.4.1 states: *Ensure long-term provisions of adequate storm water management within existing City limits and areas to be annexed in the future.*

Policy a) "The City shall continue to participate in the CWS's (sic) Surface Water Management (SWM) program for the urban portion of the Tualatin River watershed. The City shall retain responsibility for planning, construction and maintenance of portions of the local storm water facilities within its incorporated limits."

Policy b) "On-site detention will be used as a storm water management tool to mitigate the impacts of increased storm water run-off associated with new land development."

Policy c) "All new land development will be connected to a storm water drainage system. Each new development will be responsible for the construction or assurance of construction of their portion of the major storm water run-off facilities that are identified by the SWM program as being necessary to serve the new land development."

FINDING: Implementing Schedule D and the SWMP is consistent with the city's stated goals and policies.

Chapter Seven – Natural, Cultural, Historic, Scenic, Energy and Groundwater Resources Element addresses natural resources protection.

Goal 7.1.1 states: *Balance development rights with natural resource protection.*

Policy a) "Coordinate resource protection programs with affected local, state and federal regulatory agencies, and notify them of development proposals within natural resource areas."

Policy b) "Where adverse impacts to Significant Natural Resources cannot be practicably avoided, require mitigation of the same resource type commensurate with the impact, at a location as close as possible to the impacted resource site."

Policy c) "Allow for relaxation of development standards to protect significant natural and historic resources. Such standards may include but are not limited to minimum setbacks, maximum building height, minimum street width, location of bicycle, pedestrian and multi-use paths, etc."

Goal 7.3.1.1 states: *Conserve, protect, enhance or restore the functions and values of inventoried Significant Natural Resources.*

Policy a) "Inventoried natural resources shall be conserved, protected, enhanced or restored:

- **To retain the visual and scenic diversity of our community;**
- **For their educational and recreational values;**
- **To provide habitats for fish and wildlife in our urban area."**

Policy b) "Conserve, protect and enhance natural resource sites and values through a combination of programs that involve development regulations, purchase of land and conservation easements, educational efforts, and mitigation of impacts on resource sites."

Policy c) "Inventoried natural resources shall be incorporated into the landscape design of development projects as part of a site development plan, recognizing them as amenities for residents and employees alike.

Policy d) "The City shall rely on its site development permitting process as the mechanism to balance the needs of development with natural resource protection."

Policy e) "Development within Significant Natural Resource areas shall be consistent with the relevant regulations or guidelines of the National Marine Fisheries Service, US Fish and Wildlife Service, Oregon Department of Fish and Wildlife, US Army Corps of Engineers, Oregon Division of State Lands, Clean Water Services, and the Oregon Department of Environmental Quality."

Policy f) "Specific uses of or development activities in Significant Natural Resources areas shall be evaluated carefully and those uses or activities that are complementary and compatible with resource protection shall be permitted. This is not intended to prohibit a land use permitted by the underlying zoning district but only to regulate the design of development such as building or parking location or type of landscaping."

Policy g) "Limited alteration or improvement of Significant Natural Resource areas may be permitted so long as potential losses are mitigated and "best management practices" are employed."

Policy h) "Roads and utilities, which must be located within, or traverse through, a Significant Natural Resource Area, shall be carefully planned and aligned so as to minimize loss and disruption. A rehabilitation or restoration plan shall be a necessary component. The city should allow variations from standard street sections in these areas."

Goal 7.3.2.1 states: *Promote a healthy environment and natural landscape in riparian corridors, and manage conflicting uses through education, and adoption and enforcement of regulations.*

Policy a) "Significant Riparian Corridors shall be protected for their fish and wildlife habitat values, and other values associated with the natural resource area. Development plans for these areas shall treat these components as assets and encroachment into the riparian corridor shall require enhancement, mitigation or restoration."

Policy b) "Streams, creeks, and other watercourses, including a number of small drainages not identified on the Significant Natural Resource inventory maps, can be significant amenities. The City should protect the natural resource values of these areas from damage or degradation caused

intentionally or by neglect. The city should cooperate with and assist property owners in maintaining and upgrading these areas for their potential aesthetic, wildlife, or recreational value."

Goal 7.3.3.1 states: *Protect or enhance wetlands adopted as Significant Wetlands in the Local Wetland Inventory.*

Policy a) "Significant Wetlands in the Local Wetland Inventory shall be protected for their filtration, flood control, wildlife habitat, natural vegetation and other water resource values."

Policy b) "Development within the buffer area adjacent to a significant wetland shall be subject to restrictions on building, grading, excavation, placement of fill, and native vegetation removal."

Policy c) "Where development is constrained due to wetland protection regulations, a hardship variance may be granted if approval criteria are met."

Goal 7.6.1 states: *Protect groundwater in the City from contamination.*

Policy a) "Cooperate with other local water providers and neighboring jurisdictions in preventing pollution in areas around municipal and domestic wells so as to protect groundwater that is a source of potable water for the City from contamination."

FINDING: Implementing the SWMP, especially the vegetated corridors and sensitive areas regulations found within the SWMP, is consistent with the aforementioned goals and policies. Education programs cited in the NPDES permit application are also supported by the cited goals and policies. The last goal and policy cited above pertains to consistency of the CWS requirements within the Stormwater Pollution Control Plan (SWPCP) with the Plan.

Chapter Eight: Environmental Quality and Safety addresses water quality, air quality, noise, seismic hazards, geologic hazards, flood hazards, and solid and hazardous waste.

Goal 8.2.1 states: *Maintain and improve water quality, and protect the beneficial uses, functions and values of water resources.*

Policy a) "All water resource areas within the City shall be enhanced, restored or protected to the extent practicable."

Policy b) "The City shall limit development in vegetative corridors along streams through application of the CWS Design and Construction Standards so as to substantially comply with requirements of the Metro Functional Plan Title 3."

Policy c) "The City shall support the development of education programs aimed at helping citizens understand the importance of good stewardship and the use of non-regulatory tools that will provide additional water quality resource protection."

Policy d) "Partner with other local jurisdictions and service providers to avoid duplication of efforts and resources."

Policy e) "Protect investments in the City by managing stormwater runoff."

Goal 8.7.1 states: *Maintain the functions and values of floodplains, to allow for the storage and conveyance of stream flows and to minimize the loss of life and property.*

Policy a) "Utilize uniform or complementary interjurisdictional floodplain development and management programs to reduce flood hazards, protect natural resource, and permit reasonable development."

Policy b) "Development shall be prohibited in the floodway, except as necessary for the placement of roadways, utilities, stormwater conveyance, bridges, culverts, and grading related to public utility projects as permitted by the appropriate implementing ordinances."

Policy c) "Construction within the flood fringe shall be regulated through the City's implementing ordinances, such as the City's Engineering Design Manual and Standard Drawings."

Policy d) "Uncontained areas of hazardous materials, as defined by the DEQ, shall be prohibited in the floodplain."

FINDING: Implementation of best management practices, vegetated corridors, prohibiting illicit discharges, and other components of the SWMP are consistent with the cited policies.

Volumes II through V of the Comprehensive Plan provide background material to the overall plan. Specific findings relative to each volume is not applicable to this proposal.

City of Beaverton Development Code

While the NPDES permit authorizes CWS to construct, install, modify, or operate a wastewater collection, treatment, control, and disposal system, this LUCS does not permit CWS or any other public agency or private entity to construct, install, or modify said systems. Any physical change to the landscape requires approval from the City of Beaverton through the permitting processes established in the Development Code and the

standards found in the *Engineering Design Manual and Standard Drawings*. Site development permits are administered through the City Municipal Code.

Development Code Chapter 60 Special Requirements, Section 10. Floodplain Regulations

The proposal is consistent with the City's floodplain regulations and is generally supportive of them. Commercial and Industrial development can be permitted in the floodway fringe when it meets the City's *Engineering Design Manual and Standard Drawings* and the CWS *Design and Construction Standards* and has been reviewed and approved by the appropriate City review authority. Single and two family residences are prohibited in the floodway fringe on any lot smaller than five acres, unless it is developed as a planned unit development. All other residential uses, if allowed in the primary zone, are allowed as conditional uses only. To be approved, the proposal must meet all the other requirements of the Development Code and the requirements of Beaverton Municipal Code Section 9.05 and the CWS *Design and Construction Standards*.

FINDING: While not authorizing any specific activity, the CWS NPDES permit is consistent with the City's floodplain regulations.

Development Code Chapter 60 Special Requirements, Section 15. Land Division Standards

This section requires improvements to be constructed to the specifications in the *Engineering Design Manual and Standard Drawings*. It also requires a site development permit for improvements. The City's site development permit covers the erosion control and water quality and quantity analysis for a proposal.

FINDING: Thus, the CWS SWMP regulations that require controls to eliminate or minimize the exposure of pollutants to storm water are consistent with this section of the City's Development Code.

Development Code Chapter 60 Special Requirement, Section 60. Trees and Vegetation

This section of the Development Code provides the City's regulatory framework for tree and vegetation removal. Tree resources on undeveloped property, within Significant Groves, Significant Natural Resource Areas, community trees on residentially zoned property greater than 1/2 acre, trees conditioned through the development process, and street trees are all regulated through this section of the Development Code.

FINDING: The proposal is consistent with the City's tree and vegetation removal regulations, where the CWS vegetated corridor and sensitive area regulations and City Significant Natural Resource Areas, Significant Trees and Groves intersect.

City of Beaverton Municipal Code Section 9.05.045

The City's *Engineering Design Manual and Standard Drawings* implement the City's Site Development Ordinance adopted as Municipal Code Section 9.05.045. CWS' *Design and*

Construction Manual is incorporated by reference into the City's *Engineering Design Manual and Standard Drawings*. If, in the course of design or construction, any of the codes or standards should change, the City Engineer may determine based upon his or her professional judgment whether the new or former standard shall be applicable.

FINDING: The City's Municipal Code and *Engineering Design Manual and Standard Drawings* implement portions of CWS' SWMP.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

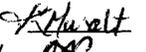
SUBJECT: A Resolution Establishing the City of
Beaverton Purchasing Code

FOR AGENDA OF: 2-14-05 **BILL NO:** 05042

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Finance 

DATE SUBMITTED: 02-08-05

CLEARANCES: Purchasing 
City Attorney 

PROCEEDING: Consent Agenda
(Contract Review Board)

- EXHIBITS:**
1. Resolution
 2. Beaverton Purchasing Code
 3. Agenda Bill 05022
 4. Resolution 3804

BUDGET IMPACT

EXPENDITURE REQUIRED	AMOUNT BUDGETED	APPROPRIATION REQUIRED
\$0	\$0	\$0

HISTORICAL PERSPECTIVE:

During the state's last legislative session, extensive changes were made to Oregon's public purchasing and contracting laws. Most of the old public purchasing and contracting laws found in ORS chapter 279 were repealed. In their place, the state enacted new laws codified at ORS 279A, 279B and 279C. These new laws replace the old public purchasing and contract laws and are collectively referred to as the "Public Contracting Code." The state's new Public Contracting Code becomes effective March 1, 2005. Effective that date, all existing local contracting rules, including Beaverton's current contracting rules as adopted on February 24, 2003 by Resolution 3708, are repealed by operation of state law.

INFORMATION FOR CONSIDERATION:

Although all existing local contracting rules and local contracting codes will be repealed effective March 1, 2005, the state's Public Contracting Code also permits cities and other local contracting agencies to adopt their own new rules of procedures for public contracts. Under the new law, any local public contract rules independently adopted by a public agency must prescribe the rules of procedure that the contracting agency will use for public contracts, including procedures for screening and selecting persons to perform personal services. In addition, the rules may address any relevant substantive public contracting concern of the agency.

The city of Beaverton now wishes to exercise the authority available to it under state law to adopt its own substantive and procedural public purchasing and contracting rules. The proposed new rules will be codified as a purchasing code, to be called the Beaverton Purchasing Code, a copy of which is attached as Exhibit 2 to this agenda bill.

The first step in the process of adopting a new purchasing code for the city of Beaverton has already been completed. On February 7, 2005, the City requested that the Beaverton Contract Review Board

approve written findings justifying establishment of 23 different classes of public contracts as exempt from formal competitive bidding or proposal requirements. Following a public hearing, prior notice of which had been duly published in the Daily Journal of Commerce, the Beaverton Contract Review Board and City Council approved the City's proposed findings in support of the requested exemptions. Exhibit 3 is a copy of Agenda Bill 05022 that requested Contract Review Board approval of the City's findings in support of its requested exemptions. Exhibit 4 is a copy of Resolution 3804 approving the City's request.

The final step in the process of adopting a new purchasing code for the city of Beaverton is for the City Council and the Beaverton Contract Review Board to now adopt the proposed Beaverton Purchasing Code in its entirety.

RECOMMENDED ACTION:

Council and Contract Review Board adopt the attached Resolution establishing the Beaverton Purchasing Code.

RESOLUTION NO. 3809

**A RESOLUTION ESTABLISHING
THE CITY OF BEAVERTON PURCHASING CODE**

WHEREAS, on February 7, 2005, the Beaverton Contract Review Board duly approved the City of Beaverton’s request to establish 23 exemptions from formal competitive bidding and proposals regarding contracts for the procurement of goods or services and the awarding of public improvement contracts; and

WHEREAS, the City of Beaverton seeks to establish its own rules of procedure for public contracts, which rules are set forth in full in Exhibit 2 to Agenda Bill 05042 (hereinafter referred to as “the Beaverton Purchasing Code”); now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF BEAVERTON, OREGON:**

1. The City of Beaverton hereby establishes the Beaverton Purchasing Code.

2. Except as to those portions of the Attorney General’s Model Public Contract Rules specifically incorporated by reference into the Beaverton Purchasing Code, the Model Public Contract Rules adopted by the Attorney General under ORS 279A.065 do not apply to the City.

3. This Resolution and the Beaverton Purchasing Code shall take effect on March 1, 2005, and apply to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

4. Any public contract first advertised, or if not advertised then entered into before Mach 1, 2005, shall be and remain governed under the City of Beaverton’s current Rules of Procedure for Public and Personal Services Contracts set forth in Resolution 3708, as amended.

Adopted by the City Council this ___ day of February, 2005.

Ayes: ___

Nays: _____

Adopted by the Contract Review Board this ___ day of February, 2005.

Ayes: ___

Nays: _____

Approved by the Mayor this ____ day of February, 2005.

Attest:

Approved:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

TABLE OF CONTENTS
BEAVERTON PURCHASING CODE
CHAPTER 46
GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

46-0100 INTRODUCTION3

46-0110 DEFINITIONS4

 Addendum.....4

 Administering Contracting Agency4

 Advantageous4

 Affected Person or Affected Offeror4

 Architect4

 Award4

 Bid4

 Bid Security4

 Bidder4

 Change Order.....5

 City5

 City Council.....5

 Closing.....5

 Code.....5

 Competitive Range5

 Conduct Disqualification5

 Construction Manager/General Contractor5

 Contract5

 Contract Price5

 Contract Review Board.....5

 Contractor5

 Cooperative Procurement5

 Cooperative Procurement Group6

 Days6

 Descriptive Literature6

 Design Build6

 DBE Disqualification.....6

 Disqualification.....6

 Electronic Advertisement6

 Electronic Procurement System.....6

 Emergency6

 Energy Savings Performance Contract (ESPC)6

 Engineer6

 Facsimile.....6

 Goods and Services (or “Goods or Services”)7

 Grant7

 Interstate Cooperative Procurement.....7

 Invitation to Bid or ITB7

 Joint Cooperative Procurement.....7

 Land Surveyor7

 Notice.....7

 Offer.....7

 Offeror7

 Opening7

 Original Contract8

 Out-of-State Contractor8

 Oregon Cooperative Purchasing Program (ORCPP)8

 Permissive Cooperative Procurement8

 Person8

 Prequalification.....8

Price Agreement	8
Procurement	8
Product Sample	8
Project Manager	8
Proposal	8
Proposer	8
Public Contract	9
Public Contracting Code	9
Public Improvement	9
Public Work	9
Purchasing Contracting Agency	9
Request for Proposals or RFP	9
Requirements Contract	9
Resident Bidder	9
Responsible Offeror	9
Responsive Offer	9
Rules	9
Scope	9
Signed or Signature	10
Solicitation Document	10
Specification	10
Surplus Property	10
Oregon Procurement Information Network or ORPIN	10
Work	10
Written or Writing	10
CONTRACT PREFERENCES	10
46-0300 PREFERENCE FOR OREGON GOODS AND SERVICES; NONRESIDENT BIDDERS	10
A. Award When Offers Identical.....	10
B. Determining if Offers are Identical.....	10
C. Determining if Goods or Services are Manufactured or Produced in Oregon.....	11
D. Procedure for Drawing Lots	11
46-0310 RECIPROCAL PREFERENCES	11
46-0320 PREFERENCE FOR RECYCLED MATERIALS AND SUPPLIES	11
COOPERATIVE PROCUREMENT	11
46-0400 COOPERATIVE PURCHASING PROGRAM; GENERAL	11
46-0410 RESPONSIBILITIES OF ADMINISTERING CONTRACTING AGENCIES AND PURCHASING CONTRACTING AGENCIES	12
46-0420 JOINT COOPERATIVE PROCUREMENTS.....	12
46-0430 PERMISSIVE COOPERATIVE PROCUREMENTS.....	12
46-0440 ADVERTISEMENTS OF INTENT TO ESTABLISH CONTRACTS OR PRICE AGREEMENTS THROUGH A PERMISSIVE COOPERATIVE PROCUREMENT	12
46-0450 INTERSTATE COOPERATIVE PROCUREMENTS	13
46-0460 ADVERTISEMENTS OF INTERSTATE COOPERATIVE PROCUREMENTS.....	13
46-0470 PROTESTS AND DISPUTES.....	14
46-0480 CONTRACT AMENDMENTS	14

BEAVERTON PROCUREMENT CODE

CHAPTER 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

46-0100 Introduction

- A. Pursuant to the authority granted to the City of Beaverton by enactment of ORS 279A.065, the City hereby elects to establish its own rules of procedure for public and personal services contracts. The Model Rules of Procedure for Public Contracts adopted by the Attorney General under authority of ORS 279A.065 does not apply to the City of Beaverton. Instead, the rules of procedure for public and personal services contracts applicable to the City of Beaverton are those contained herein. These local rules of purchasing procedure originate separately from those of the State of Oregon, although the provisions of this Code often parallel those of the Attorney General's Model Public Contract Rules.

This manual is organized in eight parts.

1. Chapter 46 sets forth rules generally applicable to all Public Contracts;
 2. Chapter 47 describes how the City procures goods and services;
 3. Chapter 48 contains special rules for the City's selection of Architects, Engineers, Land Surveyors and other related professional service, but these rules apply only in limited circumstances, such as when the City partners with the State on a Contract to construct a public improvement;
 4. Chapter 49 includes rules for the solicitation and award of public improvement contracts and includes provisions affecting the work of contractors, subcontractors and laborers;
 5. Chapter 50 sets forth classes of contracts that are exempt from the general requirements for competitive bids and proposals; and
 6. Chapter 51 provides the procedures for the city's disposal of Surplus Property.
- B. In the event of conflict between rules in chapter 46 and rules in chapters 47, 48, 49, 50 and 51, the rules in chapters 47, 48, 49, 50 and 51 take precedence over the rules in this chapter 46.
- C. Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or this Code, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.
- D. In preparing the codified editions of this Code for publication and distribution, the City Attorney shall not alter the sense, meaning, effect or substance of this resolution, but within such limitations may:
1. Renumber or rearrange chapters and sections;
 2. Combine chapter or sections into other chapters or sections;
 3. Divide chapters or sections into other chapters or sections so as to give to distinct subject matters a distinct chapter or section number or letter;
 4. Substitute a reference to the proper chapter or section;
 5. Substitute figures for written words and vice versa;
 6. Make uniform the manner the code and its chapters and sections are referred to, for example allowing the phrase "these rules" to be changed to "this code" and the like;

7. Change titles and captions of the code, its chapters or sections;
8. Change capitalization for the purpose of uniformity;
9. Correct manifest clerical, typographical, grammatical, or punctuation errors;
10. Correct obviously misspelled words;
11. Change references to agree with renumbered, re-titled or re-lettered chapters or sections or to properly reflect references to other statutes; and
12. Conform the provisions of this code to any future amendment, revision, or re-enactment of a duly enacted ordinance or resolution of the city council or contract review board.

46-0110 Definitions

Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following capitalized terms have the meanings set forth below. Additionally, any term defined in the singular includes the meaning of the plural, and vice-versa. A term that is stated in this Code and not defined herein, but is defined in a similar context under Oregon law, may be defined for use herein consistent with that state law definition.

Addendum

An addition or deletion to a material change in, or general interest explanation of the Solicitation Document. Addenda shall be labeled as such and distributed to any interested Persons in accordance with this Code.

[OAR 137-046-0110]

Administering Contracting Agency

A contracting agency that solicits and establishes the Original Contract for procurement of goods, services or public improvements in a Cooperative Procurement.

[ORS 279A.200]

Advantageous

In the City's best interests, as assessed according to the judgment of the City.

Affected Person or Affected Offeror

A Person whose ability to participate in a Procurement is adversely affected by the City's decision.

Architect

A Person defined by and described in ORS 671.010 to 671.220.

[ORS 279C.100]

Award

As the context requires, either the act or occurrence of the City's identification of the Person with whom the City will enter into a Contract following the resolution of any protest of the City's selection of that Person, and the completion of all Contract negotiations.

[OAR 137-046-0110]

Bid

A competitive offer, binding on the Bidder and submitted in response to an Invitation to Bid.

[OAR 137-046-0110]

Bid Security

A surety bond, irrevocable letter of credit, cashier's check or certified check attached to a bid as security in which a third party agrees to be liable to pay a certain amount of money in the event a selected Bidder fails to accept the Contract as Bid.

[ORS 279C.365 (4)]

Bidder

A Person that submits a Bid in response to an Invitation to Bid.

[ORS 279A.010]

Change Order

An amendment to a Contract providing for more or less work or product and that is reasonably related to the scope of work under the Original Contract, including Change Orders, extra work, field orders, or other change in the original specifications that increases or decreases the Original Contract Price.

City

The City of Beaverton, a municipal corporation and a contracting agency. Unless the context requires otherwise, "City" also shall refer to the Mayor or Mayor's Designee.

City Council

The City Council of Beaverton, as established by City Charter.
[BC 1 01.020]

Closing

The date and time announced in the Solicitation Document (or applicable Addendum) as the deadline for submitting Offers.
[OAR 137-046-0110]

Code

The Oregon Revised Statutes (ORS) chapters 279A, 279B and 279C may be cited as the Public Contracting Code, [ORS 279A.005].

Competitive Range

The number of Proposers with whom the City will conduct discussions or negotiate, if the City intends to conduct discussions or negotiations, in accordance with BPC 47-0600. The Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the City in accordance with BPC 47-0600.
[OAR 137-046-0110]

Conduct Disqualification

A Disqualification pursuant to ORS 279C.440.
[OAR 137-049-0120]

Construction Manager/General Contractor

A method of Public Improvement contracting that uses a construction manager to perform one or more of the following value engineering: act as general Contractor; coordinate and manage the building process; provide General Contractor expertise; establish a Guaranteed Maximum Price for construction; or be a member of the construction team with the Agency, architect/engineers or other consultants as the City or the project may require.
[OAR 137-049-0610]

Contract

The Written agreement that results from the Solicitation Document that sets forth the rights and obligations of the parties.
[ORS 279A.010]

Contract Price

The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed Change Orders or amendments.
[OAR 137-046-0110]

Contract Review Board

The City Council of the City of Beaverton when acting in its capacity pursuant to BPC 2.03.210 to 2.03.214.
[OAR 137-046-0110]

Contractor

The Person with whom the City enters into a Contract.
[OAR 137-046-0110]

Cooperative Procurement

A procurement conducted by or on behalf of one or more contracting agencies, including, but not limited to, multi-party contracts and price agreements.
[ORS 279-A.200]

Cooperative Procurement Group

A group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
[ORS 279-A.200]

Days

Calendar days unless otherwise specified by this Code.
[ORS 279A.010]

Descriptive Literature

The Offeror's materials submitted to provide information concerning the products available in response to the Solicitation Document.
[OAR 137-046-0110]

Design Build

A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Person provides the City with all of the services necessary to both design and construct the project.
[OAR 137-049-0610]

DBE Disqualification

A disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

Disqualification

The preclusion of a Person from contracting with the City for a period of time in accordance with BPC 49-0370.
[OAR 137-049-0110]

Electronic Advertisement

Electronic advertisement for Offers available over the Internet via (i) the World Wide Web, or (ii) Telnet, provided the City maintains an Internet World Wide Web site that describes how a Person can access the advertisement through the Internet via a Telnet application. The City may maintain the World Wide Web site directly or through any third party service provider.
[OAR 137-046-0110]

Electronic Procurement System

An information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer that enables the City to post Electronic Advertisements and conduct other activities related to a Procurement.
[OAR 137-047-0330]

Emergency

Circumstances that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that require prompt execution of a Contract to remedy the condition.

Energy Savings Performance Contract (ESPC)

A Public Improvement Contract between the City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
[OAR 137-049-0610]

Engineer

A person who is registered in this state and holds a valid certificate to practice engineering in this state as provided under ORS 672.002 to 672.325.
[ORS 279C.100]

Facsimile

A document that has been transmitted to and received by the City in a format that is capable of being received via a device commonly known as a Facsimile machine (e.g. a Facsimile Bid). A Facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.

Goods and Services (or “Goods or Services”)

Are supplies, equipment, materials and services other than personal services designated under ORS 279A.055 and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the City is authorized by law to procure. “Goods and Services” or “Goods or Services” includes combinations of any of the items identified in this paragraph.

[ORS 279B.005]

Grant

- A. 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
- B. 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.

Grant does not include a public contract for a public improvement, for public works, as defined in ORS 279C.800, 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.

[ORS 279A.010]

Interstate Cooperative Procurement

A permissive Cooperative Procurement in which the Administering Contracting Agency is an in-State or out-of-State body 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 agencies are located outside this state.

[ORS 279A.200]

Invitation to Bid or ITB

All documents used for soliciting Bids.

[ORS 279B.005]

Joint Cooperative Procurement

A Cooperative Procurement in which the participating contracting agencies or the Cooperative Procurement group and the agencies’ or group’s contract requirements or estimated contract requirements for price agreements are identified.

[ORS 279A.200]

Land Surveyor

A person who is registered in this state and holds a valid certificate to practice surveying in this state as provided in ORS 672.002 to 672.325.

[ORS 279C.100]

Notice

Any of the alternative forms of public announcement of Procurements, as described in BPC 49-0210.

Offer

A response to a Solicitation Document.

[OAR 137-0046-0110]

Offeror

A Person who submits an Offer.

[OAR 137-0046-0110]

Opening

The date, time and place announced in the Solicitation Document for the public opening of Written and sealed Offers.

[OAR 137-0046-0110]

Original Contract

The initial contract or price agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.

[ORS 279A.200]

Out-of-State Contractor

A Contractor that is not domiciled in or registered to do business in the State of Oregon.

[ORS 279A.120]

Oregon Cooperative Purchasing Program (ORCPP)

A program organized through intergovernmental agreement that allows its members to utilize certain State Price Agreements for Goods and Services. ORCPP eligible entities include cities, counties, school districts, special districts, Qualified Rehabilitation Facilities, residential programs under Contract with the Oregon Department of Human Services, United States governmental agencies, Native American Indian tribes and agencies of Native American Indian tribes.

Permissive Cooperative Procurement

A Cooperative Procurement in which the purchasing contracting agencies are not identified.

[ORS 279A.200]

Person

A natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or non profit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

[ORS 279A.010]

Prequalification

A procedure to prequalify contractors and limit consideration of Bids or Proposals to only those contractors who are prequalified.

[OAR 137-049-0220] [ORS 279C 430]

Price Agreement

A public 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.

[ORS 279A.010]

Procurement

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 this Code, or the Public Contracting Code.

[ORS 279A.010]

Product Sample

A representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.

[OAR 137-046-0110]

Project Manager

The City employee assigned responsibility for the day-to-day management of a Public Improvement Contract.

Proposal

A competitive offer, binding on the Proposer and submitted in response to a Request for Proposals (RFP).

[OAR 137-046-0110]

Proposer

A Person that submits a Proposal in response to a Request for Proposals.

[ORS 279A.010]

Public Contract

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, or ordinary repair or maintenance necessary to preserve a Public Improvement. Public Contract does not include Grants.

[ORS 279A.010]

Public Contracting Code

Means ORS chapters 279A, 279B and 279C.

[ORS 279A.005]

Public Improvement

Projects for construction, reconstruction or major renovation on real property by or for the City. "Public Improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve that Public Improvement. Public Improvement also does not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection.

[ORS 279A.010]

Public Work

Includes, but is not limited to, 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 the City (or other public agency) to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by the City (or other public agency).

[ORS 279C.800]

Purchasing Contracting Agency

A contracting agency that procures goods, services or public improvements from a contractor based on the Original contract established by an Administering Contracting Agency.

[ORS 279A.200]

Request for Proposals or RFP

All documents used for soliciting Proposals.

[ORS 279B.005]

Requirements Contract

A Contract in which the Person agrees to supply all of the City's requirements that arise for an item or items within a specified time period.

Resident Bidder

A bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

[ORS 279A.120]

Responsible Offeror

A Person that has submitted an Offer, meets the definition of a Responsible Offeror set forth in BPC 47-0640 or 49-0390(2), and has not been disqualified by the City under BPC 47-0575 or BPC 49-0370. The term "Responsible Offeror" may refer to either a Responsible Bidder or Responsible Proposer.

[ORS 279B.110]

Responsive Offer

An Offer that substantially complies in all material respects with applicable solicitation procedures and requirements and the Solicitation Document, and any applicable Rules and other laws. (Also referred to as "Responsive Bid" or "Responsive Proposal," as applicable.)

[OAR 137-046-0110] [ORS 279B.005]

Rules

The Rules of Procedure for Public and Personal Services Contracts adopted by the Contract Review Board of the City of Beaverton and including amendments thereto.

Scope

The range and attributes of the Goods or Services described in the applicable Procurement document.

[ORS 279A.065]

Signed or Signature

Any mark, word or symbol executed or adopted by a Person evidencing an intent to be bound.
[OAR 137-046-0110]

Solicitation Document

An Invitation to Bid (ITB) or Request for Proposals (RFP) and includes all documents incorporated by reference.
[OAR 137-046-0110]

Specification

Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.
[OAR 137-046-0110]

Surplus Property

Property that is in excess of the present and foreseeable needs of the City.

Oregon Procurement Information Network or ORPIN

The electronic procurement system of the Oregon Department of Administrative Services.

Work

The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.
[OAR 137-046-0110]

Written or Writing

Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.
[OAR 137-046-0110]

CONTRACT PREFERENCES

46-0300 Preference for Oregon Goods and Services; Nonresident Bidders

A. Award When Offers Identical

When the City receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the City shall award the Contract based on the following order of precedence:

1. The City shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services that have been manufactured or produced in Oregon.
2. If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the City shall award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
3. If the City receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, then the City shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

B. Determining if Offers are Identical

The City shall consider Offers identical in price, fitness, availability and quality as follows:

1. Bids received in response to an Invitation to Bid issued under ORS 279B.055 or ORS 279C.335 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.

2. Proposals received in response to a Request for Proposals issued under ORS 279B.060 and BPC 47-0260 through BPC 47-0263, or ORS 279C.400 and BPC 49-0600(incorporating by reference OAR 137-049-0650) are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
3. Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Board, the City determines, in writing, that two or more Proposals are equally advantageous to the City.

C. Determining if Goods or Services are Manufactured or Produced in Oregon

For the purposes of complying with this Rule, the City may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information it determines is appropriate and necessary to allow it to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relates to that determination, and provided that the City applies those criteria equally to each Bidder or Proposer.

D. Procedure for Drawing Lots

In any instance when this Section calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

46-0310 Reciprocal Preferences

When evaluating Bids pursuant to BPC 47-0255, 47-0257 or BPC 49-0390, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The City may rely on the list prepared and maintained by the State pursuant to ORS 279A.120(4) to determine whether the Nonresident Bidder's state gives preference to in-state bidders and the amount of such preference.

46-0320 Preference for Recycled Materials and Supplies

- A. Pursuant to ORS 279A.125, the City shall give preference to the procurement of goods manufactured from recycled materials if each of the following four conditions exist:
1. The recycled product is available;
 2. The recycled product meets applicable standards;
 3. The recycled product can be substituted for a comparable non-recycled product; and
 4. The cost of the recycled product's costs do not exceed the cost of the non-recycled products by more than five percent, or a higher percentage if a written termination is made by the City and set within the solicitation document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to BPC 46-0310.

As used in this Section, "recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than ten percent of its total weight consisting of post-consumer waste. "Recycled product" also 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.

COOPERATIVE PROCUREMENT

46-0400 Cooperative Purchasing Program; General

- A. The City may participate in, sponsor, conduct or administer Cooperative Procurements as follows:

1. The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Contracts for Public Improvements that use a Competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
 2. The City may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
 3. The City may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
- B. A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 when it has the characteristics set forth in ORS 279A.200 (2). The City shall determine in writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 in accordance with ORS 279A.200(2).

46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

- A. If the City acts as an Administering Contracting Agency of a Cooperative Procurement, the City may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the City. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the City, whether the participants must enter into a Written Agreement with the City, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. If the City acts as an Administering Contracting Agency it may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist the Purchasing Contracting Agencies' compliance with this Code.
- B. If the City, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the City shall comply with this Code including without limitation those sections of this Code that govern:
1. The extent to which the City may participate in the Cooperative Procurement;
 2. The advertisement of the Solicitation Document related to the Cooperative Procurement; and
 3. Public Notice of the City's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

46-0420 Joint Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement, it may do so only in accordance with ORS 279A.210.

46-0430 Permissive Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement, it may do so only in accordance with ORS 279A.215.

46-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

- A. If the City wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement, it must publish Notice of its intent to do so if the City estimates that it will spend in excess of \$250,000 on Goods and Services acquired under the Contract or Price Agreement.

- B. For purposes of determining whether the City must give the Notice required by BPC 46-0440(A), the City will spend in excess of \$250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the City will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;

The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or

At the time the City enters into the Contract or Price Agreement, the City reasonably contemplates, based on historical or other data available to the City, that the total payments it will make for Goods or Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

- C. The Notice of intent required by BPC 46-0440(A) shall contain the information required by ORS 279A.215(2)(b), and the City shall advertise the Notice in the same manner as provided in ORS 279B.055 (4)(b) and (c). The City shall give the Notice required by this Section no fewer than seven days before the deadline for submitting comments regarding the City's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- D. If the City intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the Notice requirements set forth in BPC 46-0440(A) and (C) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the City's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such Notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and this Code.
- E. The City shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

46-0450 Interstate Cooperative Procurements

If the City chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

46-0460 Advertisements of Interstate Cooperative Procurements

The City may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

- A. The Solicitation Document for the Interstate Cooperative Procurement lists the City or the Cooperative Procurement Group of which the City is a member as a party that may enter into Contracts or Price Agreements under the terms and conditions of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by either:

The City; or

The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the City is a member; or

Another Purchasing Contracting Agency that is subject to the ORS, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the City; or

- B. If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with BPC 46-0460(A), the City gives Notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement. The Notice of intent shall contain the information required by ORS 279A.220(2)(b)(B), and the City shall advertise the Notice in the same manner as provided in ORS

279B.055(4)(b) and (c). The City shall give the Notice required by this Section no fewer than seven days before the deadline for submitting comments regarding the City's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

- C. The City shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.220(3)(c).

46-0470 Protests and Disputes

- A. If a Bidder or Proposer wishes to protest the procurement process, the contents of a Solicitation Document, or the award or proposed award of an Original Contract, the Bidder or Proposer may only direct the protest to the Administering Contracting Agency. If the City is the Administering Contracting Agency, the Bidder or Proposer must make such protests in accordance with this Code. If the Administering Contracting Agency is not subject to the Public Contracting Code, then Bidders or Proposers must make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.
- B. The failure of the City to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.
- C. Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

46-0480 Contract Amendments

The City may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in BPC 50-0035.

TABLE OF CONTENTS

**BEAVERTON PURCHASING CODE
CHAPTER 47
PUBLIC PROCUREMENTS FOR GOODS OR SERVICES**

GENERAL PROVISIONS.....5

- 47-0005 APPLICATION5
- 47-0010 DEFINITIONS5
 - Goods.....5
 - Personal Service Contract.....5
 - Services.....6
- 47-0015 CONTRACT FORM6
- 47-0020 RESOLUTION OF UNCERTAINTY OF CONTRACT STATUS.....6

SOURCE SELECTION6

- 47-0250 METHODS OF SOURCE SELECTION6
- 47-0255 COMPETITIVE SEALED BIDDING6
 - A. The City may procure Goods or Services by competitive sealed bidding.6
 - B. Invitation to Bid.....6
- 47-0257 MULTISTEP SEALED BIDS7
 - A. Generally.7
 - B. Phased Process.7
 - C. Public Notice.7
 - D. Procedures Generally.....7
 - E. Procedure for Phase One of Multistep Sealed Bids8
 - F. Procedure for Phase Two of Multistep Sealed Bids.9
- 47-0260 COMPETITIVE SEALED PROPOSALS9
 - A. Generally.9
 - B. Request for Proposal.....9
- 47-0261 PROCEDURES FOR COMPETITIVE RANGE, MULTI-TIERED AND MULTISTEP PROPOSALS10
 - A. Generally.10
 - B. Solicitation Protest.....10
 - C. Addenda Protest.10
 - D. Exclusion Protest.10
 - E. Administrative Remedy.10
 - F. Award Protest.11
- 47-0262 COMPETITIVE RANGE, DISCUSSIONS AND NEGOTIATIONS11
 - A. Competitive Range.11
 - B. Discussions; Revised Proposals.....11
 - C. Negotiations.....12
 - D. Best and Final Offers13
- 47-0263 MULTISTEP SEALED PROPOSALS13
 - A. Generally.13
 - B. Phased Process.13
 - C. Public Notice.13
 - D. Procedure for Phase One of Multistep Sealed Proposals.....14
 - E. Procedure for Subsequent Phases.....15

EXEMPTIONS15

- 47-0265 SMALL PROCUREMENTS15
 - A. Generally.15
- 47-0270 INTERMEDIATE PROCUREMENTS.....15
 - A. Generally.15
- 47-0275 SOLE-SOURCE PROCUREMENTS15
 - A. Generally.15
- 47-0280 EMERGENCY PROCUREMENTS15
- 47-0285 SPECIAL PROCUREMENTS16

A. Generally.....	16
47-0290 COOPERATIVE PROCUREMENTS.....	16
PROCUREMENT PROCESS.....	16
47-0300 PUBLIC NOTICE OF SOLICITATION DOCUMENTS.....	16
A. Notice of Solicitation Documents; Fee.....	16
B. Advertising.....	16
C. Content of Advertisement.....	16
D. Posting Advertisement for Offers.....	17
E. Fees.....	17
F. Notice of Addenda.....	17
47-0310 BIDS OR PROPOSALS ARE OFFERS.....	17
A. Offer and Acceptance.....	17
B. Contingent Offers.....	17
C. Offeror's Acknowledgment.....	17
47-0320 FACSIMILE BIDS AND PROPOSALS.....	17
A. City Authorization.....	17
B. Provisions.....	17
47-0330 [RESERVED].....	18
BID AND PROPOSAL PREPARATION.....	18
47-0400 OFFER PREPARATION.....	18
A. Instructions.....	18
B. Forms.....	18
C. Documents.....	18
D. Electronic Submissions.....	18
47-0410 OFFER SUBMISSION.....	18
A. Product Samples and Descriptive Literature.....	18
B. Identification of Offers.....	19
C. Receipt of Offers.....	19
47-0420 PRE-OFFER CONFERENCES.....	19
A. Purpose.....	19
B. Required Attendance.....	19
C. Scheduled Time.....	19
D. Statements Not Binding.....	19
E. City Announcement.....	19
47-0430 ADDENDA TO SOLICITATION DOCUMENT.....	19
A. Issuance; Receipt.....	19
B. Notice and Distribution.....	19
C. Timelines; Extensions.....	19
D. Request for Change or Protest.....	20
47-0440 PRE-CLOSING MODIFICATION OR WITHDRAWAL OF OFFERS.....	20
A. Modifications.....	20
B. Withdrawals.....	20
C. Documentation.....	20
47-0450 RECEIPT, OPENING, AND RECORDING OF OFFERS; CONFIDENTIALITY OF OFFERS.....	20
A. Receipt.....	20
B. Opening and Recording.....	21
47-0460 LATE OFFERS, LATE WITHDRAWALS AND LATE MODIFICATIONS.....	21
47-0470 MISTAKES.....	21
A. Generally.....	21
B. City Treatment of Mistakes.....	21
C. Rejection for Mistakes.....	22
D. Identification of Mistakes after Award.....	22
47-0480 TIME FOR CITY ACCEPTANCE.....	22
47-0490 EXTENSION OF TIME FOR ACCEPTANCE OF OFFER.....	22
QUALIFICATIONS AND DUTIES.....	22
47-0500 RESPONSIBILITY OF BIDDERS AND PROPOSERS.....	22

47-0525	QUALIFIED PRODUCTS LISTS	22
47-0550	PREQUALIFICATION OF PROSPECTIVE OFFERORS	22
47-0575	DEBARMENT OF PROSPECTIVE OFFERORS	23
	A. Generally	23
	B. Responsibility	23
	C. Imputed Knowledge	23
	D. Limited Participation	23
OFFER EVALUATION AND AWARD.....		23
47-0600	OFFER EVALUATION AND AWARD	23
	A. General Principle	23
	B. Clarification of Bids	23
	C. Negotiations Prohibited	24
	D. Award	24
47-0610	NOTICE OF INTENT TO AWARD	25
	A. Notice of Intent to Award	25
	B. Finality	25
47-0620	DOCUMENTATION OF AWARD	25
	A. Basis of Award	25
	B. Contents of Award Record	25
47-0630	AVAILABILITY OF AWARD DECISIONS	25
	A. Contract Documents	25
	B. Availability of Award Decisions	26
	C. Availability of Procurement Files	26
47-0635	CONTRACT REQUIREMENTS	26
47-0636	INDEPENDENT CONTRACTOR STATUS	26
	A. Service Providers Usually Not Employees	26
	B. All Employees Hired Through Personnel Procedures	27
	C. Required Contract Provisions	27
	D. Doubtful Independent Contractors	27
47-0637	NON-ASSIGNABILITY OF PERSONAL SERVICE CONTRACTS	27
47-0640	REJECTION OF AN OFFER	27
	A. Rejection of an Offer	27
	B. Form of Business Entity	28
47-0650	REJECTION OF ALL OFFERS	28
	A. Rejection	28
	B. Criteria	28
47-0660	CANCELLATION OF PROCUREMENT OR SOLICITATION	29
	A. Cancellation in the Public Interest	29
	B. Notice of Cancellation Before Opening	29
	C. Notice of Cancellation After Opening	29
47-0670	DISPOSITION OF OFFERS IF PROCUREMENT OR SOLICITATION CANCELED	29
	A. Prior to Opening	29
	B. After Opening	29
	C. Rejection of All Offers	29
47-0680	APPROVAL OF PERSONAL SERVICE CONTRACTS	29
47-0690	RATIFICATION	30
LEGAL REMEDIES		30
47-0700	PROTESTS AND JUDICIAL REVIEW OF SPECIAL PROCUREMENTS	30
	A. Purpose	30
	B. Delivery	30
	C. Content of Protest	30
	D. Contract Review Board	30
	E. Judicial Review	31
47-0710	PROTESTS AND JUDICIAL REVIEW OF SOLE-SOURCE PROCUREMENTS	31
	A. Purpose	31
	B. Delivery	31
	C. Content of Protest	31

D. Contract Review Board Response.....	31
E. Judicial Review.....	31
47-0720 PROTESTS AND JUDICIAL REVIEW OF MULTI-TIERED AND MULTISTEP SOLICITATIONS	31
A. Purpose.....	31
B. Basis for Protest.....	32
C. Delivery.....	32
D. Content of Protest.....	32
E. City Response.....	32
F. Judicial Review.....	32
47-0730 PROTESTS AND JUDICIAL REVIEW OF SOLICITATIONS.....	32
A. Purpose.....	32
B. Delivery.....	32
C. Content of Protest.....	32
D. City Response.....	32
E. Extension of Closing.....	33
F. Clarification.....	33
G. Judicial Review.....	33
47-0740 PROTESTS AND JUDICIAL REVIEW OF CONTRACT AWARD.....	33
A. Purpose.....	33
B. Delivery.....	33
C. Content of Protest.....	33
D. City Response.....	33
E. Judicial Review.....	33
47-0745 PROTESTS AND JUDICIAL REVIEW OF QUALIFIED PRODUCTS LIST DECISIONS.....	33
A. Purpose.....	33
B. Delivery.....	33
C. Content of Protest.....	33
D. City Response.....	33
E. Judicial Review.....	34
47-0750 JUDICIAL REVIEW OF OTHER VIOLATIONS.....	34
47-0760 REVIEW OF PREQUALIFICATION AND DEBARMENT DECISIONS.....	34

BEAVERTON PURCHASING CODE

CHAPTER 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

GENERAL PROVISIONS

47-0005 Application

The Rules of this chapter implement City policy regarding the Procurement of Goods or Services. In addition to the provisions of this chapter, Personal Service contracts relating to Services to be performed by Architects, Engineers, Land Surveyors and related service providers are subject to the provisions of chapter 48 of this Code. As a practical matter, however, the supplemental provisions of chapter 48 apply only in limited circumstances, generally where the City receives State Highway Funds to hire an Architect, Engineer or Land Surveyor.

47-0010 Definitions

As used in this chapter the following capitalized terms have the meanings set forth below:

Goods

Supplies, equipment, materials, tangible and intangible personal property, intellectual property, and rights and licenses in relation thereto.

Personal Service Contract

A Contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.

A. Examples of Personal Services Contracts

Personal Services Contracts include, but are not limited to, the following:

1. Contracts for services performed in a professional capacity including services of an accountant, bookkeeper, financial analyst, attorney, paralegal, physician, nurse, medical care provider, mediator, arbitrator, facilitator, land use planner, plan reviewer, inspector, third party workers' compensation claims administrator, pollster, public relations professional, expert witness, food or beverage concessionaire, real estate agent, appraiser, information technology consultant, or broadcaster;
2. Contracts for services as an artist in the performing or fine arts including any person identified as a photographer, filmmaker, painter, weaver, or sculptor (Note: Selection procedures for the requirements of the One Percent for Art in Public Buildings program are found in OAR 190-020-0015.);
3. Contracts for services that are specialized, creative and research-oriented;
4. Contracts for services as a consultant, including human services or management consultant; and
5. Contracts for educational services, including training.

B. Examples of Contracts that are not Personal Services Contracts

Personal Services Contracts do not include:

1. Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials; e.g., a Contract to supply computer hardware and bundled, mass-marketed standard software is not a Personal Services Contract, but a Contract with a technology consultant to design or develop a new computer system is a Personal Services Contract; or

2. Contracts with a temporary service or personnel agency to supply labor that can generally be done by any skilled worker; e.g., a Contract to supply an office receptionist during the incumbent's extended absence.

Services

The furnishing of labor, time and effort by a contractor, not involving the delivery of a good, other than reports. The term includes, but is not limited to, consulting, personal, and professional services.

47-0015 Contract Form

The Purchasing Agent shall provide forms for contracts for Personal Services. Prior to soliciting, the form may be submitted to City Attorney for review and possible revision to reflect the nature of the transaction.

47-0020 Resolution of Uncertainty of Contract Status

In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the City Attorney shall determine whether the Contract calls for the performance of Personal Services or for the purchase, lease or sale of personal property, Public Improvements or services other than Personal Services. The Contract Review Board may ratify the City Attorney's determination.

SOURCE SELECTION

47-0250 Methods of Source Selection

Except as permitted by BPC 47-0265 – BPC 47-0290 and chapter 50 of this Code the City shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids or competitive sealed Proposals.

47-0255 Competitive Sealed Bidding

A. The City may procure Goods or Services by competitive sealed bidding.

An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The City shall provide public notice of the competitive sealed bidding solicitation as set forth in BPC 47-0300.

B. Invitation to Bid.

In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

1. General Information

- a. Notice of any pre-Offer conference as follows:
 - i. The time, date and location of any pre-Offer conference;
 - ii. Whether attendance at the conference will be mandatory or voluntary; and
 - iii. A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.
- b. The form and instructions for submission of Bids and any other special information.
- c. The time, date and place of Opening;
- d. The office where the Solicitation Document may be reviewed;
- e. A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in BPC 46-0110;
- f. Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
- g. How City will notify Bidders of Addenda and how City will make Addenda available (See BPC 47-0430).

2. City Need
The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.
3. Bidding and Evaluation Process
 - a. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
 - b. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the City has available concerning future use; and
 - c. If the City intends to Award Contracts to more than one Bidder pursuant to BPC 47-0600(4)(c), the City shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
4. Applicable preferences pursuant to ORS 279B.055(6)(b).
5. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the City.

47-0257 Multistep Sealed Bids

A. Generally.

The City may procure Goods or Services by using multistep competitive sealed Bids.

B. Phased Process.

Multistep bidding is a phased process that seeks necessary information or un-priced technical Bids in the initial phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the final phase. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the City may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

C. Public Notice.

Whenever multistep sealed Bids are used, public notice for the first phase shall be given in accordance with BPC 47-0300. Public notice is not required for the subsequent phases. However, the City shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to BPC 47-430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to BPC 47-0720.

D. Procedures Generally.

In addition to the procedures set forth in BPC 47-0300 through 47-0490, the City shall employ the procedures set forth in this rule for multistep bidding:

1. Solicitation Protest.
Prior to the Closing of phase one, the City shall provide an opportunity to protest the solicitation and under BPC 47-0730.
2. Addenda Protest.
The City may, provide an opportunity to protest any Addenda issued during phase two pursuant to BPC 47-0430(C)(2).
3. Exclusion Protest.
The City may, but is not required to provide an opportunity for a Bidder to protest exclusion from the second round of multistep sealed Bids as set forth in BPC 47-0720.

4. **Administrative Remedy.**
Proposers may submit a protest to any Addenda or to any action by City that has the effect of excluding the Proposer from the second phase of multistep bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the City.
5. **Award Protest.**
The City shall provide an opportunity to protest its intent to Award a Contract pursuant to BPC 47-0740. An Affected Bidder may protest, for any of the bases set forth in BPC 47-0720(B), its exclusion from the second phase of a multistep sealed Bid, or an Addendum issued following initial Closing, if the City did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

E. Procedure for Phase One of Multistep Sealed Bids.

1. **Form.**
Multistep sealed bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in BPC 47-0255(2), the multistep Invitation to Bid shall state:
 - a. That un-priced technical Bids are requested;
 - b. Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;
 - c. That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;
 - d. The criteria to be used in the evaluation of un-priced technical Bids;
 - e. That the City, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical Bids;
 - f. That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid.
 - g. Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.
2. **Addenda to the Invitation to Bid.**
After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.
3. **Receipt and Handling of Un-priced Technical Bids.**
Un-priced technical Bids need not be opened publicly.
4. **Evaluation of Un-Priced Technical Bids.**
Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:
 - a. Eligible;
 - b. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - c. Ineligible. The City shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical discussions. If the City finds that such is not the case, the City may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.

5. Discussion of Un-priced Technical Bids.
The City may seek clarification of a technical Bid by any eligible or potentially eligible Bidder. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that it's Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the final step established by the City. Such submission may be made at the request of the City or upon the Bidder's own initiative.
6. Notice of Ineligible Un-priced Technical Bid.
When the City determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.
7. Mistakes During Multistep Sealed Bidding.
Mistakes may be corrected or Bids may be withdrawn during phase one:
 - a. Before un-priced technical Bids are considered;
 - b. After any discussions have commenced under subsection (5)(e);
 - c. When responding to any Addenda of the Invitation to Bid; or
 - d. In accord with BPC 47-470.

F. Procedure for Phase Two of Multistep Sealed Bids.

1. Initiation.
Upon the completion of phase one, the City shall either:
 - a. Open price Bids submitted in phase one (if price Bids were required to be submitted) from Bidders whose un-priced technical Bids were found to be eligible; or
 - b. If price Bids have not been submitted, technical discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.
2. Conduct.
Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a. As specifically set forth in this rule;
 - b. No public notice need be given of this invitation to submit price Bids because such notice was previously given.

47-0260 Competitive Sealed Proposals

A. Generally.

The City may procure Goods or Services by competitive sealed Proposals. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section B of this rule. The City shall provide public notice of the competitive sealed proposals as set forth in BPC 47-0300.

B. Request for Proposal.

In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

1. General Information.
 - a. Notice of any pre-Offer conference as follows:
 - i. The time, date and location of any pre-Offer conference; and
 - ii. Whether attendance at the conference will be mandatory or voluntary; and
 - iii. A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.

- b. The form and instructions for submission of Proposals and any other special information.
 - c. The time, date and place of Opening;
 - d. The office where the Solicitation Document may be reviewed;
 - e. Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
 - f. How the City will notify Proposers of Addenda and how the City will make Addenda available. (See BPC 47-0430).
2. The City Need.
The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.
3. Proposal and Evaluation Process.
- a. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
 - b. The City shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the City; and
 - c. If the City intends to Award Contracts to more than one Proposer pursuant to BPC 47-0600(4)(d), the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
4. Applicable Preferences described in ORS 279A.125(2).
5. All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Goods or Services without prior written approval from the City.

47-0261 Procedures for Competitive Range, Multi-tiered and Multistep Proposals

A. Generally.

The City may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in BPC 47-0300 through BPC 47-0490 for methods of Contractor selection that call for the establishment of a Competitive Range or include discussions or negotiations, the City shall employ the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.

B. Solicitation Protest.

Prior to the initial Closing, the City shall provide an opportunity to protest the solicitation under BPC 47-0730.

C. Addenda Protest.

The City may provide an opportunity to protest, pursuant BPC 47-0430, any Addenda issued pursuant to ORS 279B.060(6)(d).

D. Exclusion Protest.

The City may provide before the notice of intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in BPC 47-0720.

E. Administrative Remedy.

Proposers may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.

F. Award Protest.

The City shall provide an opportunity to protest its intent to Award a Contract pursuant to BPC 47-0740. An Affected Proposer may protest, for any of the bases set forth in BPC 47-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

47-0262 Competitive Range, Discussions and Negotiations

A. Competitive Range.

When the City's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the City to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

1. Determining Competitive Range.

- a. The City shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City shall determine and rank the Proposers in the Competitive Range.
- b. The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The City may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most advantageous Proposer.

2. Protesting Competitive Range.

The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City's evaluation and determination of the Competitive Range in accordance with BPC 47-0720.

3. Intent to Award; Discuss or Negotiate.

After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:

- a. Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - i. An unsuccessful Proposer may protest the City's intent to Award in accordance with BPC 47-0740.
 - ii. After the protest period provided in accordance with BPC 47-0740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence negotiations in accordance with section (3) of this rule with Proposers in the Competitive Range; or
- b. Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

B. Discussions; Revised Proposals.

If the City chooses to enter into discussions with and receive best and final Offers (See BPC 47-0262(D)), the City shall proceed as follows:

1. Initiating Discussions.

The City shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the City identified in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:

- a. Informing eligible Proposers of deficiencies in their initial Proposals;

- b. Notifying eligible Proposers of parts of their Proposals for which the City would like additional information; or
 - c. Otherwise allowing eligible Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
2. Conducting Discussions.
- The City may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this Section 2, but need not conduct the same amount of discussions with each eligible Proposer. The City may terminate discussions with any eligible Proposer at any time. However, the City shall offer all eligible Proposers the same opportunity to discuss their Proposals with the City before the City notifies eligible Proposers of the date and time pursuant to section D that best and final Proposals will be due.
- a. In conducting discussions, the City:
 - i. Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - ii. Shall disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(6)(a)(B) or (C);
 - iii. May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.
 - b. At any time during the time allowed for discussions, the City may:
 - i. Continue discussions with a particular eligible Proposer;
 - ii. Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - iii. Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section 4 of this rule to the eligible Proposers requesting best and final Offers.

C. Negotiations.

1. Initiating Negotiations.
- The City may commence serial negotiations with the highest-ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers as follows:
- a. After initial determination of which Proposals are Responsive; or
 - b. After initial determination of the Competitive Range in accordance with section (1) of this rule; or
 - c. After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).
2. Conducting Negotiations.
- a. Scope. The City may negotiate:
 - i. The statement of Work;
 - ii. The Contract Price as it is affected by negotiating the statement of Work; and
 - iii. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and the City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.
 - b. Terminating Negotiations. At any time during discussions or negotiations that the City conducts in accordance with sections (2) or (3) of this rule, the City may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:

- i. The Proposer is not discussing or negotiating in good faith; or
 - ii. Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- 3. Continuing Serial Negotiations.
If the City is conducting serial negotiations and the City terminates negotiations with a Proposer in accordance with paragraph 3(b)(B) of this rule, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in section (3) of this rule until the City has either:
 - a. Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - b. Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the City has completed all rounds of discussions or negotiations.
- 4. Competitive Simultaneous Negotiations.
If the City chooses to conduct competitive negotiations, the City may negotiate simultaneously with competing Proposers. The City:
 - a. Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - b. May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the City notifies all of the Proposers with whom the City will engage in negotiations of the City's intent to disclose before engaging in negotiations with any Proposer.
- 5. Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing by the Proposer.

D. Best and Final Offers.

If best and final Offers are required, the City shall establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the City may make a written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct evaluations conducted as described in BPC 47-0600. The City shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

47-0263 Multistep Sealed Proposals

A. Generally.

The City may procure Goods or Services by using multistep competitive sealed Proposals.

B. Phased Process.

Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the City may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

C. Public Notice.

Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with BPC 47-0300. Public notice is not required for the subsequent phases. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to BPC 47-0720.

D. Procedure for Phase One of Multistep Sealed Proposals.

1. Form.

Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in BPC 47-0260(B), the multistep Request for Proposal shall state:

- a. That un-priced technical Proposals are requested;
- b. Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;
- c. That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;
- d. The criteria to be used in the evaluation of un-priced technical Proposals;
- e. That the City, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;
- f. That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.
- g. Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

2. Addenda to the Request for Proposal.

After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

3. Receipt and Handling of Un-priced Technical Proposals.

Un-priced technical Proposals need not be opened publicly.

4. Evaluation of Un-Priced Technical Proposals.

Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:

- a. Qualified;
- b. Potentially qualified; that is, reasonably susceptible of being made qualified; or
- c. Unqualified. The City shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the City finds that such is not the case, the City shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in subsection D(e).

5. Discussion of Un-priced Technical Proposals.

The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing date established by the City. Such submission may be made at the request of the City or upon the Proposer's own initiative.

6. Notice of Unqualified Un-priced Technical Proposal.
When the City determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.
7. Mistakes During Multistep Sealed Proposals.
Mistakes may be corrected or Proposals may be withdrawn during phase one:
 - a. Before un-priced technical Proposals are considered;
 - b. After any discussions have commenced under subsection D(e) of this rule;
 - c. When responding to any Addenda to the Request for Proposal; or
 - d. In accordance with BPC 47-470.

E. Procedure for Subsequent Phases.

1. Initiation.
Upon the completion of phase one, the City shall either:
 - a. Open price Proposals submitted in phase one (if price Proposals were required to be submitted) from Proposers whose un-priced technical Proposals were found to be qualified; or
 - b. If price Proposals have not been submitted, technical discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.
2. Conduct.
Phase two shall be conducted as any other competitive sealed Proposal solicitation except:
 - a. As specifically set forth in this rule; and
 - b. No public notice need be given of the request to submit price Proposals because such notice was previously given.

EXEMPTIONS

(Most Commonly used – See also chapter 50 providing additional exemptions)

47-0265 Small Procurements

A. Generally.

Pursuant to BPC 50-0020 the City may Award a Contract of Goods or Services if the Goods or Services are valued less than or equal to \$5,000 as a small Procurement.

47-0270 Intermediate Procurements

A. Generally.

Pursuant to BPC-50-0025 the City may Award a Contract of Goods or Services if the Goods and Services are valued at greater than \$5,000 and less than or equal to \$50,000 as an intermediate Procurement.

47-0275 Sole-source Procurements

A. Generally.

Pursuant to BPC 50-0030 the City may Award a Public Contract without competition as a sole-source Procurement.

47-0280 Emergency Procurements

Pursuant to the requirements of BPC 50-0040 the City may Award a Public Contract as an Emergency Procurement. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is practicable under the circumstances.

47-0285 Special Procurements

A. Generally.

Pursuant to BPC 50-0015 the City may Award a Public Contract as a Special Procurement.

47-0290 Cooperative Procurements

The City may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in BPC 46-0400 through BPC 46-0480.

PROCUREMENT PROCESS

47-0300 Public Notice of Solicitation Documents

A. Notice of Solicitation Documents; Fee.

The City shall provide public notice of every Solicitation Document in accordance with section (B) of this rule. City may give additional notice using any method it determines appropriate to foster and promote competition, including:

1. Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in City's Procurements;
2. Placing notice on City's Electronic Procurement System; or
3. Placing notice on City's Internet World Wide Web site.

B. Advertising.

The City shall advertise every notice of a Solicitation Document as follows:

1. City shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4) or;
2. The City may publish the advertisement for Offers on the City's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the City's Contract Review Board has authorized the City to publish notice of Solicitation Documents on the City's Electronic Procurement System.

C. Content of Advertisement.

All advertisements for Offers shall set forth:

1. Where, when, how, and for how long the Solicitation Document may be obtained;
2. A general description of the Goods or Services to be acquired;
3. The interval between the first date of notice of the Solicitation Document given in accordance with subsection B(1) or (2) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the City determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection B(1) or (2) above and Closing be less than seven (7) Days. The City shall document the specific reasons for the shorter public notice period in the Procurement file;
4. The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;
5. The office where Contract terms, conditions and Specifications may be reviewed;
6. The name, title and address of the individual authorized by the City to receive Offers;

7. The scheduled Opening; and
8. Any other information the City deems appropriate.

D. Posting Advertisement for Offers.

The City shall post a copy of each advertisement for Offers at the principal business office of the City. A Proposer may obtain a copy of the advertisement for Offers upon request.

E. Fees.

The City may charge a fee or require a deposit for the Solicitation Document.

F. Notice of Addenda.

The City shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with BPC 47-0430.

47-0310 Bids or Proposals are Offers

A. Offer and Acceptance.

The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in BPC 47-0480. The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

B. Contingent Offers.

Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to BPC 47-0262, a Proposer shall not make its Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

C. Offeror's Acknowledgment.

By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under BPC 47-0262, the Offeror's Offer includes the non-negotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

47-0320 Facsimile Bids and Proposals

A. City Authorization.

The City may authorize Offerors to submit facsimile Offers. If the City determines that Bid or Proposal security is or will be required, the City should not authorize facsimile Offers unless the City has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the City shall determine that the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the City shall establish administrative procedures and controls:

1. To receive, identify, record, and safeguard facsimile Offers;
2. To ensure timely delivery of Offers to the location of Opening; and
3. To preserve the Offers as sealed.

B. Provisions.

To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a facsimile Offer, the City will include in the Solicitation Document the following:

1. A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a facsimile machine";
2. A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

3. A provision that requires Offerors to Sign their facsimile Offers;
4. A provision substantially in the form of the following: "The City reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the City's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
5. The data and compatibility characteristics of the City's receiving facsimile machine as follows:
 - a. Telephone number; and
 - b. Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
6. A provision that the City is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents;
 - b. Availability or condition of the receiving facsimile machine;
 - c. Incompatibility between the sending and receiving facsimile machine;
 - d. Delay in transmission or receipt of documents;
 - e. Failure of the Offeror to properly identify the Offer documents;
 - f. Illegibility of Offer documents; and
 - g. Security and confidentiality of data.

47-0330 [Reserved]

BID AND PROPOSAL PREPARATION

47-0400 Offer Preparation

A. Instructions.

An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

B. Forms.

An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

C. Documents.

An Offeror shall provide the City with all documents and descriptive literature required by the Solicitation Document.

D. Electronic Submissions.

If the Solicitation Document permitted Electronic Offers, an Offeror may submit its Offer electronically. The City shall not consider Electronic Offers unless authorized by the Solicitation Document.

47-0410 Offer Submission

A. Product Samples and Descriptive Literature.

The City may require product samples or descriptive literature if the City determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The City will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

B. Identification of Offers.

1. To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with this Code and the instructions set forth in the Solicitation Document.
2. The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

C. Receipt of Offers.

The Offeror is responsible for ensuring the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

47-0420 Pre-Offer Conferences

A. Purpose.

The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

B. Required Attendance.

The City may require attendance at the pre-Offer conference as a condition for making an Offer.

C. Scheduled Time.

If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

D. Statements Not Binding.

Statements made by the City's representative at the pre-Offer conference do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.

E. City Announcement.

The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with BPC 47-0255(B) or BPC47-0260(B).

47-0430 Addenda to Solicitation Document

A. Issuance; Receipt.

The City may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda.

B. Notice and Distribution.

The City shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the City will engage in a multistep competitive sealed Bid process in accordance with BPC 47-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with BPC 47-0261 through BPC 47-0263. The following is an example of how the City may specify how it will provide notice of Addenda: "City will not mail notice of Addenda, but will publish notice of any Addenda on City's Web site. Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

C. Timelines; Extensions.

1. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City may extend the Closing if the City determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the City shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

2. Notwithstanding subsection C(1) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and BPC 47-0261 through BPC 47-0263 must be issued no fewer than five Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

D. Request for Change or Protest.

Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in BPC 47-0730, by the close of the City's next business day after issuance of the Addendum, or up to the deadline to submit a request for change or protest under BPC 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with BPC 47-0730, then the City may consider an Offeror's request for change or protest to the Addendum only, and the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (D) of this rule, the City is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

47-0440 Pre-Closing Modification or Withdrawal of Offers

A. Modifications.

An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the City in accordance with BPC 47-0400 and BPC 47-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

1. Bid (or Proposal) Modification; and
2. Solicitation Document Number (or other identification as specified in the Solicitation Document).

B. Withdrawals.

1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the City prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to City.
2. City may release an unopened Offer withdrawn under subsection B(1) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.
3. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Bid (or Proposal) Withdrawal; and
 - b. Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

C. Documentation.

City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

A. Receipt.

The City shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. City shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If City inadvertently opens an Offer or a modification prior to the Opening, City shall return the

Offer or modification to its secure and confidential state until Opening. City shall document the resealing for the Procurement file (e.g. "City inadvertently opened the Offer due to improper identification of the Offer.").

B. Opening and Recording.

The City shall publicly open Offers including any modifications made to the Offer pursuant to BPC 47-0440(A). In the case of Invitations to Bid, to the extent practicable, City shall read aloud the name of each Bidder, and such other information as City considers appropriate. However, City may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, City will not read Offers aloud.

47-0460 Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications except as permitted in BPC 47-470 or 47-0262.

47-0470 Mistakes

A. Generally.

To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the City should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

B. City Treatment of Mistakes.

The City shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If City discovers certain mistakes in an Offer after Opening, but before Award of the Contract, City may take the following action:

1. The City may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
 - a. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - b. Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and
 - c. Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.
2. The City may waive or permit an Offeror to correct a mistake that does not affect the price, quantity or quality of performance.
3. The City may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms City's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.
4. The City may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
 - a. The nature of the error;
 - b. That the error is not a minor informality under this subsection or an error in judgment;
 - c. That the error cannot be corrected or waived under subsection (3) of this section;

- d. That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
 - e. That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
 - f. That the Offeror will suffer substantial detriment if City does not grant the Offeror permission to withdraw the Offer;
 - g. That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on City or the public it represents; and
 - h. That the Offeror promptly gave notice of the claimed error to City.
5. The criteria in subsection B(4) of this rule shall determine whether the City will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the City will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to City based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by City, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

C. Rejection for Mistakes.

City shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

D. Identification of Mistakes after Award.

The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this chapter 47 only to the extent permitted by applicable law.

47-0480 Time for City Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days following Closing unless otherwise specified in the Solicitation Document.

47-0490 Extension of Time for Acceptance of Offer

The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which City may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

QUALIFICATIONS AND DUTIES

47-0500 Responsibility of Bidders and Proposers

Before Awarding a Contract, the City shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. City shall use the standards set forth in ORS 279B.110 and BPC 47-0640(A)(3)(F) to determine if a Bidder or Proposer is Responsible. In the event the City determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

47-0525 Qualified Products Lists

The City may develop and maintain a qualified products list pursuant to ORS 279B.115.

47-0550 Prequalification of Prospective Offerors

A. The City may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

- B. Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible prior to Contract Award.

47-0575 Debarment of Prospective Offerors

A. Generally.

The City may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

B. Responsibility.

Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), the City may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

C. Imputed Knowledge.

The City may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

D. Limited Participation.

The City may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

OFFER EVALUATION AND AWARD

47-0600 Offer Evaluation and Award

A. General Principle.

City shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. City shall not evaluate Offers using any other requirement or criterion.

1. Evaluation of Bids.

- a. Nonresident Bidders. In determining the lowest Responsive Bid, City shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and BPC 46-0310 for Nonresident Bidders.
- b. [Reserved].
- c. Award When Bids are Identical. If City determines that one or more Bids are identical under BPC 46-0300, City shall Award a Contract in accordance with the procedures set forth in BPC 46-0300.

2. Evaluation of Proposals.

- a. Award When Proposals are Identical. If City determines that one or more Proposals are identical under BPC 46-0300, City shall Award a Contract in accordance with the procedures set forth in BPC 46-0300.
- b. [Reserved].

3. Recycled Materials. When procuring Goods, City shall give preference for recycled materials as set forth in ORS 279A.125 and BPC 46-0320.

B. Clarification of Bids.

After Bid Opening, the City may conduct discussions with apparent Responsive Bidders for the purpose of clarification to assure full understanding of the Bid. All Bids, in City's sole discretion, needing clarification shall be accorded such an opportunity. City shall document clarification of any Bidder's Bid in the Procurement file.

C. Negotiations Prohibited.

1. Bids. Except as permitted by section B of this rule, the City shall not negotiate with any Bidder. After Award of the Contract, City and Contractor may only modify the Contract in accordance with BPC 47-0800.
2. Requests for Proposals. The City may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and BPC 47-0262. After Award of the Contract, City and Contractor may only modify the Contract in accordance with BPC 50-0035.

D. Award.

1. General.
If Awarded, City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
2. Multiple Items.
An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a “market basket” of items representative of City’s expected purchases, or grand total of all items.
3. Multiple Awards - Bids.
 - a. Notwithstanding subsection D(1) of this rule, the City may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet City’s needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude City from Awarding a single Contract for such Invitation to Bid.
 - b. If an Invitation to Bid permits the Award of multiple Contracts, City shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.
4. Multiple Awards – Proposals.
 - a. Notwithstanding subsection D(1) of this rule, the City may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet City’s needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude City from Awarding a single Contract for such Request for Proposals.
 - b. If a Request for Proposals permits the Award of multiple Contracts, City shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.
5. Partial Awards.
If after evaluation of Offers, City determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:
 - a. City may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

- b. City may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.
- 6. All or none Offers.
The City may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

47-0610 Notice of Intent to Award

A. Notice of Intent to Award.

Unless otherwise provided in the Solicitation Document, the City shall provide Written notice to all bidders and proposers of the City's intent to award the Contract pursuant to ORS 279B.135 at least 14 Days before the Award of a Contract, unless City determines that circumstances require prompt execution of the Contract, in which case City may provide a shorter notice period. City shall document the specific reasons for the shorter notice period in the Procurement file. The referral of a recommendation to the Contract Review Board to Award a Contract is sufficient notice of the City's intent to award the Contract.

B. Finality.

City's Award shall not be final until the later of the following:

- 1. The expiration of the protest period provided pursuant to BPC 47-0740; or
- 2. City provides Written responses to all timely-filed protests denying the protests and affirming the Award.

47-0620 Documentation of Award

A. Basis of Award.

After Award, City shall make a record showing the basis for determining the successful Offeror part of City's Procurement file.

B. Contents of Award Record.

City's record shall include:

- 1. For Bids:
 - a. Bids;
 - b. Completed Bid tabulation sheet; and
 - c. Written justification for any rejection of lower Bids.
- 2. For Proposals:
 - a. Proposals;
 - b. The completed evaluation of the Proposals;
 - c. Written justification for any rejection of higher scoring Proposals; and
 - d. If City engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and BPC 47-0261 through 47-0263, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures City used to select a Proposer to which City Awarded a Contract.

47-0630 Availability of Award Decisions

A. Contract Documents.

To the extent required by the Solicitation Document, City shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

B. Availability of Award Decisions.

A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to City a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, City may make available tabulations of Bids and Proposals through the Electronic Procurement System of City or City's Web site.

C. Availability of Procurement Files.

After notice of intent to Award, City shall make Procurement files available in accordance with applicable law. City will make copies of non-confidential material from procurement files available upon payment of a reasonable copying charge.

47-0635 Contract Requirements

In addition to all applicable provisions that are required for legal sufficiency and for sound Contract management, all Personal Services Contracts shall include, without limitation, the following:

1. A measurable Statement of Work within the scope of the solicitation, an established delivery schedule, Contractor and City duties and responsibilities;
2. The total sum of money to be paid for the satisfactory accomplishment of the work;
3. A billing and payment schedule. Interim payments may be made for partial completion of tasks or services. When a Contract specifies an end product, an amount up to 10 percent of the total Contract amount may be withheld until all required work is completed and accepted;
4. A provision that payments will be made for completed work that is accepted by the City Purchasing Agent, unless other payment provisions are approved by the City Attorney;
5. Certification that sufficient City funds are available and authorized for expenditure to finance costs of the Contract within the City's appropriation or limitation covering the time period(s) of the Contract;
6. A provision indicating whether subcontracts for any of the work scheduled under the Contract may be entered into without prior Written approval from the City;
7. Provisions for termination by the City, including the manner by which it will be affected. The Contract shall describe conditions under which the Contract may be terminated for default as well as conditions under which the Contract may be terminated because of circumstances beyond the City's control;
8. Notice of any potential Contract amendments in accordance with the solicitation;
9. A provision that if charges are made for services performed and are to be paid by grant funds, the services shall relate directly to the grant from which the funds are expended;
10. A provision that the City, State and federal government, and their duly authorized representatives, shall have access to the Contractor's books, documents, papers and records directly pertinent to the Contract for the purpose of making audit, examination, excerpts and transcripts;
11. A provision that the Contract is subject to all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
12. A provision that the parties shall comply with any state or federal law or regulation specific to the funding source supporting the Contract.

To protect or advance the interests of the City, the City Attorney may modify these or approve other Contract terms.

47-0636 Independent Contractor Status

A. Service Providers Usually Not Employees

The City shall develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. The City and Contractor shall sign a Personal Services Contract that includes provisions

certifying the service provider is an Independent Contractor. If the individual cannot certify Independent Contractor status, the City may not Contract with the individual using a Personal Services Contract, except as otherwise allowed in subsection D of this section.

B. All Employees Hired Through Personnel Procedures

If the nature of the services or project is such that an employee/employer relationship will exist, the City shall not enter into a Contract except as otherwise allowed in subsection D of this section.

C. Required Contract Provisions

The Contract shall include:

1. The Contractor's legal name, address, and Social Security or federal tax identification number; and
2. A provision that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the Contract payment.

D. Doubtful Independent Contractors

When an individual cannot certify that he or she is an Independent Contractor, the City may Contract with the individual using a Personal Services Contract only if the Mayor or Finance Director, in consultation with the City Attorney, approves the use of a Personal Services Contract upon a determination by the Mayor or Finance Director that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the City.

47-0637 Non-Assignability of Personal Service Contracts

Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

47-0640 Rejection of an Offer

A. Rejection of an Offer.

1. The City may reject any Offer as set forth in ORS 279B.100.
2. City shall reject an Offer upon City's finding that the Offer:
 - a. Is contingent upon City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;
 - c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
 - d. Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
 - e. Is late;
 - f. Is not in substantial compliance with the Solicitation Document; or
 - g. Is not in substantial compliance with all prescribed public Procurement procedures.
3. City shall reject an Offer upon City's finding that the Offeror:

- a. Has not been prequalified and City required mandatory prequalification;
- b. Has been Debarred as set forth in ORS 279B.130 or has been disqualified for the reasons set forth in ORS 279A.110;
- c. Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;
- d. Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
- e. Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
- f. Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, City must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, City must determine pursuant to ORS 279B.110 that the Offeror:
 - i. Has 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; and
 - ii. Has a satisfactory record of contract performance. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. City shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
 - iii. Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. City shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
 - iv. Is qualified legally to contract with City; and
 - v. Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by City concerning Responsibility, City shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

B. Form of Business Entity.

For purposes of this rule, City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

47-0650 Rejection of All Offers

A. Rejection.

The City may reject all Offers as set forth in ORS 279B.100. City shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

B. Criteria.

City may reject all Offers based upon the following criteria:

- 1. The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

2. The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
3. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
4. Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
5. City cancels the Procurement or solicitation in accordance with BPC 47-0660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

47-0660 Cancellation of Procurement or Solicitation

A. Cancellation in the Public Interest.

The City may cancel a Procurement or solicitation as set forth in ORS 279B.100.

B. Notice of Cancellation Before Opening.

If City cancels a Procurement or solicitation prior to Opening, City shall provide Written notice of cancellation in the same manner that City initially provided notice of the solicitation. Such notice of cancellation shall:

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

C. Notice of Cancellation After Opening.

If City cancels a Procurement or solicitation after Opening, City shall provide Written notice of cancellation to all Offerors who submitted Offers.

47-0670 Disposition of Offers if Procurement or Solicitation Canceled

A. Prior to Opening.

If City cancels a Procurement or solicitation prior to Opening, City shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, City shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, City shall delete the Offers from City's Electronic Procurement System or information technology system.

B. After Opening.

If City cancels a Procurement or solicitation after Opening, City:

1. May return Proposals in accordance with ORS 279B.060(5)(c); and.
2. Shall keep Bids in the Procurement file.

C. Rejection of All Offers.

If City rejects all Offers, City shall keep all Proposals and Bids in the Procurement file.

47-0680 Approval of Personal Service Contracts

Before the City executes a Personal Services Contract that calls for payment in excess of \$1,000 in a single fiscal year, the City Attorney shall determine (and, where appropriate, approve) the legal sufficiency of the Contract. This subsection does not apply if:

1. The Contract is substantially composed of forms, terms or conditions that have been pre-approved by the City Attorney; or
2. Circumstances exist that create a substantial risk of loss, damage, interruption of services or threat to public health or safety and that require prompt execution of a Contract to deal with the risk.

All requisite approvals must be obtained before any Personal Service Contract entered into by the City becomes binding upon it and before any service may be performed or payment made under the Contract.

47-0690 Ratification

If the parties to a Personal Services Contract perform under the Contract before the City Attorney approves the Contract for legal sufficiency as required by this Code, the City, acting through its Contract Review Board, may ratify the Contract if the City Attorney determines that the Contract is legally sufficient prior to ratification. As a condition for approval, the City Attorney may require that the Contract be amended as necessary to make the Contract legally sufficient.

Upon approval of the Personal Services Contract for legal sufficiency and ratification of the Contract by the City under this section, the Contract is effective and the City may make payments on the ratified Contract even if the payments are for services rendered before ratification.

LEGAL REMEDIES

47-0700 Protests and Judicial Review of Special Procurements

A. Purpose.

An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Board and exhaust all administrative remedies.

B. Delivery.

1. Protest of Request for Approval of a Special Procurement. An Affected Person must deliver a Written protest to the Contract Review Board or designee within 14 Days after the first date of public notice of a proposed Special Procurement, unless a different protest period is provided in the public notice of the proposed Special Procurement.
2. Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Board or designee within 14 Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Board, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

C. Content of Protest.

The Written protest must include:

1. A detailed statement of the legal and factual grounds for the protest;
2. A description of the resulting harm to the Affected Person; and
3. The relief requested.

D. Contract Review Board.

1. Protest of Request for Approval of a Special Procurement: The Contract Review Board shall not consider an Affected Person's protest of City's request for approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the request for approval of a proposed Special Procurement. The Contract Review Board shall

issue a Written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or deny the request for approval of the Special Procurement.

2. Protest of Approval of a Special Procurement: The Contract Review Board shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Board shall issue a Written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

E. Judicial Review.

An Affected Person may not seek judicial review of the Contract Review Board's denial of a protest of a request for approval of a Special Procurement. An Affected Person may seek judicial review of the Contract Review Board's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

47-0710 Protests and Judicial Review of Sole-Source Procurements

A. Purpose.

For sole-source Procurements requiring public notice under BPC 47-0275, an Affected Person may protest the determination of the Contract Review Board or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Board or designee and exhaust all administrative remedies.

B. Delivery.

Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Board or designee within seven Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

C. Content of Protest.

The Written protest must include:

1. A detailed statement of the legal and factual grounds for the protest;
2. A description of the resulting harm to the Affected Person; and
3. The relief requested.

D. Contract Review Board Response.

The Contract Review Board or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Board or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Board or designee upholds the protest, in whole or in part, City shall not enter into a sole-source Contract.

E. Judicial Review.

Judicial review of the Contract Review Board's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

A. Purpose.

An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with City and exhaust all administrative remedies.

B. Basis for Protest.

An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and, but for City's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or City committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

C. Delivery.

Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to City within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

D. Content of Protest.

The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

E. City Response.

City shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall issue a Written disposition of the protest in a timely manner. If City upholds the protest, in whole or in part, City may in its sole discretion either issue an Addendum under BPC 47-0430 reflecting its disposition or cancel the Procurement or solicitation under BPC 47-0660.

F. Judicial Review.

Judicial review of City's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

47-0730 Protests and Judicial Review of Solicitations

A. Purpose.

1. A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with City and exhaust all administrative remedies.
2. Contract-Specific Special Procurements. Notwithstanding section A(1) of this rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth ORS 279B.405(2)(b).

B. Delivery.

Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to City not less than ten (10) Days prior to Closing.

C. Content of Protest.

In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

D. City Response.

City shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). City shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If City upholds the protest, in whole or in part, City may in its sole discretion either issue an Addendum reflecting its disposition under BPC 47-0430 or cancel the Procurement or solicitation under BPC 47-0660.

E. Extension of Closing.

If City receives a protest from a prospective Offeror in accordance with this rule, City may extend Closing if City determines an extension is necessary to consider and respond to the protest.

F. Clarification.

Prior to the deadline for submitting a protest, a prospective Offeror may request that the City clarify any provision of the Solicitation Document. City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on City unless City amends the Solicitation Document by Addendum.

G. Judicial Review.

Judicial review of City's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

47-0740 Protests and Judicial Review of Contract Award

A. Purpose.

An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with City and exhaust all administrative remedies before seeking judicial review of City's Contract Award decision.

B. Delivery.

Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to City within seven (7) Days after issuance of the notice of intent to Award the Contract.

C. Content of Protest.

An Offeror's Written protest shall specify the grounds for the protest to be considered by City pursuant to ORS 279B.410(2).

D. City Response.

City shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If City upholds the protest, in whole or in part, City may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

E. Judicial Review.

Judicial review of City's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

47-0745 Protests and Judicial Review of Qualified Products List Decisions

A. Purpose.

A prospective Offeror may protest City's decision to exclude the prospective Offeror's Goods from City's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of City's qualified products list decision.

B. Delivery.

Unless otherwise stated in City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to City within seven (7) Days after issuance of City's decision to exclude the prospective Offeror's Goods from the qualified products list.

C. Content of Protest.

The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

D. City Response.

City shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. City shall issue a Written disposition of the protest in a timely manner. If City upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

E. Judicial Review.

Judicial review of City's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

47-0750 Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by the City for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

47-0760 Review of Prequalification and Debarment Decisions

Review of City's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

TABLE OF CONTENTS

**BEAVERTON PURCHASING CODE
CHAPTER 48**

**CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED
SERVICES CONTRACTS**

48-0100	APPLICATION; EFFECTIVE DATE	2
48-0010	[RESERVED].....	2
48-0015	APPLICATION OF STATE ADMINISTRATIVE RULES	2

BEAVERTON PURCHASING CODE

CHAPTER 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

48-0100 Application; Effective Date

As mandated by ORS 279C.105 (1), this chapter of this Code sets forth supplemental procedures the City uses to screen and select licensed Architects, registered professional Engineers, registered professional Land Surveyors and consultants providing related services to the City under certain limited circumstances. This chapter 48 supplements chapter 47 of this Code relating to the screening and selection of persons to perform personal services for the City.

48-0010 [Reserved]

48-0015 Application of State Administrative Rules

Unless otherwise required by state law or by condition of a grant or Contract, the City shall screen and select licensed Architects, registered professional Engineers, registered professional Land Surveyors, and consultants providing related services to the City following the procedures set forth in chapter 47 of this Code relating to Personal Services Contracts.

Where a provision of state law, including ORS 279C.110 (2) , or ORS 279C.120, or a Grant or a Contract requires the City to use a qualification-based selection process to hire professional Architectural, Engineering or Land Surveying services or related consulting services, the City shall follow the procedures set forth in the Attorney General's model rules of procedure for the screening and selection of persons to perform architectural, engineering and land surveying Personal Services Contracts, OAR 137-048-0100 through 137-048-0320. Application of OAR 137-048-0100 through 137-048-0320 shall be necessary only when the services to be performed by an Architect, Engineer or Land Surveyor are those that only a licensed Architect, registered professional Engineer or Land Surveyor may perform. In no instance is application of OAR 137-048-0100 through 137-048-0320 necessary when the services to be performed are related services not required to be performed by a licensed Architect, registered professional Engineer or Land Surveyor.

TABLE OF CONTENTS

**CITY OF BEAVERTON PURCHASING CODE
CHAPTER 49**

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

49-0100 APPLICATION 6
49-0110 POLICIES 6
49-0120 DEFINITIONS 6
49-0130 COMPETITIVE BIDDING REQUIREMENT 6
49-0140 CONTRACTS FOR CONSTRUCTION OTHER THAN PUBLIC IMPROVEMENTS 6
 A. Procurement Under ORS Chapter 279B 6
 B. Application of ORS Chapter 279C 7
EXEMPTIONS FROM FORMAL BIDDING SOLICITATIONS 7
49-0150 EMERGENCY CONTRACTS; BIDDING AND BONDING EXEMPTIONS 7
 A. Emergency Declaration 7
 B. Competition for Contracts 7
 C. Contract Award 7
 D. Contract Scope 7
 E. Contract Modification 7
 F. Excusing Bonds 7
 G. Notification 7
49-0160 INTERMEDIATE PROCUREMENTS; COMPETITIVE QUOTES AND AMENDMENTS 8
 A. General 8
 B. Selection Criteria 8
 C. Request for Quotes 8
 D. Number of Quotes; Record Required 8
 E. Award 8
 F. Price Increases 8
 G. Amendments 8
49-170 SMALL PROCUREMENTS 8
 A. General 8
 B. Selection Criteria 9
 C. Request for Quotes 9
 D. Award 9
 E. Price Increase 9
 F. Amendments 9
FORMAL PROCUREMENT RULES 9
49-0200 SOLICITATION DOCUMENTS; REQUIRED PROVISIONS; ASSIGNMENT OR TRANSFER 9
 A. Solicitation Document 9
 B. Assignment or Transfer Restricted 12
49-0210 NOTICE AND ADVERTISING REQUIREMENTS; POSTING 12
 A. Notice and Distribution Fee 12
 B. Advertising 12
 C. Minority, Women Emerging Small Business 13
49-0220 PREQUALIFICATION OF OFFERORS 13
 A. Prequalification 13
 B. Prequalification Presumed 13
 C. Standards for Prequalification 13
 D. Notice Of Denial 14
49-0230 ELIGIBILITY TO BID OR PROPOSE; REGISTRATION OR LICENSE 14
 A. Construction Contracts 14
 B. Landscape Contracts 14
 C. Non-complying Entities 14

49-0240	PRE-OFFER CONFERENCES	14
A.	Purpose	14
B.	Required attendance.....	14
C.	Scheduled time.	14
D.	Statements Not Binding.....	14
E.	City Announcement	14
49-0250	ADDENDA TO SOLICITATION DOCUMENTS.....	14
A.	Issuance; Receipt	14
B.	Notice and Distribution.....	15
C.	Timelines; Extensions.....	15
D.	Request for Change or Protest.	15
49-0260	REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS	15
A.	Clarification.	15
B.	Request for Change.....	15
C.	Protest.	15
D.	City Response.	16
E.	Extension of Closing.....	16
49-0270	CANCELLATION OF SOLICITATION DOCUMENT.....	16
A.	Cancellation in the Public Interest.	16
B.	Notice of Cancellation.	16
C.	Disposition of Offers.	16
49-0280	OFFER SUBMISSIONS.....	16
A.	Offer and Acceptance.	16
B.	Responsive Offer.	17
C.	Contingent Offers.	17
D.	Offeror's Acknowledgement.	17
E.	Instructions.	17
F.	Forms.	17
G.	Documents.	17
H.	Facsimile or Electronic Submissions.	17
I.	Product Samples and Descriptive Literature.....	17
J.	Identification of Offers	17
K.	Receipt of Offers.....	18
49-0290	BID OR PROPOSAL SECURITY	18
A.	Security Amount.....	18
B.	Requirement for Bid Security (Optional for Proposals).	18
C.	Form of Bid or Proposal Security.	18
D.	Return of Security.....	18
49-0300	FACSIMILE BIDS AND PROPOSALS.....	18
A.	City Authorization.	18
B.	Provisions To Be Included in Solicitation Document.....	18
49-0310	ELECTRONIC PROCUREMENT	19
A.	General.	19
B.	Alternative Procedures.....	19
C.	Interpretation.	19
49-0320	PRE-CLOSING MODIFICATION OR WITHDRAWAL OF OFFERS	20
A.	Modifications.....	20
B.	Withdrawals.....	20
C.	Documentation.....	20
49-0330	RECEIPT, OPENING AND RECORDING OF OFFERS; CONFIDENTIALITY OF OFFERS	20
A.	Receipt.	20
B.	Opening and Recording.	20
C.	Availability.	20
49-0340	LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.....	21
49-0350	MISTAKES.....	21
A.	Generally.	21
B.	City Treatment of Mistakes.	21
C.	Rejection for Mistakes.....	22

D.	Identification of Mistakes after Award.....	22
49-0360	FIRST-TIER SUBCONTRACTORS; DISCLOSURE AND SUBSTITUTION.....	22
A.	Required Disclosure.....	22
B.	Bid Closing, Disclosure Deadline and Bid Opening.....	22
C.	Bidder Instructions and Disclosure Form.....	23
D.	Submission.....	23
E.	Responsiveness.....	23
F.	City Role.....	23
G.	Substitution.....	23
49-0370	DISQUALIFICATION OF PERSONS.....	23
A.	Authority.....	23
B.	Notice of Intent to Disqualify.....	24
C.	Hearing.....	25
D.	Notice of Disqualification.....	25
49-0380	BID OR PROPOSAL EVALUATION CRITERIA.....	25
A.	General.....	25
B.	Bid Evaluation Criteria.....	25
C.	Proposal Evaluation Criteria.....	25
49-0390	OFFER EVALUATION AND AWARD; DETERMINATION OF RESPONSIBILITY.....	26
A.	General.....	26
B.	Determination of Responsibility.....	26
C.	City Evaluation.....	26
D.	Offeror Submissions.....	26
E.	Evaluation of Bids.....	27
F.	Evaluation of Proposals.....	27
49-0400	DOCUMENTATION OF AWARD; AVAILABILITY OF AWARD DECISIONS.....	27
A.	Basis of Award.....	27
B.	Contents of Award Record for Bids.....	27
C.	Contents of Award Record for Proposals.....	27
D.	Contract Document.....	27
E.	Bid Tabulations and Award Summaries.....	28
F.	Availability of Solicitation Files.....	28
G.	Copies from Solicitation Files.....	28
49-0410	TIME FOR CITY ACCEPTANCE; EXTENSION; INTENT TO AWARD.....	28
A.	Time for Offer Acceptance.....	28
B.	Extension of Acceptance Time.....	28
C.	Intent to Award.....	28
49-0420	NEGOTIATION WITH BIDDERS PROHIBITED.....	28
A.	Bids.....	28
B.	Requests for Proposals.....	28
49-0430	NEGOTIATION WHEN BIDS EXCEED COST ESTIMATE.....	28
A.	Generally.....	28
B.	Definitions.....	29
C.	Rejection of Bids.....	29
D.	Scope of Negotiations.....	29
E.	Discontinuing Negotiations.....	29
F.	Limitation.....	29
G.	Public Records.....	29
49-0440	REJECTION OF OFFERS.....	30
A.	Rejection of an Offer.....	30
B.	Form of Business.....	30
C.	Certification of Non-Discrimination.....	30
D.	Rejection of all Offers.....	31
E.	Criteria for Rejection of All Offers.....	31
49-0450	PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD.....	31
A.	Purpose.....	31
B.	Notice of Competitive Range.....	31
C.	Notice of Intent to Award.....	31

D.	Right to Protest Award.....	32
E.	Right to Protest Competitive Range.....	32
F.	Authority to Resolve Protests.....	32
G.	Decision.....	32
H.	Award.....	33
49-0460	PERFORMANCE AND PAYMENT SECURITY; WAIVER.....	33
A.	Public Improvement Contracts.....	33
B.	Other Construction Contracts.....	33
C.	Requirement for Surety Bond.....	33
D.	Time for Submission.....	33
49-0470	SUBSTITUTE CONTRACTOR.....	33
49-0490	FOREIGN CONTRACTOR.....	33
ALTERNATIVE CONTRACTING METHODS.....		33
49-0600	INCORPORATION BY REFERENCE.....	33
49-0610	[RESERVED].....	34
49-0620	[RESERVED].....	34
49-0630	[RESERVED].....	34
49-0640	[RESERVED].....	34
49-0650	[RESERVED].....	34
49-0660	[RESERVED].....	34
49-0670	[RESERVED].....	34
49-0680	[RESERVED].....	34
49-0690	[RESERVED].....	34
CONTRACT PROVISIONS.....		34
49-0800	REQUIRED CONTRACT CLAUSES.....	34
49-0810	WAIVER OF DELAY DAMAGES AGAINST PUBLIC POLICY.....	34
49-0820	RETAINAGE.....	34
A.	Withholding of Retainage.....	34
B.	Deposit in interest-bearing accounts.....	35
C.	Alternatives to cash retainage.....	35
D.	Recovery of costs.....	35
49-0830	CONTRACTOR PROGRESS PAYMENTS.....	35
A.	Request for progress payments.....	35
B.	Progress payments do not mean acceptance of Work.....	35
49-0840	INTEREST.....	36
A.	Prompt payment policy.....	36
B.	Interest on progress payments.....	36
C.	Interest on final payment.....	36
D.	Settlement or judgment interest.....	36
49-0850	FINAL INSPECTION.....	36
A.	Notification of Completion; inspection.....	36
B.	Acknowledgment of acceptance.....	36
49-0860	PUBLIC WORKS CONTRACTS.....	36
A.	Generally.....	36
B.	Required Contract Conditions.....	36
C.	Requirements for Specifications.....	37
49-0870	SPECIFICATIONS; BRAND NAME PRODUCTS.....	37
A.	Generally.....	37
B.	Equivalents.....	37
49-0880	RECORDS MAINTENANCE; RIGHT TO AUDIT RECORDS.....	37
A.	Records Maintenance; Access.....	37
B.	Inspection and Audit.....	37
C.	Records Inspection; Contract Audit.....	37
49-0890	CITY PAYMENT FOR UNPAID LABOR OR SUPPLIES.....	38
A.	Contract incomplete.....	38
B.	Contract completed.....	38

49-0900	CONTRACT SUSPENSION; TERMINATION PROCEDURES	38
A.	Suspension of Work.....	38
B.	Termination of Contract by mutual agreement for reasons other than default.	38
C.	Public interest termination by City.	38
D.	Responsibility for completed Work.	38
E.	Remedies cumulative.....	38
49-0910	CHANGES TO THE WORK AND CONTRACT AMENDMENTS.....	39
A.	Definitions for Rule. As used in this rule:	39
B.	Changes Provisions.....	39
C.	Change Order Authority.	39
D.	Contract Amendments.	39

CITY OF BEAVERTON PURCHASING CODE

CHAPTER 49

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

49-0100 Application

- A. The rules of this chapter apply to both (1) Public Improvement Contracts and (2) Public Contracts for ordinary construction services that are not Public Improvements. The rules of this chapter that apply specifically to only one of these two types of contracts are so identified.
- B. The rules of this chapter address matters covered in ORS chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in chapter 48 of this Code).
- C. The rules of this chapter become effective on March 1, 2005 and apply to the Contracts described in section (A) above first advertised, but if not advertised then entered into, on or after March 1, 2005.

49-0110 Policies

It is the policy of the City of Beaverton in enacting this code that its contracting system meet policies set forth in ORS 279A.015, ORS 279C.300 and the ORS 279C.305.

49-0120 Definitions

- A. "Conduct Disqualification" means a Disqualification pursuant to ORS 279C.440.
- B. "Disqualification" means the preclusion of a Person from contracting with the City for a period of time in accordance with BPC 49-0370.
- C. "Out of State Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See BPC 49-0490.
- D. "Notice" means any of the alternative forms of public announcement of Procurements, as described in BPC 49-0210.

49-0130 Competitive Bidding Requirement

The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except;

1. If federal funds are involved and applicable federal laws, rules and regulations conflict with this Code or ORS 270C.800 to 279C.870, or require additional conditions in public contracts not authorized by this Code or ORS 279C.800 to 279C.870, the applicable federal laws, rules and regulations shall govern; or
2. As otherwise allowed or required pursuant to ORS 279C.335 provided, however, that the exception to competitive bidding set forth at ORS 279C.335(1)(d) shall be limited in all cases to contracts not to exceed \$50,000; or
3. As other wise allowed required pursuant to ORS 279A.100 or BPC 49-0600(incorporating by reference OAR 137-049-0600 to 137-049-690).

49-0140 Contracts for Construction Other Than Public Improvements

A. Procurement Under ORS Chapter 279B.

Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335 (5) and BPC 49-0150, may be procured and

amended as general trade services under the provisions of ORS chapter 279B and chapter 47 rules rather than under the provisions of ORS chapter 279C and these chapter 49 Rules.

B. Application of ORS Chapter 279C.

Non-procurement provisions of ORS chapter 279C and BPC chapter 47 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

EXEMPTIONS FROM FORMAL BIDDING SOLICITATIONS

49-0150 Emergency Contracts; Bidding and Bonding Exemptions

A. Emergency Declaration.

Pursuant to ORS 279C.335 (5) and this rule, the City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made by the City Council, Mayor or a department head by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall exempt the Public Contract from the competitive bidding requirements of ORS 279C.335 (1) and shall thereafter be kept on file as a public record.

B. Competition for Contracts.

The City shall ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the City considers reasonable in responding to the Emergency.

C. Contract Award.

Any Contract Awarded under this rule must be Awarded within 60 Days after declaration of the Emergency, unless an extension is granted under ORS 279C.335 (5).

D. Contract Scope.

Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

E. Contract Modification.

Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

F. Excusing Bonds.

Pursuant to ORS 279C.380 (4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement.

G. Notification.

For contracts greater than \$50,000 in value, the City shall notify the Contract Review Board of the existence of such contract by submitting a copy of the Written documentation required in subsections A and B of this section to the Contract Review Board within 60 days following the declaration of an emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency. If the Contract Review Board grants such an extension, the City shall submit such documentation on or before expiration of the extension.

49-0160 Intermediate Procurements; Competitive Quotes and Amendments

A. General.

Public Improvement Contracts estimated by the City to be valued greater than \$5,000 and less than or equal to \$50,000, may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

B. Selection Criteria.

The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

C. Request for Quotes.

The City shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking.

When requesting quotations orally, prior to requesting the price quote the City shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

D. Number of Quotes; Record Required.

The City shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the City shall make a written record of the effort made to obtain those quotes.

E. Award.

If Awarded, the City shall Award the Contract to the prospective contractor whose quote will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a written record of the basis for Award.

F. Price Increases.

Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by City issuance of a Change to the Work or Amendment, pursuant to BPC 49-0910, within the following limitations:

1. Up to an aggregate Contract Price increase of 25% over the original Contract amount when the Project Manager determines that a price increase is warranted for additional reasonably-related Work, and;
2. Up to an aggregate Contract Price in excess of 25% over the original Contract amount, when the Project Manager determines that a price increase is warranted for additional reasonably-related Work and the Contract Review Board approves the increase.

G. Amendments.

Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section A are specifically authorized, when made in accordance with this rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

49-0170 Small Procurements

A. General.

Public Improvement Contracts estimated by the City to be valued at less than or equal to \$5,000 may be awarded in accordance with small level procurement procedures for competitive quotes established by this Rule.

B. Selection Criteria.

The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

C. Request for Quotes.

The City shall, where practical, obtain three informally solicited competitive verbal quotes, bids or proposals. The City shall keep a record of the source and amount of the quotes, Bids or Proposals received. If three informally solicited competitive verbal quotes, Bids or Proposals are not available, fewer quotes, Bids or Proposals will suffice, provided a record is made of the effort to obtain the quotes, Bids or Proposals.

D. Award.

If Awarded, the City shall Award the Contract to the prospective contractor whose quote will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a written record of the basis for Award.

E. Price Increase.

Small level Public Improvement contracts obtained by informal competitive verbal quotes, bids or proposals may be increased above the original amount of Award by City issuance of a change to the Work or Amendment, pursuant to BPC 49-0910, with the following limitations:

1. Up to an aggregate Contract Price of \$6,000 when the Project Manager determines that a price increase is warranted for additional reasonably related Work.
2. Up to an aggregate Contract Price in excess of \$6,000 when the Project Manager determines that a price increase is warranted for additional reasonably-related Work and the Finance Director approves the increase.

F. Amendments.

Amendments to small level Public Improvement Contracts that exceed the thresholds stated in Section A are specifically authorized when made in accordance with this Rule. Such Amendments are not considered new procurements and do not require an exemption from competitive bidding.

FORMAL PROCUREMENT RULES

49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer

A. Solicitation Document.

Pursuant to ORS 279C.365 and this rule, the Solicitation Document for a Public Improvement Contract shall include the following:

1. General Information.
 - a. Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
 - b. Notice of any pre-Offer conference as follows:
 - i. The time, date and location of any pre-Offer conference;
 - ii. Whether attendance at the conference will be mandatory or voluntary; and
 - iii. That statements made by the City representatives at the conference are not binding upon the City unless confirmed by Written Addendum.
 - c. The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;
 - d. The name and title of the authorized Person designated for receipt of Offers and the name and title of the contact Person, if different;

- e. Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See BPC 49-0300 regarding facsimile Bids or Proposals and BPC 49-0310 regarding Electronic Procurement);
 - f. The time, date and place of Opening;
 - g. The time and date of Closing after which the City will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370 (1) (b) and BPC 49-0360. For timing issues relating to Addenda, see BPC 49-0250;
 - h. The office where the Specifications for the Work may be reviewed;
 - i. A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;
 - j. If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the City unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.";
 - k. A statement that the City will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in BPC 49-0230;
 - l. Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
 - m. Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
 - n. How the City will notify Offerors of Addenda and how the City will make Addenda available (See BPC 49-0250); and
 - o. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in BPC 49-0360.
2. Evaluation Process.
- a. A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the City finding that it is in the public interest to do so;
 - b. The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
 - c. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals where use of Competitive Proposals is authorized under ORS 279C.335 and BPC 49-0600 (incorporating by reference OAR 137-049-0600 to 137-049-690), along with the process the City will use to determine acceptability of the Work;
 - i. If the Solicitation Document is an Invitation to Bid, the City shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited

to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;

- ii. If the Solicitation Document is a Request for Proposals, the City shall refer to the additional requirements of BPC 49-0600(incorporating by reference OAR 137-049-0650); and

3. Contract Provisions.

The City shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the City considers appropriate for the Public Improvement project. The City must also include all applicable Contract provisions required by Oregon law as follows:

- a. Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- b. Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- c. If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- d. If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- e. Payment of claims by public officers (ORS 279C.515(1));
- f. Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- g. Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- h. Hours of labor in compliance with ORS 279C.520;
- i. Environmental and natural resources regulations (279C.525);
- j. Payment for medical care and attention to employees (ORS 279C.530 (1));
- k. A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530 (2));
- l. Maximum hours, holidays and overtime (ORS 279C.540);
- m. Time limitation on claims for overtime (ORS 279C.545);
- n. Prevailing wage rates (ORS 279C.800 to 279C.870);
- o. Fee paid to BOLI (ORS 279C.830);
- p. Retainage (ORS 279C.550 to 279C.570);
- q. Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- r. Contractor's relations with subcontractors (ORS 279C.580);

- s. Notice of claim (ORS 279C.605);
- t. Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
- u. Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

B. Assignment or Transfer Restricted.

Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

49-0210 Notice and Advertising Requirements; Posting

A. Notice and Distribution Fee.

The City shall furnish "Notice" as set forth below in subsections (1) through (3), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:

1. Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City Procurements;
2. Placing Notice on the City Electronic Procurement System; or
3. Placing Notice on the City Internet Web site.

B. Advertising.

Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Board has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335.

1. Unless the City publishes by Electronic Advertisement as permitted under subsection B(2), the City shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the City may determine to be necessary or desirable to foster and promote competition.
2. The City may publish by Electronic Advertisement if the Contract Review Board determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.
3. In addition to the City publication required under subsection B(1) or B(2), the City shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000 and no such advertisement has yet been published in a trade newspaper in connection with the solicitation.
4. All advertisements for Offers shall set forth:

- a. The Public Improvement project;
- b. The office where Contract terms, conditions and Specifications may be reviewed;
- c. The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
- d. The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
- e. The name, title and address of the Person authorized to receive Offers;
- f. The scheduled Opening; and
- g. If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

C. Minority, Women Emerging Small Business.

The City may provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

49-0220 Prequalification of Offerors

A. Prequalification.

Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

1. **Mandatory Prequalification.** The City may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the Contract Review Board. The City must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the City conditions a Person's submission of an Offer upon the Person's prequalification. The City shall not consider an Offer from a Person that is not prequalified if the City required prequalification.
2. **Permissive Prequalification.** The City may prequalify a Person for the City Solicitation list on forms prescribed by the Contract Review Board, but in permissive prequalification the City shall not limit distribution of a Solicitation to that list.

B. Prequalification Presumed.

If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the City.

C. Standards for Prequalification.

A Person may prequalify by demonstrating to the City satisfaction:

1. That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;
2. The Person's record of performance;
3. The Person's record of integrity;
4. The Person is qualified to contract with the City.
(See, BPC 49-0390(B) regarding standards of responsibility.)

D. Notice Of Denial.

If a Person fails to prequalify for a mandatory prequalification, the City shall notify the Person, specify the reasons under section (C) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

49-0230 Eligibility to Bid or Propose; Registration or License

A. Construction Contracts.

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

B. Landscape Contracts.

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

C. Non-complying Entities.

The City shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

49-0240 Pre-Offer Conferences

A. Purpose.

The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

B. Required attendance.

The City may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

C. Scheduled time.

If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

D. Statements Not Binding.

Statements made by the City's representative at the pre-Offer conference do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.

E. City Announcement.

The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with BPC 49-0200(A)(1)(b).

49-0250 Addenda to Solicitation Documents

A. Issuance; Receipt.

The City may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or in the Solicitation Document.

B. Notice and Distribution.

The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in BPC 49-0210(A). The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available (see, BPC 49-0200(A)(1)(n). For example, "City will not mail notice of Addenda, but will publish notice of any Addenda on City's Web site. Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing,"

C. Timelines; Extensions.

The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City may extend the Closing if the City determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the City shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

D. Request for Change or Protest.

Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in BPC 49-0260, by the close of the City's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under BPC 49-0260, whichever date is later. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the City's receipt of request for change or protests as set forth in BPC 49-0260(B) and (C).

49-0260 Request for Clarification or Change; Solicitation Protests

A. Clarification.

Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the City clarify any provision of the Solicitation Document. The City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the City unless the City amends the Solicitation Document by Addendum.

B. Request for Change.

1. Delivery.

An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the City not less than 10 Days prior to Closing;

2. Content of Request for Change.

a. An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

b. An Offeror shall mark its request for change as follows:

i. "Contract Provision Request for Change"; and

ii. Solicitation Document number (or other identification as specified in the Solicitation Document).

C. Protest.

1. Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the City not less than 10 Days prior to Closing;

2. Content of Protest.

a. An Offeror's Written protest shall include:

i. A detailed statement of the legal and factual grounds for the protest;

ii. A description of the resulting prejudice to the Offeror; and

- iii. A statement of the desired changes to the Contract terms and conditions, including any Specifications.
- b. An Offeror shall mark its protest as follows:
 - i. "Contract Provision Protest"; and
 - ii. Solicitation Document number (or other identification as specified in the Solicitation Document)

D. City Response.

The City is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The City shall provide notice to the applicable Person if it entirely rejects a protest. If the City agrees with the Person's request or protest, in whole or in part, the City shall either issue an Addendum reflecting its determination under this section or cancel the Solicitation under BPC 49-0270.

E. Extension of Closing.

If the City receives a Written request for change or protest from an Offeror in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

49-0270 Cancellation of Solicitation Document

A. Cancellation in the Public Interest.

The City may cancel a Solicitation for good cause if the City finds that cancellation is in the public interest. The City's reasons for cancellation shall be made part of the Solicitation file.

B. Notice of Cancellation.

If the City cancels a Solicitation prior to Opening, the City shall provide Notice of cancellation in accordance with BPC 49-0210(A). Such notice of cancellation shall:

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

C. Disposition of Offers.

1. Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City shall open the Offer to determine the source and then return it to the Offeror.
2. After Offer Opening. If the City rejects all Offers, the City shall retain all such Offers as part of the City's Solicitation file.

49-0280 Offer Submissions

A. Offer and Acceptance.

The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

1. In competitive Bidding, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in BPC 49-0410. The City's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

2. In competitive Proposals, the Solicitation Document shall describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of competitive Bidding, or whether Offers are subject to discussion, negotiation or otherwise are not to be considered as final offers. See BPC 49-0600(incorporating by reference OAR 137-049-0650 on Requests for Proposals) and BPC 49-0290 on Bid or Proposal Security.

B. Responsive Offer.

The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.

C. Contingent Offers.

Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to BPC 49-0600(incorporating by reference OAR 137-049-0650), an Offeror shall not make an Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

D. Offeror's Acknowledgement.

By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under BPC 49-0600(incorporating by reference OAR 137-049-0650), the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

E. Instructions.

An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

F. Forms.

An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

G. Documents.

An Offeror shall provide the City with all documents and descriptive literature required under the Solicitation Document.

H. Facsimile or Electronic Submissions.

If the City permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The City shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

I. Product Samples and Descriptive Literature.

The City may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

J. Identification of Offers

1. To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.
2. The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

K. Receipt of Offers.

The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

49-0290 Bid or Proposal Security

A. Security Amount.

If the City requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. The City shall not use Bid or Proposal security to discourage competition. The City shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.

B. Requirement for Bid Security (Optional for Proposals).

Unless the City has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the City shall require Bid security for its Solicitation of Bids for Public Improvements. The City may require Bid security even if it has exempted a class of Solicitations from Bid security. The City may require Proposal security in RFP's when Award of a Public Improvement Contract may be made without negotiation following receipt of a Firm Offer as described in BPC 49-0280(A)(2). See ORS 279C.400(5).

C. Form of Bid or Proposal Security.

The City may accept only the following forms of Bid or Proposal security:

1. A surety bond from a surety company authorized to do business in the State of Oregon;
2. An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
3. A cashier's check or Offeror's certified check.

D. Return of Security.

The City shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds have been provided, or after all Offers have been rejected. The City may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

49-0300 Facsimile Bids and Proposals

A. City Authorization.

The City may authorize Offerors to submit facsimile Offers. If the City determines that Bid or Proposal security is or will be required, the City shall not authorize facsimile Offers unless the City has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the City shall determine that the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the City shall establish administrative procedures and controls:

1. To receive, identify record and safeguard facsimile Offers;
2. To ensure timely delivery of Offers to the location of Opening; and
3. To preserve the Offers as sealed.

B. Provisions To Be Included in Solicitation Document.

In addition to all other requirements, if the City authorizes a facsimile Offer for Bids or Proposals, the City shall include in the Solicitation Document (other than in a request for quotes) the following:

1. A provision substantially in the form of the following: “A ‘facsimile Offer’, as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a facsimile machine.”;
2. A provision substantially in the form of the following: “Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.”;
3. A provision that requires Offerors to Sign their facsimile Offers;
4. A provision substantially in the form of the following: “The City reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the City’s request the apparent successful Offeror shall promptly submit its complete original Signed Offer.”;
5. The data and compatibility characteristics of the City receiving facsimile machine as follows:
 - a. Telephone number; and
 - b. Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
6. A provision that the City is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents;
 - b. Availability or condition of the receiving facsimile machine;
 - c. Incompatibility between the sending and receiving facsimile machine;
 - d. Delay in transmission or receipt of documents;
 - e. Failure of the Offeror to properly identify the Offer documents;
 - f. Illegibility of Offer documents; and
 - g. Security and confidentiality of data.

49-0310 Electronic Procurement

A. General.

The City may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

B. Alternative Procedures.

In the event that the City desires to allow Electronic Offers for a Public Improvement Contract, it shall first promulgate supporting procedures substantially in conformance with the Electronic Procurement provisions under ORS chapter 279B, taking into account ORS chapter 279C requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

C. Interpretation.

Nothing in this rule shall be construed as prohibiting The City from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

49-0320 Pre-Closing Modification or Withdrawal of Offers

A. Modifications.

An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the City in accordance with BPC 49-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

1. Bid (or Proposal) Modification; and
2. Solicitation Number (or Other Identification as specified in the Solicitation Document).

B. Withdrawals

1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the City prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.
2. The City may release an unopened Offer withdrawn under subsection B(1) to the Offeror or its authorized representative, after voiding any date and time stamp mark.
3. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Bid (or Proposal) Withdrawal; and
 - b. Solicitation Number (or Other Identification as specified in the Solicitation Document).

C. Documentation.

The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

49-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers

A. Receipt.

The City shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The City shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the City inadvertently opens an Offer or a modification prior to the Opening, the City shall return the Offer or modification to its secure and confidential state until Opening. The City shall document the resealing for the Procurement file (e.g. "City inadvertently opened the Offer due to improper identification of the Offer").

B. Opening and Recording.

The City shall publicly open Offers including any modifications made to the Offer pursuant to BPC 49-0320. In the case of Invitations to Bid, to the extent practicable, the City shall read aloud the name of each Bidder, the Bid price(s), and such other information as the City considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the City will not read Offers aloud.

C. Availability.

After Opening, the City shall make Bids available for public inspection; however, pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event the City may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the City determines such designation is not in accordance with applicable law, the City shall make those portions

available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

49-0340 Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications except as permitted in BPC 49-0350 or 49-0390.

49-0350 Mistakes

A. Generally.

To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the City should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

B. City Treatment of Mistakes.

The City shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the City discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the City may take the following action:

1. The City may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
 - a. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - b. Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and
 - c. Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.
2. The City may wave or permit an Offeror to contest a mistake that does not affect the price, quantity or quality of performance.
3. The City may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the City's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.
4. The City may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
 - a. The nature of the error;
 - b. That the error is not a minor informality under this subsection or an error in judgment;
 - c. That the error cannot be corrected or waived under subsection (2) of this section;

- d. That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
 - e. That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
 - f. That the Offeror will suffer substantial detriment if the City does not grant the Offeror permission to withdraw the Offer;
 - g. That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the City or the public it represents; and
 - h. That the Offeror promptly gave notice of the claimed error to the City.
5. The criteria in subsection (B)(4) of this rule shall determine whether the City will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the City will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the City based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the City, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

C. Rejection for Mistakes.

The City shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

D. Identification of Mistakes after Award.

The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this chapter 49 only to the extent permitted by applicable law.

49-0360 First-Tier Subcontractors; Disclosure and Substitution

A. Required Disclosure.

Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the City to exceed \$100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370 (2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- 1. Five percent of the total Contract Price, but at least \$15,000; or
- 2. \$350,000, regardless of the percentage of the total Contract Price.

B. Bid Closing, Disclosure Deadline and Bid Opening.

For each ITB to which this rule applies, the City shall:

- 1. Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
- 2. Open Bids publicly immediately after the Bid Closing; and
- 3. Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the City.

C. Bidder Instructions and Disclosure Form.

For the purposes of this rule, the City's Solicitation shall:

1. Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370 (2); and
2. Provide instructions in a notice substantially similar to the following:
"Instructions for First-Tier Subcontractor Disclosure"
Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:
 - i. The subcontractor's name,
 - ii. The category of Work that the subcontractor would be performing, and
 - iii. The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CITY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see BPC 49-0360)."

D. Submission.

A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

E. Responsiveness.

Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

F. City Role.

The City shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The City shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The City is not required to determine the accuracy or completeness of the information provided on disclosure forms.

G. Substitution.

Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The City shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, The City does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

49-0370 Disqualification of Persons

A. Authority.

The City may disqualify a Person from consideration of Award of the City's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (B) and (D) of this rule.

1. Standards for Conduct Disqualification. As provided in ORS 279C.440, the City may disqualify a Person for:

- a. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.
 - c. Conviction under state or federal antitrust statutes.
 - d. Violation of a contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under this subsection A(1)(d) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.
2. Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:
- a. For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:
 - i. The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or
 - ii. The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or
 - iii. The Person has been disqualified by another City pursuant to ORS 200.065.
 - b. For a DBE Disqualification under ORS 200.075, the City may disqualify a Person upon finding that:
 - i. The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or
 - ii. The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or
 - iii. The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.
 - iv. If the City disqualifies a Person for a DBE Disqualification under ORS 200.075, the City shall not permit such Person to participate in City's Contracts.
 - c. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in awarding a subcontract under a contract with the City.

B. Notice of Intent to Disqualify.

The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

- 1. State that the City intends to disqualify the Person;
- 2. Set forth the reasons for the Disqualification;
- 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the City does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

4. Include a statement of the authority and jurisdiction under which the hearing will be held;
5. Include a reference to the particular sections of the statutes and rules involved;
6. State the proposed Disqualification period; and
7. State that the Person may be represented by legal counsel.

C. Hearing.

The City shall schedule a hearing upon the City's receipt of the Person's timely request. The City shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

D. Notice of Disqualification.

The City will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

1. The effective date and period of Disqualification;
2. The grounds for Disqualification; and
3. A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the City in Writing within three business Days after receipt of the City's notice of Disqualification if the Person intends to appeal the City's decision.

49-0380 Bid or Proposal Evaluation Criteria

A. General.

A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See BPC 49-0390, and Rules for Alternative Contracting Methods at BPC 49-0600(incorporating by reference OAR 137-049-0600 to 137-049-0690).

B. Bid Evaluation Criteria.

Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

1. Lump Sum.
If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the City, for the purpose of comparing Bids.
2. Unit Price.
If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. (See BPC 49-0350(B)(2)).

C. Proposal Evaluation Criteria.

If the City's Contract Review Board has exempted the Procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335 (1), and has directed the City to use an Alternative Contracting Method under ORS 279C.335 (3), the City shall set forth the evaluation criteria in the Solicitation Documents. See BPC 49-0600(incorporating by reference OAR 137-049-0650, ORS 279C.335 and 279C.405).

49-0390 Offer Evaluation and Award; Determination of Responsibility

A. General.

If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a). The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

B. Determination of Responsibility.

Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City shall have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375(2)(b). To be a Responsible Offeror, the City must determine that the Offeror:

1. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;
2. Has a satisfactory record of contract performance. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The City shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
3. Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state safety and environmental laws or false certifications made to the City or other Contracting Agency. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under BPC 49-0370 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
4. Is qualified legally to contract with the City; and
5. Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

C. City Evaluation.

The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.

D. Offeror Submissions.

1. The City may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:
 - a. Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;
 - b. Examination of such elements as appearance or finish; or
 - c. Other examinations to determine whether the product conforms to Specifications.

2. The City shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The City shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The City's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

E. Evaluation of Bids.

The City shall use only objective criteria to evaluate Bids as set forth in the ITB. The City shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

1. Nonresident Bidders. In determining the lowest Responsive Bid, the City shall, in accordance with BPC 46-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
2. Clarifications. In evaluating Bids, the City may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
3. Negotiation Prohibited. The City shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

F. Evaluation of Proposals.

See BPC 49-0600(incorporating by reference OAR 137-049-0650 regarding rules applicable to Requests for Proposals).

49-0400 Documentation of Award; Availability of Award Decisions

A. Basis of Award.

After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.

B. Contents of Award Record for Bids.

The City's record shall include:

1. All submitted Bids;
2. Completed Bid tabulation sheet; and
3. Written justification for any rejection of lower Bids.

C. Contents of Award Record for Proposals.

Where the use of Requests for Proposals is authorized as set forth in BPC 49-0600(incorporating by reference OAR 137-049-0650), the City's record shall include:

1. All submitted Proposals.
2. The completed evaluation of the Proposals;
3. Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
4. If the City permitted negotiations in accordance with BPC 49-0600(incorporating by reference OAR 137-049-0650), the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

D. Contract Document.

The City shall deliver a fully executed copy of the final Contract to the successful Offeror.

E. Bid Tabulations and Award Summaries.

Upon request of any Person the City shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The City may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the City's Electronic Procurement System.

F. Availability of Solicitation Files.

The City shall make completed Solicitation files available for public review at City Hall.

G. Copies from Solicitation Files.

Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

49-0410 Time for City Acceptance; Extension; Intent to Award

A. Time for Offer Acceptance.

An Offeror's Bid, or Proposal submitted as a Firm Offer (see BPC 49-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

B. Extension of Acceptance Time.

The City may request, orally or in Writing that Offerors extend the time during which the City may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

C. Intent to Award.

Unless otherwise provided in the Solicitation Document, the City shall provide Written notice to all Offerors of the City's intent to award the Contract. The referral of a recommendation to the City Council or Contract Review Board to Award a Contract is sufficient notice of the City's intent to award the Contract. The City's award shall not be final until the later of the following:

1. Fourteen days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the award.

49-0420 Negotiation With Bidders Prohibited

A. Bids.

Except as permitted by ORS 279C.340 and BPC 49-0430 when all bids exceed the cost estimate, the City shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the City and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with BPC 49-0860.

B. Requests for Proposals.

The City may conduct discussions or negotiations with Proposers only in accordance with the requirements of BPC 49-0600(incorporating by reference OAR 137-049-0650).

49-0430 Negotiation When Bids Exceed Cost Estimate

A. Generally.

In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the City's Cost Estimate, prior to Contract Award the City may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the City's Cost Estimate. The subcontractor disclosure and substitution requirements of BPC 49-0360 do not apply to negotiations under this rule.

B. Definitions.

The following definitions apply to this administrative rule:

1. "Cost Estimate" means the City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
2. "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in BPC 49-0600(incorporating by reference OAR 137-049-0650), but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.
3. "Project" means a Public Improvement.
4. "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which either may increase or decrease absolute costs over varying time periods.

C. Rejection of Bids.

In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.

D. Scope of Negotiations.

The City shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the City to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit re-solicitation of trade subcontracts.

E. Discontinuing Negotiations.

The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

F. Limitation.

Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

G. Public Records.

To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

49-0440 Rejection of Offers

A. Rejection of an Offer.

1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
2. The City shall reject an Offer upon the City's finding that the Offer:
 - a. Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. Takes exception to terms and conditions (including Specifications);
 - c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d. Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
 - e. Is late;
 - f. Is not in substantial compliance with the Solicitation Documents;
 - g. Is not in substantial compliance with all prescribed public Solicitation procedures.
3. The City shall reject an Offer upon the City's finding that the Offeror:
 - a. Has not been prequalified under ORS 279C.430 and the City required mandatory prequalification;
 - b. Has been Disqualified;
 - c. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d. Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;
 - e. Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - f. Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - g. Has failed to provide the certification required under section 3 of this rule;
 - h. Is not Responsible. See BPC 49-0390(B) regarding City determination that the Offeror has met statutory standards of responsibility.

B. Form of Business.

For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and BPC 49-0370.

C. Certification of Non-Discrimination.

As part of the Offer the Offeror shall certify and deliver to the City Written certification, that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

D. Rejection of all Offers.

The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

E. Criteria for Rejection of All Offers.

The City may reject all Offers upon a Written finding that:

1. The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
2. The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
3. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
4. Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;
5. The City cancels the Solicitation in accordance with BPC 49-0270; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

49-0450 Protest of Contractor Selection, Contract Award

A. Purpose.

An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the City's Contractor selection or Contract Award decision.

B. Notice of Competitive Range.

Unless otherwise provided in the RFP, when the competitive proposal process is authorized under BPC 49-0600 (incorporating by reference OAR 137-049-0650), the City shall provide Written notice to all Proposers of the City's determination of the Proposers included in the Competitive Range. The City notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

1. 10 Days after the date of the notice, unless otherwise provided therein; or
2. Until the City provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

C. Notice of Intent to Award.

Unless otherwise provided in the Solicitation Document, the City shall provide Written notice to all Offerors of the City's intent to Award the Contract. The City's Award shall not be final until the later of the following:

1. Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

D. Right to Protest Award.

1. An adversely affected or aggrieved Offeror may submit to the City a Written protest of the City's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.
2. The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.
3. An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:
 - a. Because their Offers were nonresponsive; or
 - b. The City committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.
4. The City shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the City's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

E. Right to Protest Competitive Range.

1. An adversely affected or aggrieved Proposer may submit to the City a Written protest of the City decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFP's at BPC 49-0600(incorporating by reference OAR 137-049-0650).
2. The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.
3. A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:
 - a. Their Proposals were not responsive; or
 - b. The City committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.
4. The City shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the City's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

F. Authority to Resolve Protests.

The Mayor or the Mayor's designee may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

G. Decision.

If a protest is not settled, the head of the City, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

H. Award.

The successful Offeror shall promptly execute the Contract after the Award is final. The City shall execute the Contract only after it has obtained all applicable required documents and approvals.

49-0460 Performance and Payment Security; Waiver

A. Public Improvement Contracts.

Unless the required performance bond is waived under ORS 279C.380 (1)(a), excused in cases of emergency under ORS 279C.380 (4), or unless the Contract Review Board exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. However, under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a).

B. Other Construction Contracts.

The City may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

C. Requirement for Surety Bond.

The City shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the City may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.

D. Time for Submission.

The apparent successful Offeror must promptly furnish the required performance security upon the City request. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City discretion, the Offeror shall forfeit its Bid or Proposal security.

49-0470 Substitute Contractor

If the Contractor provided a performance bond, the City may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS chapter 279C.

49-0490 Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

ALTERNATIVE CONTRACTING METHODS

49-0600 Incorporation by Reference

OAR 137-049-0600 to 137-049-690 relating to Alternative Contract Methods for Public Improvement Contracts are hereby incorporated by reference into this Code and made applicable to the City. Those methods include, but are not limited to the following forms of contracting.

1. Requests for Proposals;
2. Design – Build;
3. Energy Savings Performance Contract (ESPC); and
4. Construction Manager/General Contractor (CM/GC)

49-0610 [Reserved]

49-0620 [Reserved]

49-0630 [Reserved]

49-0640 [Reserved]

49-0650 [Reserved]

49-0660 [Reserved]

49-0670 [Reserved]

49-0680 [Reserved]

49-0690 [Reserved]

CONTRACT PROVISIONS

49-0800 Required Contract Clauses

The City shall include in all formal Solicitations for Public Improvement Contracts all of the ORS chapter 279C required Contract clauses, as set forth in the checklist contained in BPC 49-0200(A)(3) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

49-0810 Waiver of Delay Damages Against Public Policy

The City shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the City's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

49-0820 Retainage

A. Withholding of Retainage.

Except to the extent the City's Charter or City ordinance laws require otherwise, the City shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the City may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The City shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the City may, at its discretion and without application

by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. The City may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

B. Deposit in interest-bearing accounts.

Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor.

C. Alternatives to cash retainage.

In lieu of cash retainage to be held by the City, the Contractor may substitute one of the following:

1. Deposit of securities:

- a. The Contractor may deposit bonds or securities with the City or in any bank or trust company to be held for the benefit of the City. In such event, the City shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.
- b. Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the City Attorney or City Finance Director, which may include, without limitation:
 - i. Bills, certificates, notes or bonds of the United States.
 - ii. Other obligations of the United States or its Contracting Agencies.
 - iii. Obligations of any corporation wholly owned by the Federal Government.
 - iv. Indebtedness of the Federal National Mortgage Association.
- c. Upon the City determination that all requirements for the protection of the City interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

2. Deposit of surety bond.

The City, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the City in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

D. Recovery of costs.

By reduction of the final payment, the City may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities.

49-0830 Contractor Progress Payments

A. Request for progress payments.

Each month the Contractor shall submit to the City its Written request for a progress payment based upon an estimated percentage of Contract completion. At the City discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the City will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the City for any cause; and (iv) less the appropriate amount of retainage.

B. Progress payments do not mean acceptance of Work.

Progress payments shall not be construed as an acceptance or approval of any part of the Work and shall not relieve the Contractor of responsibility for defective workmanship or material.

49-0840 Interest

A. Prompt payment policy.

The City shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

B. Interest on progress payments.

Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after City approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, up to a maximum rate of 30 percent.

C. Interest on final payment.

Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

D. Settlement or judgment interest.

In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the City in Writing or otherwise in accordance with the Contract requirements.

49-0850 Final Inspection

A. Notification of Completion; inspection.

The Contractor shall notify the City in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the City will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

B. Acknowledgment of acceptance.

When the City finds that all Work required under the Contract has been completed satisfactorily, the City shall acknowledge acceptance of the Work in Writing.

49-0860 Public Works Contracts

A. Generally.

ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

B. Required Contract Conditions.

As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

1. City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
2. Maximum hours of labor and overtime, as set forth in ORS 279C.520 (1).
3. Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
4. Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

5. Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
6. Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

C. Requirements for Specifications.

The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotes or similar procurement Specifications), must contain the following provisions:

1. The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement Specifications, and by a downloadable direct link to the specific wage rates that apply to the project (on the BOLI Web site) when procurement Specifications are also made available in electronic format.
2. Reference to payment of fee to BOLI, as required by ORS 279C.830(2)

49-0870 Specifications; Brand Name Products

A. Generally.

The City Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

B. Equivalents.

The City may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The City shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

49-0880 Records Maintenance; Right to Audit Records

A. Records Maintenance; Access.

Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the City at reasonable times and places, whether or not litigation has been filed as to such claims.

B. Inspection and Audit.

The City may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

C. Records Inspection; Contract Audit.

The City, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

49-0890 City Payment for Unpaid Labor or Supplies

A. Contract incomplete.

If the Contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the City chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

B. Contract completed.

If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to subcontractors or suppliers for Work already paid for by the City.

49-0900 Contract Suspension; Termination Procedures

A. Suspension of Work.

In the event the City suspends performance of Work for any reason considered by the City to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

B. Termination of Contract by mutual agreement for reasons other than default.

1. Reasons for termination.

The parties may agree to terminate the Contract or a divisible portion thereof if:

- a. The City suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and
- b. Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

2. Payment.

When a Contract, or any divisible portion thereof, is terminated pursuant to this section (B), the City shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The City shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

C. Public interest termination by City.

The City may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the City unilaterally terminates the Contract for any reason considered by the City to be in the public interest.

D. Responsibility for completed Work.

Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

E. Remedies cumulative.

The City may, at its discretion, avail itself of any or all rights or remedies set forth in this Code, in the Contract, or available at law or in equity.

49-0910 Changes to the Work and Contract Amendments

A. Definitions for Rule. As used in this rule:

1. "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the City and the Contractor.
2. "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the City or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

B. Changes Provisions.

Changes to the Work are anticipated in construction and, accordingly, the City shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the City or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by the City.

C. Change Order Authority.

The City may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not exclusively set by this Code, but such changes are limited by the above definition of that term.

D. Contract Amendments.

Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

1. They are within the general scope of the original Procurement;
2. The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency contract;
3. In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and
4. The Amendment is made consistent with applicable legal requirements.

TABLE OF CONTENTS
CITY OF BEAVERTON PURCHASING CODE
CHAPTER 50
EXEMPTIONS FOR PURCHASE OF GOODS OR SERVICES

50-0005	Purpose.....	3
50-0010	Legal Authority	3
50-0015	Special Procurements: Single Contract; Single Class	3
	A. Generally.....	3
	B. Public Notice.....	3
	C. Protest.....	3
50-0020	Small Procurements.....	3
	A. Generally.....	3
	B. Amendments.....	4
50-0025	Intermediate Procurements.....	4
	A. Generally.....	4
	B. Negotiations.....	4
	C. Amendments.....	4
50-0030	Sole-source Procurements	4
	A. Generally.....	4
	B. Public Notice.....	4
	C. Negotiate.....	4
	D. Protest.....	5
50-0035	Contract Amendments.....	5
	A. Authorization.....	5
	B. Aggregate Increase Limitations.....	5
	C. Contract Renewal or Extension	6
	D. Procedure.....	6
50-0040	Emergency Procurements.....	6
	A. Authorization.....	6
	B. Declaration of Emergency Required	6
	C. Mandatory Actions	6
	D. Time Limitation.....	7
	E. Notification.....	7
50-0045	Equipment Repair and Overhaul	7
	A. Authorization.....	7
	B. Notification.....	7
50-0050	Contracts for Price Regulated Items.....	7
50-0055	Purchases Under Federal Contracts.....	7
	A. Authorization.....	7
	B. Limitations.....	7
50-0060	Advertising Contracts.....	8
50-0065	Copyrighted Materials.....	8
50-0070	Investment Contracts.....	8
50-0075	Product or Service-Provider Prequalification.....	8
	A. Authorization.....	8
	B. Appeal of Denial	8
50-0080	Requirements Contracts	8
	A. Authorization.....	8
	B. Limitations.....	9
	C. Procedures	9
50-0085	Purchase of Used Personal Property.....	9
	A. Authorization.....	9
	B. Solicitation Methods.....	9
	C. Definition	9

50-0090	Employee Benefits and Insurance	9
50-0095	Insurance Contracts	10
50-0100	Cooperative Procurements	10
50-0105	Ancillary Public Improvements.....	10
50-0110	Other Agency Contracts	10
50-0115	Brand Names or Products, "or Equal" and Single Seller.....	11
	A. Authorization.....	11
	B. "Or Equal" Suffix.....	11
	C. Brand Names	11
	D. Protest and Judicial Review.....	12
	E. Single Manufacturer; Multiple Sellers.....	12
50-0120	Reserved.....	12
50-0125	Reserved.....	12
50-0130	Reserved.....	12
50-0135	Reserved.....	12
50-0140	Legal Services – Related Contracts.....	12
50-0145	Appointment of Professional Consultants	12
	A. Authorization.....	12
	B. Screening and Selection of Consultants for Retainer	12
	C. Maintenance of Roster.....	14
	D. Screening and Selection of Consultant for a Specific Project	14
	E. Negotiation of Supplemental Contract	15
	F. Exemption Nonexclusive.....	15
	G. Contract Review Board Approval	15
50-0170	Renegotiated Contract	15
50-0175	Amendment of Price Agreements.	16

CITY OF BEAVERTON PURCHASING CODE

CHAPTER 50

EXEMPTIONS FOR PURCHASE OF GOODS OR SERVICES

50-0005 Purpose

The provisions herein establish exemptions to the City's public procurement rules relating to Public Contracts for Goods or Services. These exemptions are in addition to other exemptions provided for under state law (See e.g.: ORS 279B.065 – 279B.085). These exemptions, together with those provided for under state law, allow the City to enter into certain Public Contracts or classes of Public Contracts with limited or no competitive procurement. Absent such exemptions, every Public Contract for Goods or Services would have to be let by formal competitive Bid or Proposal ("formal competitive procurement").

50-0010 Legal Authority

Under ORS 279A.065, ORS 279B.085 and related state statutes, the Contract Review Board may exempt certain Public Contracts and classes of Public Contracts for the procurement of Goods and Services from the requirements of formal competitive procurement upon the Contract Review Board's finding that (i) it is unlikely that the exemption will encourage favoritism in awarding the Contract or will substantially diminish competition for the Contract and (ii) the award of the Contract pursuant to the exemption will result in substantial cost savings to the City. In making the cost savings finding, the Contract Review Board may consider the type, cost, and amount of the Contract, number of persons available to submit a Bid or Proposal and such other factors as may be deemed appropriate. In connection with the enactment of the exemptions contained in this chapter, the Contract Review Board considered and approved findings and conclusions, which can be reviewed by contacting the City's Purchasing Agent or the City Recorder and requesting Resolution 3804 and Exhibit 3 to Agenda Bill 05022.

50-0015 Special Procurements: Single Contract; Single Class

A. Generally.

The City may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

B. Public Notice.

The City shall give public notice of (1) its request for approval of a Special Procurement and (2) the Contract Review Board's approval of a Special Procurement in a manner similar to public notice of competitive sealed Bids under BPC 47-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of its request for approval of a Special Procurement at least seven (7) Days prior to the approval of the Special Procurement by the Contract Review Board. The City shall give such public notice of the approval of a Special Procurement at least fourteen (14) Days before Award of the Contract.

C. Protest.

An Affected Person may protest the approval of or request for approval of a Special Procurement in accordance with BPC 47-0700.

[OAR 137-047-0285]

50-0020 Small Procurements

A. Generally.

For Procurements of Goods or Services less than or equal to \$5,000, the City shall, where practical, obtain three informally solicited competitive verbal quotes, Bids or Proposals. The City shall keep a record of the source and amount of the quotes, Bids or Proposals received. If three informally solicited competitive verbal quotes, Bids or Proposals are not available, fewer quotes, Bids or Proposals will suffice, provided a record is made of the effort to obtain the quotes, Bids or Proposals.

B. Amendments.

The City may amend a Public Contract Awarded as a small Procurement in accordance with BPC 50-0035. [OAR 137-047-0265]

50-0025 Intermediate Procurements

A. Generally.

For Procurements of Goods or Services greater than \$5,000 and less than or equal to \$50,000, the City shall obtain a minimum of three informally solicited competitive Written quotes, Bids or Proposals. The City shall keep a record of the source and amount of the quotes, Bids or Proposals received. If three informally solicited competitive Written quotes, Bids or Proposals are not available, fewer quotes, Bids or Proposals will suffice, provided a record is made of the effort to obtain the quotes, Bids or Proposals.

B. Negotiations.

The City may negotiate with a Proposer to clarify its quote, Bid or Proposal, or to effect modifications that will make the quote, Bid or Proposal acceptable or make the quote, Bid or Proposal more Advantageous to the City.

C. Amendments.

The City may amend a Public Contract Awarded as an intermediate Procurement in accordance with BPC 50-0035. [OAR 137-047-0270]

50-0030 Sole-source Procurements

A. Generally.

The City may award a Public Contract without competition as a sole-source procurement or services if the Goods or Services are available from only one seller or source.

In all instances, approval of the purchase of a Goods or Services from the single seller or source shall be contingent upon a documented written decision by the applicable decision-maker (i.e., either the Contract Review Board or the Finance Director, depending on the expected value of the Contract) that in the particular instance under consideration, the Goods or Services, or class of Goods or Services, are available from only one source. The determination of a sole source must be based on written findings that may include:

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; or
4. Other findings that support the conclusion that the Goods or Services are available from only one source.

B. Public Notice.

If, but for the City's determination that it may enter into a Contract as a sole-source, the City would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, the City shall give public notice of the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055 (4) and BPC 47-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The City shall give such public notice at least fourteen (14) Days before Award of the Contract.

C. Negotiate.

To the extent reasonably practical, the City shall negotiate with the sole source to obtain Contract terms advantageous to the City.

D. Protest.

An Affected Person may protest the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with BPC 47-0710.
[OAR 137-047-0275]

50-0035 Contract Amendments

A. Authorization.

The City may amend a Contract without additional competition to add additional Goods or Services within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, or in the instance of a Special Procurement the approval of Special Procurement subject to the following conditions:

1. The original Contract was Awarded pursuant to BPC 47-0265(Small Procurements), BPC 47-0270(Intermediate Procurements), BPC 47-0275(Sole-source Procurements), BPC 47-0285(Special Procurements), or BPC 46-0400 through BPC 46-0470(Cooperative Procurement); or
2. The Original Contract has been let pursuant to a declaration of emergency, in accordance with BPC 47-0280 and the Contract Amendment is made within 60 days of the declaration of emergency; or
3. One of the following two conditions is satisfied:
 - a. The additional Goods or Services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract; or
 - b. The prices for the Goods or Services are modified only as follows:
 - i. When prices for the Goods or Services are based on unit prices, unit prices that establish the cost basis for the additional Goods or Services were provided in the Offer or original Contract and those prices do not increase except as permitted by an escalation clause in the Contract; or
 - ii. When prices for the Goods or Services are not based on unit prices, options that establish the cost basis for the additional Goods or Services were provided in the Solicitation Document, Offer, or original Contract.

B. Aggregate Increase Limitations.

The authority to amend contracts under this section is limited by the affect the amendment has on contract price.

1. Generally, the maximum increase resulting from all Contract Amendments shall not exceed 25% of the initial Contract Price absent Contract Review Board approval; provided, however, that the amount of a Contract Amendment entered into pursuant to the authority of subsection A (1) – (3) of this section shall not be added to the base for calculating the 25% maximum limit. For example, in the course of construction related to a \$100,000 Contract to add on to a building, asbestos is discovered. The initial Contract is amended by issuance of a \$50,000 Amendment to prevent environmental pollution and remove the asbestos. Specific Contract Review Board approval is not required if all necessary conditions set forth in one or more of the number paragraphs of subsection A are met. Later, an \$18,000 Amendment is issued to deal with new design features. The \$18,000 Amendment is permitted without specific Contract Review Board approval because the Amendment does not exceed 25% of the initial \$100,000 Contract Price. A second Amendment in the amount of \$9,000 would need Contract Review Board approval because the two \$18,000 and \$9,000 Amendments taken together total more than \$25,000.
2. If the Original Contract was let under authority of BPC 47-0270 and valued under \$50,000, the cumulative amendments (Original Contract amount and all Amendments) shall not increase the Contract price to greater than \$50,000 absent the Contract Review Board approval. Before approving such a request, the City shall provide to the Contract Review Board in Writing the following information:
 - a. An explanation of the need for the Amendment;

- b. An explanation why the additional Work was not included in the original scope of Work; and
 - c. An estimated cost of the additional Work.
3. If the Original Contract was let under authority of BPC 47-0265 and valued under \$5,000, the cumulative amendments shall not increase the Contract price to greater than \$6,000 absent Finance Director approval. Before approving such a request, the City shall provide to the Finance Director in writing the following information:
- a. An explanation of the need for the Amendment;
 - b. An explanation why the additional Work was not included in the original scope of Work; and
 - c. An estimated cost of the additional Work.

C. Contract Renewal or Extension.

An original contract may be extended or renewed for a single term not to exceed one year, if renewal or extension is advantageous to the City.

D. Procedure.

The Department responsible for Contract Administration shall:

- 1. Prepare a required Written justification for a Contract amendment;
- 2. Submit the proposed Contract amendment and supporting documentation to the Purchasing Agent; and
- 3. Obtain necessary approvals before the Contract amendment is effective.

The Purchasing Agent will review any proposed Contract amendment for completeness, and submit the request to the appropriate decision maker.

All Contract amendments must be made in Writing.

50-0040 Emergency Procurements

A. Authorization.

Pursuant to the requirements of this Code, the City may enter into a Public Contract without formal competitive procurement if an emergency exists.

B. Declaration of Emergency Required.

The City Council, Mayor or another officer authorized by the City shall declare the existence of the emergency, as required by subsection C of this section, which shall authorize the City to enter into an emergency Contract.

C. Mandatory Actions.

Regardless of the dollar value of the Contract, when the City enters into an emergency Contract, the City shall:

- 1. Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis;
- 2. Encourage competition to the extent reasonable under the circumstances; and
- 3. Record the measures taken under subsection (2) of this section to encourage competition, the amounts of the quotes, Bids or Proposals obtained, and the reason for selecting the Contractor.

D. Time Limitation.

Any Contract awarded under this exemption and delegation shall be awarded within 60 days following declaration of the emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency.

E. Notification.

For Contracts greater than \$50,000 in value, the City shall notify the Contract Review Board of the existence of such Contract by submitting a copy of the Written documentation required in subsections A and B of this section to the Contract Review Board within 60 days following the declaration of an emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency. If the Contract Review Board grants such an extension, the City shall submit such documentation on or before expiration of the extension.

[OAR 137-047-0280]

50-0045 Equipment Repair and Overhaul

A. Authorization.

The City may enter into a Public Contract for equipment repair or overhaul without formal competitive procurement if the cost of equipment repair or overhaul is expected not to exceed \$50,000, subject to the following conditions:

1. Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
2. Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and
3. In either instance, the City documents in its procurement file the reasons why Competitive Bids or Proposals were deemed to be impractical under this section.

When the cost of equipment repair or overhaul is expected to exceed \$50,000, the City shall obtain Contract Review Board authorization before proceeding with the purchase of the needed repair or overhaul.

B. Notification.

If repairs or overhauls are commenced under a belief that the cost will not exceed \$50,000, but in fact the actual cost is equal to or greater than \$50,000, the City shall submit a copy of the Written documentation required in subsection A of this section to the Contract Review Board within 60 days following the repair or overhaul, unless the Contract Review Board grants a reasonable extension of time for reasons related to the repair or overhaul.

50-0050 Contracts for Price Regulated Items

The City may, regardless of dollar value and without formal competitive procurement, Contract for the direct purchase of Goods or Services where the rate or price for Goods or Services being purchased is established by federal, state, or local regulatory authority.

50-0055 Purchases Under Federal Contracts

A. Authorization.

When the price of Goods or Services has been established by a Contract with an agency of the federal government pursuant to a federal Contract award, the City may purchase Goods or Services in accordance with the federal Contract without further formal competitive procurement.

B. Limitations.

In exercising this authority under this exemption, the City shall:

1. Obtain and document permission from the appropriate federal agency granting permission to the City to purchase under the federal Contract;

2. Document the cost savings to be gained for the City from the anticipated purchase from the federal Contract;
3. Forego Contracting pursuant to this exemption absent a demonstrable cost savings; and
4. Obtain Contract Review Board approval before proceeding with the purchase under this provision if the cost of purchase is expected to be equal to or greater than \$50,000.

50-0060 Advertising Contracts

The City may purchase advertising, regardless of dollar value, without formal competitive procurement.

50-0065 Copyrighted Materials

The City may, without formal competitive procurement and regardless of dollar amount, purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials that may be covered by this exemption may include, but are not limited to, textbooks, instructional materials, library materials, workbooks, curriculum kits, reference materials, audio and visual media, and non-mass-marketed software.

50-0070 Investment Contracts

The City may, without formal competitive procurement, and regardless of dollar amount, Contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is Contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

50-0075 Product or Service-Provider Prequalification

A. Authorization.

When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of service or product to be purchased, the City may specify a list of approved or qualified service providers or products by reference to a list of prequalified service providers or products of particular manufacturers or vendors in accordance with the following Prequalification procedure:

1. The City shall make reasonable efforts to notify all known competing service providers or manufacturers and vendors of competing products of the City's intent to compile a list of prequalified service providers or products. The notice shall explain the opportunity competing service providers, manufactures and vendors have to submit applications for including their services or products on the list of the City's prequalified products or service providers. At its discretion, the City may provide notice by advertisement in the Daily Journal of Commerce or other trade journal of state-wide distribution; or, instead of advertising, the City may provide Written notice to service providers, manufacturers and vendors appearing on the appropriate list maintained by the City; and
2. The City shall accept service provider, manufacturer and vendor applications to include products or services in the City's list of prequalified services or products up to 15 calendar days prior to the initial advertisement for Bids or Proposals for the type of service or product to be purchased, unless otherwise specified in the advertisement or the City's Written notice.

B. Appeal of Denial.

If the City denies an application for including a service or product on a list of prequalified service providers or products, the City shall promptly provide the applicant with Written notice of the denial and include the reason for the denial. The applicant may submit a Written appeal to the Contract Review Board requesting review and reconsideration of the denial.

50-0080 Requirements Contracts

A. Authorization.

The City may enter into a Requirements Contract whereby the City agrees for a period not to exceed five years to purchase Goods or Services for an anticipated need from one or more Contractors at a predetermined price. The predetermined price may be market price at the time the anticipated need actually arises. The City may then

purchase the Goods and Services from a Contractor awarded the Requirements Contract without further formal competitive procurement.

B. Limitations.

A Requirements Contracts may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining City requirements for volume discounts, standardization among agencies, or reducing lead-time for ordering. The term of a Requirements Contract, including renewals, shall not exceed five years, unless specifically permitted by the Contract Review Board.

C. Procedures.

If the City intends to let a Contract under this section, (so as to be able to make multiple purchases of a good or service over a period of time) the City shall state the duration of the Contract in the solicitation file and Solicitation Document if any. If the anticipated total purchase amount over the life of a Contract let pursuant to this section is valued at \$50,000 or more, notice of such fact shall be stated in the published advertisement for Bids or Proposals. Such documentation and/or publication shall be sufficient notice as to subsequent purchases.

50-0085 Purchase of Used Personal Property

A. Authorization.

The City may purchase used property or equipment without formal competitive procurement if the Finance Director makes a Written determines that the purchase:

1. Will result in cost savings to the City; and
2. Will not diminish competition or encourage favoritism.

B. Solicitation Methods.

For purchase of used personal property or equipment valued under \$5,000, the City shall, where practical, obtain three informally solicited competitive verbal quotes, Bids or Proposals. The City shall keep a record of the source and amount of the quotes, Bids or Proposals received. If three quotes, Bids or Proposals are not readily available, fewer quotes, Bids or Proposals will suffice, provided a record is made of the effort to obtain three quotes, Bids or Proposals.

For purchases of used personal property or equipment costing \$5,000 or greater, the City shall, where practical, obtain three informally solicited competitive Written quotes, Bids or Proposals. The City shall keep a Written record of the source and amount of the quotes, Bids or Proposals received. If three Written quotes, Bids or Proposals are not available, fewer quotes, Bids or Proposals will suffice, provided a Written record is made of the effort to obtain the quotes, Bids or Proposals. Prior to purchase,

Prior to purchase of used personal property or equipment valued over \$50,000, the Finance Director shall obtain the contract review board 's approval of the expenditure

C. Definition.

As used in this section, the term "used personal property or equipment" means property or equipment that has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as used at the time of the City's purchase. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

50-0090 Employee Benefits and Insurance

The City may purchase employee benefits and insurance without formal competitive procurement. Employee benefits and insurance includes medical insurance, dental insurance, vision insurance, life insurance, accidental death and dismemberment insurance, long-term care insurance, employee long-term disability insurance, unemployment insurance, and deferred compensation plans.

50-0095 Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$50,000 must be let by formal competitive procurement or by one of the following two procedures:

1. The City may appoint a licensed insurance agent as its "Agent of Record." The Agent of Record shall serve as the City's representative in the insurance market.
 - a. The services the Agent of Record shall provide the City include, but are not limited to, insurance Contract review, loss control, loss forecasting, business needs assessments and securing competitive Proposals from insurance carriers for all the City's coverage's for which the Agent of Record is given responsibility.
 - b. Prior to the selection of an Agent of Record, the City shall make a reasonable effort to inform known insurance agents in Oregon. These efforts shall include advertisement in a publication of general circulation. The advertisement shall include a general description of the nature of the insurance that the City will require.
 - c. In selecting its Agent of Record, the City shall select an agent it determines most likely to perform the most cost-effective services; price alone need not be the only criterion considered in selecting the Agent of Record. The agent may be compensated through commissions paid by insurance companies on the City's account.
 - d. An appointment as the City's Agent of Record shall not exceed a period of five years, but the same agent may be selected in subsequent periods.
2. The City may solicit Bids or Proposals from licensed insurance agents for the purpose of acquiring specific insurance Contracts.
 - a. The City shall make reasonable efforts to inform known insurance agents in the competitive market area that the City is considering such selection. These efforts shall include advertisement in a publication of general circulation.
 - b. In selecting an insurance Contract, the City shall select the insurance Contract most likely to provide the City the most cost-effective coverage; premium cost alone need to be the only criterion considered in selecting a specific insurance Contract. Other factors that may be considered in selecting an insurance Contract include, but are not limited to coverage, financial stability of the insurer, and loss control services to be provided.

50-0100 Cooperative Procurements

The City may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in BPC 46-0400 through BPC 46-0480.

50-0105 Ancillary Public Improvements

A Contract entered into between the City and a developer for Public Improvements that is additional to the Public Improvements the City requires the developer to install as a condition of a development permit is exempt from formal competitive procurement if the additional Work is reasonably related to the Public Improvements required as a condition of the development permit and the cost of the additional work does not exceed \$50,000.

50-0110 Other Agency Contracts

A Contract for the purchase of Goods or Services, other than public improvements or personal services, from an Entity that is selling substantially identical Goods or Services under Contract with another public agency (the "Originating Agency") is exempt from formal competitive procurement if:

1. The Originating Agency selected the Contractor through a competitive process that complied with this Code;

2. The City's Contract is executed no later than one year after the award date of the Contract with the Originating Agency; and
3. The City's Contract contains the same Contract conditions as the Originating Agency's Contract and the Originating Agency's Contract permits the City to purchase Goods or Services at the same unit prices or rates offered to the Originating Agency. For purposes of this subsection, the City's Contract contains the same Contract Conditions as the Originating Agency's Contract notwithstanding that the City's Contract contains price adjustments for minor modifications to customize the Goods or Services to the City's specifications and other minor specification modifications to conform timing and place of performance to City's requirements. A specification modification will be considered minor if it does not change the brand, model, primary purpose or function of the Goods or Services and does not result in a unit price or rate adjustment of more than five percent of the unit prices or rates set forth in the originating agency's Contract.

The City shall obtain Contract Review Board approval before proceeding with the purchase under this section if the cost of purchase is expected to be equal to or greater than \$50,000.

50-0115 Brand Names or Products, "or Equal" and Single Seller

A. Authorization.

Solicitation Specifications for Public Contracts for Goods or Services shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections B and C of this section.

B. "Or Equal" Suffix.

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.

The City is entitled to determine upon any reasonable bases what constitutes a product that is equal or superior to the product specified, and any such determination is final.

Nothing in this subsection 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.

C. Brand Names.

A brand name specification may be prepared and used only if the City determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of the City based on one or more of the following written determinations:

1. That use of a brand name specification is unlikely to encourage favoritism in the awarding of public Contracts or substantially diminish competition for public Contracts;
2. That use of a brand name specification would result in substantial cost savings to the City;
3. That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or
4. That efficient utilization of existing goods requires the acquisition of compatible Goods or Services.

The Contract Review Board must approve a Specification of a brand name, make or product without an "or equal" or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued at \$50,000 or more.

The Finance Director must approve a Specification of a brand name, make or product without an "or equal" or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued under \$50,000.

D. Protest and Judicial Review.

The City's use of a brand name specification may be subject to review only as provided in BPC 50-0115 (C).

E. Single Manufacturer; Multiple Sellers.

The City may specify a particular good or service available from only one manufacturer, but through multiple sellers.

50-0120 Reserved

50-0125 Reserved

50-0130 Reserved

50-0135 Reserved

50-0140 Legal Services – Related Contracts

Contracts for legal counsel, expert witnesses, court-appointed attorneys, stenographers and other legal service providers are exempt from formal competitive procurement and may be hired based upon the judgment of the City Attorney. The City Attorney shall obtain City Council approval of any expenditure for legal services paid to a single legal services provider that is expected to exceed \$50,000. In addition, except for legal counsel hired by the City to provide legal services to indigent criminal defendants prosecuted by the City, the City Attorney shall select and retain all outside legal counsel hired by the City subject to the approval of the City Council.

50-0145 Appointment of Professional Consultants

A. Authorization.

The City may screen and select professional consultants, including architects, engineers, planners, land surveyors and related engineering professionals (hereinafter "Consultants") without formal competitive procurement as provided by this section.

B. Screening and Selection of Consultants for Retainer.

The City shall screen and select Consultants to be placed on retainer as follows:

1. The City shall furnish public notice of a solicitation under this section in accordance with section BPC 47-0300.
2. The City may hold a pre-proposal conference with prospective Proposers prior to closing in accordance with section BPC 47-0420.
3. An RFP under this section shall conform to section BPC 47-0260 and, in addition, shall identify any terms and conditions in the Solicitation Document that are subject to negotiation. The Solicitation Documents may permit Proposers to propose alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. In all cases, the City may negotiate the terms and conditions of a personal services contract in order to provide the city with optimal value and risk protection.
4. An evaluation committee shall evaluate Proposals consistent with the process described in the RFP and applicable law. The Proposal evaluation committee shall consist of any number of City employees and, if desired, members of the community, all with experience relevant to the RFP. Evaluators shall be selected on the basis of their ability to provide an objective, relevant and impartial evaluation of the Proposals. If there is a conflict of interest, the evaluator shall declare this in Writing and shall be excluded from participating in the evaluation.
5. The Proposal evaluation committee may evaluate the qualifications of all Proposers without benefit of an interview, or may interview all Proposers prior to evaluation, or may evaluate all Proposers and select one or more Proposers for interview and subsequent re-evaluation. In all instances, the Proposal Evaluation Committee's evaluation of Proposals shall be with regard to the evaluation criteria set out in the RFP. The interview of a Proposer may be conducted through any appropriate medium.

Prior to award, the City may require a Proposer to submit Product Samples, Descriptive Literature, technical data, or other material. Also prior to award, the City may require demonstration, inspection or testing of a product or service.

6. In evaluating Proposals, the City may seek clarification from a Proposer. Such clarification shall not vary, contradict or supplement the Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.
7. If an initial evaluation of Proposals reveals no likely satisfactory Proposer, the Solicitation may be cancelled or reduced in scope at any time the City determines it is in the public interest to do so.
8. The City shall evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. Evaluation criteria may include, but are not limited to, the following:
 - a. Availability and capability to perform the work;
 - b. Experience of key staff on comparable projects, or in performing comparable services;
 - c. Design talent and technical competence, including an indication of the planning process expected to be used in the work;
 - d. Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
 - e. References from past clients, public and private;
 - f. Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules and contract administration;
 - g. Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;
 - h. Status and quality of any required licensing or certification;
 - i. Familiarity with the City, including knowledge of local infrastructure and/or City design and construction specifications or techniques;
 - j. Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
 - k. Fees or costs and any cost management techniques proposed for use;
 - l. Results from oral interviews, if conducted;
 - m. Availability of any specific required resources or equipment;
 - n. Geographic proximity to the project or the area where the services will be performed;
 - o. Identity of proposed subcontractors and their qualifications;
 - p. Ability to communicate effectively; and
 - q. Any other identified criteria deemed relevant to the provision of services.

9. If no evaluation criteria are set forth in a Request for Proposal, all the evaluation criteria listed above (except criterion) shall be considered equally in evaluating submitted Proposals. After evaluation of all Proposals, the City will rank the Proposers. Before ranking Proposers, the City may establish a minimum level of qualification. The level of minimum qualification may be adjusted if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers are closely competitive and more likely than not minimally qualified.
10. If the City establishes a minimum level of qualification, then upon concluding the evaluation of Proposals, the City shall provide Written notice to all Proposers identifying those Proposers at or above the minimum level of qualification.
11. A Proposer found to rank below the minimum level of qualification may protest the City's evaluation and determination of the ranking in accordance with BPC 47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations. This initial protest period forecloses the right of Proposers who are found below the minimum level of qualification to protest final selection for a specific project.
12. After the protest period expires, or after the City has provided a final response to any protest, whichever date is later, the City shall invite each selected consultant to enter into a retainer agreement. The retainer agreement may have up to a three-year term and must be a form of agreement approved by the City Attorney.

C. Maintenance of Roster.

The Purchasing Agent or designee shall maintain and publish a current roster of all Consultants chosen for retainer agreements by the City. The Contract Administrator shall maintain a record of the Consultants hired to work on a specific project.

D. Screening and Selection of Consultant for a Specific Project.

The procedures the City shall follow when contracting for professional consulting services with regard to a specific project will depend upon a combination of factors including the total anticipated fee and the Contract Administrator's evaluation of which Consultant will likely provide the best value to the City in the context of a specific project.

1. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at under \$250,000, the Contract Administrator shall select from the Consultants on retainer to the City the Consultant who the Contract Administrator considers the most qualified to provide the best value to the City on a specific project.
 - a. The Contract Administrator's selection shall be made upon the evaluation of the following equally-weighted criteria:
 - Consultant's cost as shown by fee schedule;
 - Consultant's technical competencies relevant to the specific project;
 - Consultant's availability to perform desired services in a timely manner; and
 - Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.
 - b. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at under \$250,000. For purposes of this section, "good cause" includes a Consultant's specialized knowledge about a specific project or expertise regarding a needed professional service.
 - c. A Consultant on retainer who is not selected to perform work for the City on a specific project may protest the selection of a Consultant in accordance with BPC 47-0740 Protests and Judicial Review of Contract Award.
2. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$250,000 or more, but under \$350,000, the Contract Administrator shall first select from the Consultants on retainer to the City a minimum

of two Consultants who the Contract Administrator considers most qualified to provide the best value to the City on a specific project.

- a. The Contract Administrator's selection of these consultants shall be made upon the Contract Administrator's evaluation of the following equally-weighted criteria:
 - Consultant's cost as shown by fee schedule;
 - Consultant's technical competencies relevant to the specific project;
 - Consultant's availability to perform desired services in a timely manner; and
 - Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.
 - b. The Contract Administrator shall next prepare an RFP for personal services to notify each of the selected Consultants of the proposed work for the specific project. The RFP shall conform to the standards set forth in BPC 47-0260 and shall include Consultant's retainer agreement and a supplemental contract.
 - c. The City need not furnish public notice of the solicitation under this subsection D2. Except as provided by this subsection D2, the procedure for screening and selecting Consultants with regard to a specific project shall conform with the provisions of chapter 47.
 - d. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at \$250,000 or more, but under \$350,000. For purposes of this section, "good cause" includes a Consultant's specialized knowledge about a specific project or expertise regarding a needed professional service.
3. For professional service contracts with an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$350,000 or more, the City shall procure personal services through formal competitive procurement, unless otherwise permitted by state law or this Code.

E. Negotiation of Supplemental Contract.

The Contract Administrator shall negotiate the supplemental terms and conditions of the retainer agreement with the selected Consultant. If a mutually satisfactory supplemental contract cannot be agreed to, the Contract Administrator may select another Consultant to work on the project using any method permitted by this Code. In those instances where more than one Responsive Proposal has been received by the City for a specific project, the Contract Administrator may select the Consultant submitting the next best Responsive Proposal if a mutually satisfactory supplemental contract cannot first be agreed to with the Consultant submitting the best Responsive Proposal.

F. Exemption Nonexclusive.

Nothing in this section prevents the City from selecting a Consultant through formal competitive procurement or as permitted by section 50-0140.

G. Contract Review Board Approval.

Before the City executes a Personal Services Contract valued at more than \$50,000, the Contract Review Board shall approve the Contract.

50-0170 Renegotiated Contract

The City may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the City, subject to the following conditions:

1. The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, or in the instance of a Special Procurement the approval of Special Procurement;
2. The City must determine that, with all things considered, the renegotiated Contract is at least as favorable to City as the original Contract; and

3. The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if multiple Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than the longest term of any of the prior Contracts.
4. If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.
5. If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

50-0175 Amendment of Price Agreements

The City may amend or terminate a Price Agreement as follows:

1. As permitted by the Price Agreement;
2. If the circumstances set forth in ORS 279B.140(2) exist; or
3. As permitted by applicable law.

TABLE CONTENTS

**CITY OF BEAVERTON PURCHASING CODE
CHAPTER 51
SALE OF SURPLUS PROPERTY**

51-0005 SURPLUS PERSONAL PROPERTY 2
51-0010 SURPLUS REAL PROPERTY 2
51-0015 LOCAL AND STATE LAWS CONTROL 2

CITY OF BEAVERTON PURCHASING CODE

CHAPTER 51

SALE OF SURPLUS PROPERTY

51-0005 Surplus Personal Property

The personal property of the City includes materials, equipment, vehicles, furniture and fixtures but excludes real property such as land and permanent buildings. The surplus personal property of the City means personal property the City determines is no longer useful to the City. Surplus property may include obsolete and worn-out materials and equipment as well as unneeded spare parts.

The surplus personal property of the City may be disposed of as follows:

1. All departments shall submit to the Purchasing Agent, or designee, a list of materials and equipment considered surplus to the needs of the department. The surplus property list may be circulated among the City's departments to determine if a need or use of the surplus items exists within the City.
2. In the event there is no apparent need to keep the surplus personal property of the City, the Purchasing Agent, or designee, shall sell or otherwise dispose of it. The Purchasing Agent, or designee, shall arrange for the sale, transfer or disposal of the surplus personal property of the City. The methods of disposal may include, but are not limited to, trade-in, return to supplier, selling as scrap, advertising for sale, auction, donation to other governmental agencies, or disposal through the State of Oregon Department of General Services, Surplus Property Division. If the number, value and nature of the items to be sold as surplus personal property make it probable that the cost of conducting a sale by competitive bidding will be such that a liquidation sale will result in substantially greater net revenue to the City, the surplus property may be sold without competitive bidding.
3. If the estimated value of any one item of the surplus personal property of the City exceeds \$10,000, the sale of that item shall be accomplished by either trade-in or advertising and receiving sealed bids, and requesting City Council approval of the sale.

51-0010 Surplus Real Property

Surplus real property is City-owned land and buildings.

To sell surplus land or buildings, a formal declaration of surplus must be made to City Council. ORS 221.725 requires that the Council publish notice of this proposed sale in a newspaper of general circulation and hold a public hearing to consider the "general terms" of the sale in the week after the publication (at least five days must elapse between the date of published notice and the date of hearing). The Council at that hearing may direct staff as to the minimum terms it will accept for sale of the property.

A public hearing must be held at least five Days after the published notice of sale.

An advertisement of Invitation For Bids must be submitted for sale of the City Surplus Property.

51-0015 Local and State Laws Control

In the event any provision contained in this chapter conflicts with a provision of state law or City ordinance, the state law or City ordinance, as appropriate, shall control the disposition of the City's surplus real and personal property.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Approving Findings for Exemptions of Certain Classes of Public Contracts from Competitive Bidding or Competitive Proposal Requirements

FOR AGENDA OF: 2-7-05 **BILL NO:** 05022

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Finance *[Signature]*

DATE SUBMITTED: 1-25-05

CLEARANCES: Purchasing *[Signature]*
City Attorney *[Signature]*

PROCEEDING: Public Hearing
(Contract Review Board)

- EXHIBITS:**
1. Resolution
 2. New Purchasing Manual Exemptions
 3. Findings and Conclusions
 4. Survey of Local Jurisdictions' Changes to Formal Bid Thresholds
 5. Schedule of Contracts Awarded Between \$25,000 and \$50,000
 6. Agenda Bill 03055 and Current Purchasing Manual Exemptions

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
-----------------------------	------------------------	-------------------------------

HISTORICAL PERSPECTIVE:

On February 24, 2003, the city adopted its own public purchasing and contracting rules under Resolution 3708 – Agenda Bill 03055 (copy attached as Exhibit 6). In addition to establishing the city's purchasing procedures, the local rules established 22 classes of public contracts exempt from formal competitive procurement. The city has successfully conducted its purchasing and contracting activities under these local rules for the past two years.

During the last legislative session, extensive changes were made to the state's public purchasing and contracting laws. Most of the old public purchasing and contracting laws found in ORS chapter 279 were repealed. In their place, the state enacted new laws codified at ORS 279A, 279B and 279C. These new laws replace the old public purchasing and contract laws and are collectively referred to as the "Public Contracting Code." The new Public Contracting Code becomes effective March 1, 2005. Effective that date, all existing local contracting rules, including those embodied in City of Beaverton Resolution 3708, are repealed by operation of state law under 2003 Or Laws § 334.

INFORMATION FOR CONSIDERATION:

As permitted under the prior contracting law, ORS Chapter 279, the new Oregon Public Contracting Code also permits cities and other local contracting agencies to adopt their own rules of procedures for

public contracts. Under the new law, any local public contract rules independently adopted by a public agency must prescribe the rules of procedure that the contracting agency will use for public contracts, including procedures for screening and selecting persons to perform personal services. In addition, the rules may address any relevant substantive public contracting concern of the agency. As it did under the authority granted it by ORS Chapter 279, the city now wishes to exercise the authority available to it under the new Public Contracting Code and adopt its own substantive and procedural public purchasing and contracting rules.

Unless otherwise permitted by law, local agencies must procure goods and services and let contracts for the construction of public improvements using formal competitive bids and proposals. Oregon law expressly permits contracting agencies to procure goods and services using informal competitive bids and proposals in five situations:

1. For goods or services valued under \$5,000, a contracting agency may procure the goods or services "in any manner deemed practical or convenient, including by direct selection or award."
2. For goods or services valued at more than \$5,000, but under \$150,000, a contracting agency may award contracts based on "three informally solicited competitive price quotes or competitive proposals from prospective contractors."
3. If goods or services are available from only one source, a contracting agency may award a contract based on informal bids or proposals.
4. If an emergency exists, a contracting agency may procure goods or services without formal competitive bids or proposals, provided certain documentation is made of the nature of the emergency.
5. For special situations, a contract review board may grant an exemption from normal procurement procedures if circumstances justify such action.

Similar exemptions to these five situations exist in relation to public improvement contracts under ORS 279C.335.

In addition to these statutory exemptions from formal competitive bids and proposals, Oregon law allows a local contract review board to establish additional classes of exemptions to meet local needs. In the past, like other municipal contracting agencies, Beaverton has designated additional classes of public contracts as exempt from formal competitive bids and proposals. Oregon law requires that before a contract review board may designate a class of public contracts as exempt from normal competitive bidding or proposal requirements, the board must approve written findings prepared by the contracting agency justifying establishment of the requested exemption. The findings must show that the proposed exemption of the designated class of contracts is (a) unlikely to encourage favoritism in the awarding of public contracts, (b) unlikely to substantially diminish competition for public contracts and (c) will result in substantial cost savings to the city or the public. Additionally, as required under ORS 279.015 and ORS 279C.335 with regard to exemptions concerning the construction of public improvements, a public hearing must be held to allow public comment on the requested exemptions.

The exhibits to this agenda bill include the materials the contract review board should consider in adopting the city's proposed findings and the justifications for the exemptions from the formal competitive bidding and proposal process. In connection with the preparation of the new purchasing manual, the city has identified and proposes 23 different classes of public contracts for exemption from formal competitive procurement. These exemptions are described in Exhibit 2. The findings and conclusions required to justify these exemptions are set out in Exhibit 3. The requested exemptions are the same as those exemptions previously established in Resolution 3708. In addition, none of the exemptions are inconsistent with the kind of exemptions already approved by state agencies and other local contract review boards.

Establishing an exemption from formal competitive procurement for a class of contracts does not mean there will be no competition among vendors and service providers when goods or services are procured under an exemption. The proposed exemptions typically require the city to engage in informal competitive procurement when formal competitive procurement is excused. This means the city will typically be required to seek out multiple verbal or written quotes and proposals from vendors or service providers before procuring goods or services pursuant to an exemption.

The most significant proposed exemption permits the city to procure goods and services or let contracts for public improvements valued at up to \$50,000 using informal competitive procurement methods. Currently the city's authority in this regard is limited to purchases of goods and services and letting of public contracts valued up to \$25,000. While the increase in the city's authority to purchase goods and services and let public improvement contracts without formal solicitation is substantial, the amount sought is actually below the amount allowed under state law and the amount most nearby jurisdictions have established for themselves.

A survey of 13 Oregon jurisdictions (Exhibit 4) shows the dollar amount other contract review boards have allowed their jurisdictions to procure in goods or services or let in public improvement contracts using informal competitive procurement methods. Two of the important conclusions shown by the survey are these:

- With regard to contracts for goods and services, the dollar amount of goods or services other jurisdictions can informally procure ranges from a low of \$25,000 (one jurisdiction) to a high of \$150,000 (three jurisdictions). Five jurisdictions have limits of \$50,000, three jurisdictions have limits of \$75,000, and one jurisdiction has a limit of \$100,000. The average limit for the 13 jurisdictions calculates out to slightly above \$80,000.
- With regard to contracts for the construction of public improvements, the range is the same, but three of the jurisdictions that have a \$50,000 limit on informal purchases of goods and services increase that limit to \$75,000 with respect to construction contracts. Thus six jurisdictions permit informal solicitation of public improvement contracts valued at up to \$75,000 and only two jurisdictions place that upper limit at \$50,000. The average limit for the 13 jurisdictions surveyed is about \$86,000.

Exhibit 4 also shows the threshold amount where a jurisdiction requires written quotes or proposals instead of verbal ones in connection with informal competitive procurements. As proposed, Beaverton's threshold (\$5,000) is identical to those of the other jurisdictions surveyed.

Staff researched how a new \$50,000 threshold for formal solicitations would impact the city's purchasing process. Staff did this by researching all public contracts the city entered into in FY 2003-04. The results are shown in Exhibit 5. Staff found nine contracts where the dollar amount of the contract exceeds the current \$25,000 maximum limit on informal solicitations, but falls short of the proposed \$50,000 limit. Four of the contracts were in the amount of exactly \$25,000. The other five ranged from \$30,963 to \$49,630.

The other exemptions proposed cover such items as emergency contracts, contracts for change orders, and requirements contracts, all of which were also exempted under Resolution 3708. As detailed in Exhibit 2, each proposed exemption is cross-referenced to the City's revised purchasing manual, is supported by findings, and results in a conclusion that the exemption is unlikely to encourage favoritism or substantially diminish competition and will result in a substantial cost savings to the city. All of these exemptions exist in the city's current purchasing manual and are simply being carried over to the new manual.

In order for the proposed exemptions to become effective, the Council, acting as the Contract Review Board, must approve the proposed exemptions after conducting a public hearing to take comments on the proposed exemptions and findings.

RECOMMENDED ACTION:

Council, acting in its capacity as the city's contract review board:

- Hold public hearing and take comments on the proposed exemptions and findings.
- Adopt resolution approving findings for exemptions of certain classes of public contracts from formal competitive bidding and proposal requirements.



RESOLUTION NO. 3804

A Resolution Relating to Exemptions from Formal Competitive Bidding and Proposals Contracts for the Procurement of Goods and Services and the Awarding of Public Improvement Contracts

WHEREAS, ORS 279.015(2) and ORS 279B.085(2) permit the City of Beaverton to seek contract review board approval of exemptions from formal competitive bidding and proposals with regard to contracts for the procurement of goods or services; and

WHEREAS, ORS 279.015(2) and ORS 279C.335(2) permit the City of Beaverton to seek contract review board approval of exemptions from formal competitive bidding with regard to public improvement contracts; and

WHEREAS, the City of Beaverton has submitted a written request to the Beaverton Contract Review Board to approve 23 exemptions from formal competitive bidding and proposals regarding contracts for the procurement of goods or services and the awarding of public improvement contracts; and

WHEREAS, on January 21, 2005, the City of Beaverton published notice in the Daily Journal of Commerce notifying the public that the city sought to establish exemptions from competitive bidding and proposals in awarding certain public contracts; and

WHEREAS, on February 7, 2005, the Beaverton Contract Review Board held a public hearing to receive written and oral public comment regarding the city's proposed exemptions from competitive bidding and proposals; and

WHEREAS, in conjunction with the February 7 hearing, the City of Beaverton submitted to the contract review board a set of proposed written findings and conclusions in support of the city's request that the board approve the establishment of exemptions from formal competitive bidding and proposals; and

WHEREAS, the Beaverton Contract Review Board has duly considered the city's proposed findings and conclusions as well as any facts or opinions received during the public hearing; now, therefore

BE IT RESOLVED BY THE CITY COUNCIL AND THE CONTRACT REVIEW BOARD OF THE CITY OF BEAVERTON, OREGON:

1. The proposed written findings and conclusions submitted by the City of Beaverton in support of its request that the Beaverton Contract Review Board approve 23 exemptions from formal competitive bidding or proposals involving the procurement of goods and services and/or the

112

construction of public improvements demonstrate that the city's use of each of the described exemptions is unlikely to encourage favoritism in the awarding of public contracts, is unlikely to substantially diminish competitions for public contracts, and will result in substantial cost savings to the city and the public.

2. The proposed findings and conclusions of the city set forth in full in Exhibit 3 to Agenda Bill 05022 are hereby approved and accepted.
3. This Resolution is promulgated under authority of the provisions of ORS chapters 279, 279A, 279B and 279C; to the full extent permitted by law, actions taken in connection with the promulgation of this resolution are to be effective on and after March 1, 2005.
4. On or before March 1, 2005, the city shall prepare and submit to the Beaverton City Council and the Beaverton Contract Review Board a complete compilation of the Beaverton Purchasing Code for council and board approval by resolution, said code to be effective on and after March 1, 2005.

Adopted by the City Council this 7th day of February, 2005.

Ayes: 5

Nays: 0

Adopted by the Contract Review Board this 7th day of February, 2005.

Ayes: 5

Nays: 0

Approved by the Mayor this 8th day of February, 2005.

Attest:


SUE NELSON, City Recorder

Approved:


ROB DRAKE, Mayor