

ORDINANCE 2010-02
City of Joseph
Public Contracting Regulations

Whereas, the provisions of this ordinance and all rules adopted under this ordinance may be cited as the City of Joseph’s Public Contracting Regulations amending Ordinance 2005-02.

The City of Joseph does ordain that it is the policy of the City in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and purchasing power of public funds by:

- A. Promoting impartial and open competition;
- B. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
- C. Taking full advantage of evolving procurement methods that suit the contracting needs of the City of Joseph as they emerge within various industries.

1.010 City Council. The Joseph City Council is designated as the local contract review board and shall have all of the rights, powers and authority necessary to carry out the provisions of ORS Chapters 279A, 279B, and 279C (the “Public Contracting Code”). Except as otherwise provided in this Chapter, the City Recorder, or their designated purchasing agent and Department Heads are designated as the City’s Contracting Agency for purposes of contracting powers and duties assigned to the City as a contracting agency under the Public Contracting Code.

2.010 Definitions. As used in this Ordinance, the following words or phrases shall have the following meanings. All words and phrases not defined in this section shall have the meanings ascribed to them in the Public Contracting Code or the Model Rules adopted by the Oregon Attorney General there-under (“Model Rules”).

Award means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City of Joseph until the contract is executed and delivered by the City of Joseph.

Bid means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

City means City of Joseph, Oregon.

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

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

Contract review board or local contract review board means the Joseph City Council, referred to herein as City Council.

Contracting agency means the City Recorder, Public Works Director, Librarian or Fire Chief.

Cooperative procurement means a procurement conducted by or on behalf of one or more contracting agencies.

Debarment means a declaration by the Joseph City Council under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City of Joseph's public contracts for a specified period of time.

Department Head means a head of a City Department, which presently includes (1) the Director of Public Works, head of the Department of Public Works; Recorder, head of the Department of Administration; Librarian, head of the Library Department and Fire Chief, head of the Volunteer Fire Department.

Disposal means any arrangement for the transfer of property by the City of Joseph under which the City of Joseph relinquishes ownership.

Emergency means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

Findings are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and

aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

Formal Quote means procedure pursuant to which written offers are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which offers are received by the Contracting Agency on or before a stated date.

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

Informal solicitation means a solicitation made in accordance with the City of Joseph Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Invitation to bid means a publicly advertised request for competitive sealed bids.

Model Rules means the public contracting rules adopted by the Attorney General under ORS 279A.065.

Offeror means a person who submits a bid, quote or proposal to enter into a public contract with the City of Joseph.

Oregon Public Contracting Code means ORS chapters 279A, 279B and 279C.

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

Personal services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licenses professionals, artists, designers, computer programmers, performers, consultants and property managers. The Department Head or City Council shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

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

Public contract means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of Joseph 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 improvement means a project for construction, reconstruction or major renovation on real property by or for the City of Joseph. “Public improvement” does not include:

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

Purchasing manager means the department head appointed by the City Council to exercise the authority of the purchasing manager under these public contracting regulations in the amount of \$5,000.00 or less.

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

Request for proposals means a publicly advertised request for sealed competitive proposals.

Services means and includes all types of services (including construction labor) other than personal services.

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

Standards of responsibility means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- A. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- B. A satisfactory record of performance. The Department Head shall document the record of performance of an offeror if the Department Head finds the offeror to be not responsible under this paragraph;
- C. A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Department Head finds the offeror to be not responsible under this paragraph;
- D. Qualified legally to contract with the City of Joseph and perform the contract;
- E. Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Department Head concerning responsibility, the Department Head shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and
- F. Not been debarred by the City of Joseph, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus property means personal property owned by the City of Joseph which is no longer needed for use by the department to which such property has been assigned.

3.010 Application of Public Contracting Regulations

In accordance with the provisions of ORS 279A.025, the City of Joseph's Public Contracting Regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.

- A. **Between Governments.** Contracts between the City and a public body or agency of the State of Oregon, its political subdivision, and/or an agency of the Federal Government are exempt.
- B. **Grants.** Grant contracts are exempt. As used herein, a grant contract is a contract pursuant to which the City provides or receives funds for a particular purpose, including the construction of a public improvement.
- C. **Legal Witnesses and Consultants.** Contracts for professional expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters to which the City is or may become interested are exempt.
- D. **Real Property.** Acquisitions or disposals of real property or interests therein are exempt.
- E. **Oregon Corrections Enterprises.** Procurement for an Oregon Corrections enterprises program are exempt.
- F. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with the following are exempt:
 - (1) The incurring of debt by the City, including any associated contracts, obligations or other documents, regardless of whether the obligations that the contracts, agreements or other documents established are general, special or limited;
 - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by the City to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - (3) The investment of funds by the City as authorized by law; and/or
 - (4) Banking, money management or other predominantly financial transactions of the City that by their character, cannot practically be established under the competitive contractor selection procedures.

- G. **Employee Benefits.** Contracts for employee benefits as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565 are exempt.
- H. **Exempt Under State Law.** Any other public contracting or contracts specifically exempted for the Oregon Public Contracting Code by state law are exempt.
- I. **When Federal Law Controls.** When federal law applied to a contracting matter, due to use of federal funds or other cause, and federal contracting procedures or requirements, imposed by federal statutes and regulations, are in conflict with the Oregon Public Contracting Code, the matter is exempt from said contracting code to the extent necessary to permit compliance with the requirements of federal law.

3.020 Administration of Public Contracts

- A. **Authority Reserved to Council.** Except as expressly delegated under these regulations, the City Council reserves to itself the exercise of all of the duties and authority of a contract review board under state law, including, but not limited to, the power and authority to:
 - 1. **Solicitation Methods Applicable to Contracts.** Authority to approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts are reserved to the City Council.
 - 2. **Waiver of Performance and Payment Bonds.** Authority to approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond in connection with a contract for construction of a public improvement is reserved to the City Council;
 - 3. **Electronic Advertisement of Public Improvements.** Authority to authorize the use of electronic advertisements for public contracts in lieu of publication in a newspaper of general circulation is reserved to the City Council; and
 - 4. **Appeals of Debarment and Pre-qualification Decisions.** Authority to hear properly filed appeals from a decision of a City Department Head regarding debarment or pre-qualification is reserved to the City Council.

- B. **Responsibility For Initiating Solicitation.** Each Department Head shall be responsible for initiating solicitations or invitations to bid, with consultation and assistance of the City Attorney where appropriate and with the advice of the City Council where appropriate, for all public contracts pertaining to or related to the City department which the Department Head oversees. The City Council may assign responsibility for initiating a solicitation to a City officer or employee other than the Department Head of the department to which the solicitation pertains.
- C. **Decision on Award of Contract.**
1. For all public contracts with an estimated price of \$5,000.00 or less, the Department Head shall make the decision to award the contract. Such authority of the Department Head is contingent upon budgeted funds being available for payment of the contract and is subject to the directions of the City Council, if any.
 2. For all public contracts with an estimated price of \$5,000.00.00 or more, the City Council shall make the decision regarding award of the contract. The solicitation or invitation to bid shall state that the City Council decision regarding award of the contract will be made by the City Council.
- D. **Written Contract.** For all public contracts other than a small procurement, the Department Head with responsibility for soliciting a public contract shall cause to be prepared, as part of the solicitation of the contract and with the advice and assistance of the City Attorney, a written contract in compliance with the requirements of the Oregon Public Contracting Code and which incorporates the terms of the contract. Said contract shall be executed by the City and the contractor.

3.030 Model Rules for Public Contracts. It is the City's intent to make specific changes to the Model Rules by adopting this chapter. The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the City to the extent that the Model Rules do not conflict with the provisions of this Chapter.

3.040 Construction Services:

A. Time lines; Extensions. The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 24 hours before closing.

B. Request for Change. 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 Contracting Agency not less than 5 days prior to Closing.

3.050 Prescribed Methods of Procurement.

Procurement of goods and services shall be made under either competitive sealed bids pursuant to ORS 279B.055 or through competitive sealed proposals under ORS 279B.060 unless made as a small procurement (ORS 279B.065), an intermediate procurement (ORS 279B.070), a sole source procurement (ORS 279B.075), an emergency procurement (ORS 279B.080) or as either a class special procurement or a contract specific special procurement under ORS 279.085.

3.060 Competitive Sealed Bids

A. **General Requirements.** Procurement pursuant to competitive sealed bids shall be conducted in accordance with the Oregon Public Contracting Code and Model Rules provided however that the City adopts the following changes to the Model Rules, to wit, OAR 137-047-0255 shall not be applicable to Competitive Sealed Bid Procurement by the City.

B. **City Rule.** The City may include such provisions in the invitation to bid, in addition to those required by ORS 279B.055, as is appropriate to describe necessary terms, conditions and bidding procedures to prospective bidders and as necessary to otherwise comply with the requirements of law.

C. **Notices, Protests and Judicial Review.**

(1) **Protest of Terms of Solicitation.** A protest of the terms of a solicitation under ORS 279B.405 must be made not less than 7 days after the initial advertisement or 7 days prior to the bid opening, whichever is earliest.

- (2) **Notice of Intent to Award.** Prior to award of a contract, the City shall provide a notice of intent to award the contract which notice shall (1) state to which bidder the City intends to award the contract and that the contract will be awarded seven days after the date of mailing of said notice, if no protest is filed and (2) state that a protest may be filed with the City Council at any time prior to the expiration of seven days after mailing of the notice and (3) the protest will be barred if not filed within the time period. The notice of intent to award shall be mailed by first class mail and either faxed or e-mailed to all bidders no later than 7 days prior to the date set for award of contract.
- (3) **Protests.** Protests shall be reviewed and determined by the City Council in accordance with the requirements of the Oregon Public Contracting Code and the Model Rules and in accordance with the procedures set forth in Section 6.010.

3.070 Competitive Sealed Proposals

- A. **General Requirements.** Procurement pursuant to competitive sealed proposals shall be conducted in accordance with the Oregon Public Contracting Code and Model Rules, provided however that the City adopts the following changes to the Model Rules, to wit, OAR 137-047-0260 shall not be applicable to Procurement by the City pursuant to Competitive Sealed Proposals.
- B. **City Rule.** The City may include such provisions in the request for proposal, in addition to those required by ORS 279B.060, as is appropriate to describe necessary terms, conditions and contact proposal procedures to prospective proposers and as necessary to otherwise comply with the requirements of law.
- C. **Notices and Protest.** The procedures and time periods for (1) protest of the terms of solicitation, (2) issuance of a notice of intent to award and (3) review and determination of protests are as set forth in Section 6.010.

3.080 Small Procurement.

- A. **Provision of Authority.** The procurement practices and procedures set forth in this section are authorized for Department Heads in making small Procurement (in an amount

less than \$5,000.00) pursuant to the authority granted by ORS 279B.065.

- B. **Catalogues and Price Lists.** Goods or services may be ordered from catalogues or other established price lists without resort to informal competitive price quotes. The Department Head purchasing by said method should periodically make such inquiries as to confirm the reasonableness and competitiveness of the price or prices and of the quality of the product or service.
- C. **General Standard.** The Department Head may follow such small procurement procedures in general, whether involving informal price quotes or not, as is deemed reasonable under the circumstances and should endeavor to obtain a fair value for the City consistent with reasonable expenditures of time in making such Procurement.
- D. **Basis for Award.** The Department Head may award the contract based upon the award which is in the best interests of the City, including consideration of all applicable factors of which price is but one.
- E. **No Notices.** No notices of intent to award a contract will be given by the City in connection with small Procurement.

3.090 Intermediate Procurement.

- A. **Provision of Authority.** Intermediate Procurement (Procurement estimated at a price between \$5,000.00 and \$150,000.00), shall be conducted in accordance with the Oregon Public Contracting Code and Model Rules, subject to the modifications to the Model Rules set forth below.
- B. **City Rules.** OAR 137-047-0270 (2) is modified to require that a written solicitation be used to obtain all quotes and that the solicitation be structured to require submission of written quotes. The writings may be appropriate in extent and detail to the nature and estimated size of the procurement.
- C. **No Notices.** No notices of intent to award a contract will be given by the City in connection with intermediate Procurement.

3.100 Sole Source Procurement.

Sole source Procurement under the authority of ORS 279B.075 may be made only after adoption of findings as required by said section. OAR

137-047-0275, and the advertisement and time for protest contained therein, shall not apply to sole source Procurement by the City. No notice of intent to award a contract will be given by the City in connection with sole source Procurement.

3.110 Emergency Procurement.

Emergency procurement may be made in accordance with the requirements of ORS 279B.080. OAR 137-047-0280 shall not be applicable to City emergency procurement. No notice of intent to award a contract will be given by the City in connection with emergency procurement.

3.120 Class Special Procurement.

- A. **Approved Class Special Contracts.** The special procurement set forth in this section, and procedures therefore, are hereby approved under the authority of ORS 279B.085, based upon the contemporaneous findings of the City Council.
- B. **Award Procedure.** The classes of contracts set forth in this section may be awarded in any manner which the Department Head deems appropriate to the City's needs, including by appointment or purchase. Contracts in excess of \$5,000.00 shall require the approval of the City Council. Except as otherwise provided, the Department Head shall make a record of the method of award.
- C. **Description of Contract Classes.** The following classes of contracts are approved for special procurement under the procedures provided herein:
 - (1) **Advertising Contracts.** Contracts for the placing of notice or advertisements in any medium.
 - (2) **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.
 - (3) **Animals.** Contracts for the purchase of animals.
 - (4) **Copyrighted Materials; Library Materials.** Contracts for the acquisition of materials entitled to copyright, including but not limited to works of art and design, literature and music or materials even if not entitled to copyright, purchased for use as library materials.

- (5) **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
- (6) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a government authority.
- (7) **Non-Owned Property.** Contracts or arrangements, in compliance with the requirements of law, for the sale or other disposal of abandoned property or other property not owned by the City.
- (8) **Sponsor Agreements.** Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
- (9) **Structures.** Contracts for the disposal of structures located on City property.
- (10) **Renewals.** Contracts that are being renewed according to their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
- (11) **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired contract, other than a contract for a public improvement.
- (12) **Used Property.** A Department Head, for procurements less than \$5,000.00.00 and City Council, for procurements in excess of \$5,000.00.00, may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased at a lower cost than substantially similar new property. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City. A record of the findings which support the purchase will be maintained.

- (13) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunication services (if provided under a regulated monopoly) and other utilities.
- D. **City Rule.** The provisions of OAR 137-047-0285 (2) regarding required public notices shall not be applicable to class special procurements.
- E. **Protests.** Any person may protest a proposed class special procurement at the public hearing before the City Council pertaining to said call special procurement. No judicial review of the approval thereof shall occur if protest is not made.
- F. **Alternative Procurement Procedures.** The officer administering a procurement or other transaction as a special procurement under this section (or the City Council for transactions in excess of \$5,000.00) shall follow alternative procurement procedures (such as but not limited to price quotes, price checks and negotiation) (1) which are appropriate to the transaction, (2) which assure full and adequate competition for the contract, when possible, (3) which are calculated to obtain reasonable and competitive prices, and (4) which assure that the alternate procurement procedures do not result in favoritism to a particular contractor. The specific procurement procedure shall be determined by the City officer responsible for the procurement, or by the City Council for transactions in excess of \$5,000.00.

3.130 Contract Specific Special Procurements.

- A. **Public Hearing and Findings.** Contract Specific Special Procurements pursuant to the authority of ORS 279B.085 shall be undertaken only after (1) a public hearing with notice thereof advertised once at least ten days prior to the date set for public hearing in a newspaper of general circulation and (2) adoption of the findings required by ORS 279B.085.
- B. **Procurement Procedures.** The contract specific special procurement shall be conducted in accordance with method approved by the City Council and in accordance with the Oregon Public Contracting Code and Model Rules, provided, however, that the City adopts the following changes to the Model Rules, to with, the provisions of OAR 137-047-0285 (2) regarding required public notices shall not be applicable to special procurement.

- C. **Protests.** Any person may protest a proposed call special procurement at the public hearing before the City Council pertaining to said class special procurement. No judicial review of the approval thereof shall occur if protest is not made.
- D. **City Rule.** The City may include such provisions in the request for proposal, in addition to those required by ORS 279B.060, as is appropriate to describe necessary terms, conditions and contact proposal procedures to prospective proposers and as necessary to otherwise comply with the requirements of law.
- E. **Notices, Protests and Judicial Review.**
 - (1) **Protest of Terms of Solicitation.** A protest of the terms of a solicitation under ORS 279B.405, if one is made under the approved special procurement procedure, must be made not less than 7 days after the initial advertisement or 7 days prior to the bid opening, whichever is earliest.
 - (2) **Notice of Intent to Award.** Prior to award of a contract under the special procurement process, the City shall provide a notice of intent to award the contract which notice shall (1) state to which contractor the City intends to award the contract and that the contract will be awarded seven days after the date of mailing of said notice, if no protest is filed and (2) state that a protest may be filed with the City Council at any time prior to the expiration of seven days after mailing of the notice and (3) that protest will be barred if not filed within that time period. The notice of intent to award shall be mailed by first class mail and either faxed or emailed to participating or interested contractors no later than 7 days prior to the date set for award of contract.
 - (3) **Protests.** Protests shall be reviewed and determined by the City Council in accordance with the requirements of the Oregon Public Contracting Code and the Model Rules and in accordance with the procedures set forth in Section 6.010.

PUBLIC IMPROVEMENT CONTRACTS

4.010 Method of Solicitation and Award.

- A. All contracts for a public improvement as defined in the Oregon Public Contracting Code shall be awarded pursuant to a public

bidding process, solicited pursuant to an invitation to bid, except for the following:

- (1) **Disabled Individuals.** Public improvement contracts with qualified non-profit entities providing employment opportunities to disabled individuals as defined in ORS 279C.335 (1)(a);
- (2) **Small Purchases.** Purchased of Goods or Services in an amount less than \$5,000.00.
- (3) **Intermediate Contracts - Competitive Quotes.** Contracts not to exceed \$100,000.00, or not to exceed \$50,000.00 in the case of a contract for a highway, bridge or other transportation project, made under procedures for competitive quotes under Sections 132 and 133, Chapter 794, Oregon Laws of 2003.
- (4) **Contracts Exempted from Bidding.** Contracts exempted from the competitive bidding process after public hearing and required findings under the authority of ORS 279C.335 (2), (3) and (4); and
- (5) **Contracts Awarded by Competitive Proposal.** Contracts awarded under competitive proposals as authorized by ORS 279C.400 through ORS 279C.410, after exemption from public bidding under ORS 279C.335.

- B. **Applicable Requirements.** Contracts for Public Improvements shall be solicited and awarded in conformance with the Oregon Code of Public Contracting and the Model Rule, except to the extent such rules have been modified herein.

4.020 Contracts Awarded by Competitive Quotes.

- A. **Provision of Authority.** Public Improvement Contracts in an estimated amount of less than \$100,000.00; or \$50,000.00 in the case of a contract for a bridge, highway or other transportation project, may be awarded by competitive quotes under the procedures set forth in Sections 132 and 133, Chapter 794, and the provisions of the Model Rules as modified herein.
- B. **City Rules.** The following rules are adopted to supplement the provisions of the above statutes regarding award of contracts by competitive quotes:

- (1) **Model Rules.** The provisions of OAR 137-049-0160 (2), (3), (4) and (5) are not applicable to the award of public improvement contracts under this section.
- (2) **Procedures for Solicitation of Quotes.** Quotes for contracts estimated to be under \$10,000.00 may be solicited orally and quotes may be provided orally. In such cases, however, the Department Head shall create a written record of the source and amount of the quotes received. In all other cases, the solicitation shall be in writing and be appropriate in detail and extent to the project involved. The solicitation shall include the specifications, contract terms and advice of the various contract provisions required under the Oregon Public Contracting Code. Solicitations shall require that competitive quotes be submitted in writing for all contracts which are estimated to exceed \$10,000.00 in amount. Written solicitations for quotes may be circulated or be made known to qualified contractors under any procedure deemed appropriate by the Department Head.
- (3) **Number of Quotes.** The Department Head shall endeavor to obtain at least three competitive quotes. If a written solicitation is made and less than three quotes are received, the Department Head shall make informal efforts to obtain an additional quote or quotes. In the event that less than three competitive quotes are received, the Department Head may nevertheless award a contract, but shall maintain a record of the efforts made to obtain quotes.
- (4) **Award of Contract.** The contract may be awarded based upon the criteria set forth in Section 133, Chapter 794, Laws of 2003, and the Department Head shall make a written record of the basis of the award if the contract is awarded to the contractor who does not submit the lowest contract quote. The Department Head may include a description of the selection criteria in the solicitation, but is not required to do so.
- (5) **Execution of Contract.** After award, the City and the Contractor shall execute a written contract, and any additional required certifications or documents, which shall incorporate the terms of the agreement and be sufficient to comply with the requirements of the Oregon Public Contracting Code.

4.030 Abrogation of Certain Model Contract Rules

Section 137-49-0200 (1) (b) C) of the Model Rules (OAR 137-49-0200 (1) (b) C)), relating to evaluation factors, is hereby abrogated as respects City transactions.

OTHER PUBLIC CONTRACTS

5.010 Personal Services Contracts.

- A. General Method of Selection. Personal Service Contracts shall be awarded pursuant to a competitive proposal process. The City shall seek proposals through a request for proposals which shall state the services requested and the information, such as training, qualifications and experience, to be submitted. The request for proposals may require that a proposer submit price quotes, hourly fee rates, contract maximums and other information relative to fees and cost of the personal service. The request for proposals may be circulated and/or advertised under procedures deemed reasonable by the Department Head or City Council.
- B. **Selection of Contractor.** The Personal Services Contract may be awarded to the contractor or consultant whose selection is in the best interests of the City, after consideration of all relevant factors, including the relative trust in the capabilities and qualifications of the contractor and the relative cost to the City. The City is not required to select a contractor who submitted the lowest price quote.
- C. **Architects, Engineers, Land Surveyors and Related Services.**
 - (1) Contracts for architects, engineers, land surveyors and for related services (as defined in the Oregon Public Contracting Code) in connection with a project for a public improvement shall be awarded as provided in subsection A and B, unless the project to which the services pertain is included in the definition set forth in ORS 279C.110(2) (1) (project cost in excess of \$400,000 and State of Oregon grants or loans exceeding 35% of project cost).
 - (2) In the event such services are in conjunction with a project that meets the above statutory definition, selection and award of such contract shall be in accordance with the

selection process set forth in ORS 279C.110 and the accompanying Model Rules. The contract price shall comply with the requirements of OAR 137-048-0300.

- D. **Ongoing Personal Services.** The selection process set forth herein is only required at the time of initial selection of the contractor. A contractor may be selected to provide ongoing professional or other personal services on ongoing hourly or other fee basis. Existing contractors providing such professional services may be continued or the terms of provision of such service renegotiated without the necessity of utilizing the selection process set forth in this section. At any time, however, the City may elect to initiate a request for proposals with respect to the provision of such services.

5.020 Disposal of Surplus Property.

- A. **General Methods.** Surplus property may be disposed of by any of the methods set forth below upon a determination by the Department Head that the method of disposal is in the best interest of the City. Factors that may be considered by the Department Head include the costs of sale, administrative costs, and public benefits to the City. The Department Head shall maintain a record of the manner of disposal, including the name of the person to whom the surplus property was transferred. The following methods are approved:
- (1) **Governments.** Without competition, by transfer to another City Department or to another public agency or entity.
 - (2) **Auction.** By publicly advertised auction to the highest bidder.
 - (3) **Bids.** By public advertised invitation to bid.
 - (4) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator in accordance with rules for award of personal service contracts.
 - (5) **Fixed Price Sale.** The Department Head may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, with sale being pursuant to a

scheduled sale with sale being to the first buyer to meet the sale terms.

- (6) **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
- (7) **Donation.** By donation to any organization operating within or providing a service to residents of the City which is recognized by the Internal Revenue Service as an organization described in Section 501 c) (3) of the Internal Revenue Code of 1986, as amended.

- B. **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500.00 dollars or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost effective, including by disposal as waste. The official making the disposal shall make record of the estimated value of the item and the manner of disposal.
- C. **Restrictions on Sale to City Employees.** Employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of sale is publicly advertised.
- D. **Conveyance to Purchaser.** Upon consummation of a sale of surplus personal property, the City shall make, execute and deliver a bill of sale or appropriate sale invoice on behalf of the City, conveying said property to the purchaser and shall deliver possession or the right to possession to the purchaser.

PROTESTS AND APPEALS

6.010 Protests and Appeal of Debarment or Pre-qualification Decision.

- A. **Right to Hearing.** Any person who has been debarred from competing for City contracts or for whom pre-qualification has been denied, revoked or revised may appeal to the City Council as provided in this section.

- B. **Filing of Appeal.** The person must file a written notice of appeal with the City Administrator within three business days after the prospective contractor's receipt of notice of the determination or debarment, or denial of pre-qualification.
- C. **Protests.** Any protest provided by this chapter or the Oregon Public Contracting Code shall be filed with the City Administrator and shall be heard and determined as provided herein.
- D. **Notification of City Council.** Immediately upon receipt of such notice of appeal or protest, the City Administrator shall notify the City Council of the appeal or protest.
- E. **Hearing.** The procedure for appeal from a debarment or denial of a pre-qualification, and the procedure for hearing and deciding a protest, shall be as follows:
 - (1) Promptly upon receipt of a notice of appeal or upon receipt of a protest, the City shall notify the appellant or protestor, and other interested parties, of the time and place of hearing;
 - (2) The City Council shall conduct the hearing and decide the appeal or protest within 30 days after receiving notice of the appeal or protest from the City Administrator; and
 - (3) At the hearing, the City Council shall consider de novo the protest, the debarment, or denial, revocation or revision of pre-qualification, the standards of responsibility upon which the decision was based or the issue which is the subject matter of the protest.
- F. **Decision.** The City Council shall set forth in writing the reason for its decision.
- G. **Judicial Review.** The decision of the City Council may be reviewed only as permitted by the Oregon Public Contracting Code and upon a petition in the Circuit Court of Wallowa County filed within 15 days after the date of the City Council's decision.

The City of Joseph adopts the above findings as required by ORS 279B.085.

Passed by the Joseph City Council, this ___ day of _____, 2010 by a vote of ___ ayes and ___ nays.

