

**CITY OF COOS BAY CITY COUNCIL**  
**Agenda Staff Report**

<b>MEETING DATE</b> <b>June 6, 2017</b>	<b>AGENDA ITEM NUMBER</b>
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TO: Mayor Benetti and City Councilors

FROM: Susanne Baker, Finance Director  
Jim Hossley, Public Works and Community Development Director

THROUGH: Rodger Craddock, City Manager

ISSUE: Resolution 17-14 Public Contracting Rules Revision

**SUMMARY:**

The attached resolution revises the City of Coos Bay's Local Contract Review Board public contracting rules to provide better utilization of both staff and the Council's time. The revisions mostly increase the dollar amount limits for authorization, which are still far less than those promulgated through the State Attorney General's Model Public Contracting Rules.

**ACTION REQUESTED:**

It is staff's recommendation the City Council adopt Resolution 17-14 to revise the local public contracting rules.

See attached March 23, 2017 Joint Council / URA Work Session report for additional information.

**City of Coos Bay**

**Resolution 17 – 14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COOS BAY, ACTING IN ITS CAPACITY AS THE LOCAL CONTRACT REVIEW BOARD FOR THE CITY OF COOS BAY, ADOPTING RULES FOR PUBLIC CONTRACTING**

WHEREAS, pursuant to ORS 279A.060 and City of Coos Bay Ordinance No. 365, the City Council of the City of Coos Bay serves as the Local Contract Review Board for the City of Coos Bay; and

WHEREAS, pursuant to ORS 279A.065, the City Council, acting in its capacity as the Local Contract Review Board, has rulemaking power to carry out its powers and duties in as the Local Contract Review Board; and

WHEREAS, pursuant to ORS 279A.065, any local contract review board desiring to have local public contracting rules must affirmatively elect to adopt such rules, or be subject to the Model Public Contracting Rules promulgated by the Oregon Attorney General; and

WHEREAS, the City Council, acting in its capacity as the Local Contract Review Board, has caused to be prepared, and wishes to adopt, the City of Coos Bay Rules of Local Contract Review, a copy of which is attached hereto as “Exhibit A” and incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Coos Bay hereby duly adopts the City of Coos Bay Rules of Local Contract Review as the local public contracting rules for the Local Contract Review Board for the City of Coos Bay on this 6<sup>th</sup> day of June 2017.

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Joe Benetti, Mayor

ATTEST:

\_\_\_\_\_  
Susanne Baker, City Recorder

## Exhibit A

### CITY OF COOS BAY RULES OF LOCAL CONTRACT REVIEW

**Section 1.** Purpose. These rules are adopted by the Local Contract Review Board, pursuant to the authority granted by ORS Chapter 279A, to establish procedures for contracting by the City of Coos Bay.

**Section 2.** Rules of Decision. The rules of decision for public contracting by the City of Coos Bay shall be these Rules of Local Contract Review. Except as hereinafter provided, the Oregon Attorney General's Model Rules shall not apply to contract review by the City of Coos Bay Local Contract Review Board, provided, however, if any issue or claim is not resolved by or addressed in these Rules of Local Contract Review, then the rules of decision shall be the Oregon Attorney General's Model Public Contract Rules Manual, latest edition.

**Section 3.** Interpretation of Public Contracting Rules. In furtherance of the purposes of the objectives set forth herein, it is the City's intent that the City of Coos Bay Rules of Local Contract Review be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

**Section 4.** Definitions. The following words and phrases mean:

Board: The City of Coos Bay Local Contract Review Board as established by Ordinance No. 365.

City: The City of Coos Bay.

Competitive Bidding: The solicitation of competitive offers which follow the formal process for advertising, bid, and bid opening required by ORS Chapters 279A, 279B and 279C, and applicable rules of the Board.

Competitive Quotes: The solicitation of offers from competing vendors. Solicitations may be by advertisement or requests to vendors to make an offer. Solicitations and offers may be oral or in writing.

Consultant: Means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing. Provided, however, when Board is entering into a direct Contract under Section 20, the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).

Director: The City Manager or his or her designee.

Findings: The justification for a determination and/or conclusion that includes, but is not limited to, the following information:

- (1) operational, budgetary, and financial data;

- (2) benefit to the public;
- (3) value engineering;
- (4) requirements for specialized expertise;
- (5) public safety;
- (6) market conditions;
- (7) technical complexity;
- (8) funding sources;
- (9) cost savings.

Procurement: means the act of purchasing, leasing, renting or otherwise acquiring goods or services. "Procurement" includes each function and procedure undertaken or required to be undertaken by the City to enter into a public contract, administer a public contract and obtain the performance of a public contract under these Rules.

Public Contract: A sale or other disposal, or purchase, lease or sale, 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 to preserve a public improvement.

Public Improvement: A project for construction, reconstruction or major renovation on real property by or for the City. Public improvements does not include any emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement, nor 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.

Related Services: means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services.

Responsible Bidder: Any bidder who has:

- (1) Adequate financial resources to perform the contract, or the ability to obtain such resources. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish adequate financial resources. Evidence of ability to obtain required resources may also include a commitment or specific arrangement, that will be in existence at the time of the contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;
- (2) The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments of the bidder;

- (3) A satisfactory performance record. Evidence that the person has repeatedly breached contractual obligations to public and/or private contracting agencies constitutes strong evidence of nonresponsibility. The Board shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation;
- (4) Key personnel available of sufficient experience, as determined by the Board, to perform the contract;
- (5) The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain these skills and abilities, as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractors;
- (6) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (7) Is otherwise qualified and eligible to receive the contract under applicable laws and regulations.

**Responsive Bid or Proposal:** A bid or proposal which complies in all material aspects with an Invitation to Bid (ITB) or Request for Proposals (RFP) and with all prescribed public bidding procedures and requirements.

**Nonresponsive Bid or Proposal:** Except in the case of minor informalities, any bid or proposal which:

- (1) Omits, or is unclear as to, the price;
- (2) Offers goods or services of a quality or quantity different from that requested in the ITB or RFP;
- (3) Requires a delivery date different from that required in the ITB or RFP;
- (4) Takes exception to the terms and conditions of the ITB or RFP, unless the ITB or RFP specifically allow for an exception to be taken;
- (5) Is conditional upon the public contracting agency's acceptance of terms and conditions different from those contained in the ITB or RFP; or
- (6) Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the ITB or RFP;

For the purposes of these rules, a minor informality is defined as any minor matter as to the form of the bid or proposal, rather than the substance, which is evident from documents as submitted by the bidder or proposer, or any informality which does not affect the price, quantity, quality, or delivery.

## **Section 5.   Policy.**

(a) It is the policy of the City of Coos Bay to encourage open and impartial competition in public procurement. However, competition exists not only as to price, but in a contractor's ability to

perform, including the contractor's technical competence, ability to provide timely deliveries or services, and quality of performance. While an Invitation to Bid is a common method of competitive procurement, it is not always the most advantageous or practical method of source solicitation, and does not always reflect the balance between price competition and performance competition; therefore, meaningful competition shall be sought in procurement of products or services by engaging in a variety of procurement methods.

(b)The Board shall choose the solicitation method that is most likely to encourage offers representing optimal value to the City.

(1) The Board shall use an Invitation to Bid if the Board believes the City will receive optimal value by selecting the lowest priced offer that meets the technical requirements of the City's specifications. Unless specifically exempted from the requirements of competitive bidding, public improvement contracts shall be by ITB.

(2) The Board is allowed to use cooperative procurement methods, pursuant to ORS 279A.200 et. seq., for the procurement of goods for the City of Coos Bay. The Board may award bids for goods based upon another public agencies competitive bid process. Other public agencies may use such methods in cooperation with the City of Coos Bay, unless the bidder expressly states in the proposal to the City of Coos Bay, that the prices submitted are available only to Coos Bay. Coos Bay shall accept no responsibility to the bidder or the public agency using the bid procured by the City of Coos Bay.

(3) The Board shall use a Request for Proposal, if the Board believes the City will receive optimal value by:

(A) selecting an offer using both price and non-price related factors;

(B) selecting an offer using both price and non-price related factors and permitting negotiations for the statement of work, for contract price as affected by changes to the statement of work, and for any other specific terms and conditions indicated as subject to negotiation in the solicitation documents. Negotiations under this paragraph are authorized only where:

(i) alternative terms may reduce cost or enhance the value of the product or service;

(ii) negotiation is required for successful procurement because the specifications are complex and the Board expects numerous queries as to the proper interpretation of the specifications; the work requires a high level of technical or managerial competence that cannot be adequately defined in the specifications; or the Board believes discussions are necessary to gauge the proposer's understanding of complex specifications.

(C) The City Council, acting as the Board, shall approve/authorize all public contracts exceeding \$75,000. The Director may enter into public contracts in accordance with these rules for contracts with a value up to \$75,000. The Director may delegate approval authority to Department Heads for public contracts with a value up to \$25,000.

The Director is authorized to approve invoices, contracts and agreements related to Public Employee Retirement System, workers compensation, employee medical insurance benefits, and property liability insurance approved by the Board through the budget process.

**Section 6.** In accordance with ORS 279A.025, the City's public contracting regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.

(a) Between Governments. Contracts made between the City and a public body or agency of the State of Oregon or its political subdivisions, or with a municipality or other governmental entity, or with an agency of the federal government.

(b) Grants. A grant contract is an agreement under which the City is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) Real Property. Acquisitions or disposals of real property or interests in real property.

(d) Contracts with Nonprofit Agencies: Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.

(e) Contracts for Price Regulated Items: Contracts for the purchase of goods or services where the rate or price for the goods or services purchased is established by federal, state or local regulatory authority.

(f) Allocated Petroleum Products: Contracts for the purchase of petroleum products, if such purchase is required to be made from a particular supplier as a result of a federal allocation or if purchase from other than an established supplier could jeopardize an allocation or future supply of such petroleum products.

(g) Oil or Hazardous Material Removal: Contracts for the cleanup of oil or hazardous waste, when ordered by the Department of Environmental Quality (DEQ) pursuant to its authority under ORS 466.605 through 466.680, and such order requires prompt performance of the contract for compliance with the statutes regarding the spill or release of oil or hazardous materials. In exercising its authority under this exemption, the Board shall:

(1) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(2) Make written findings describing the circumstances requiring cleanup and including a copy of the DEQ order ordering such cleanup;

(3) Make written findings recording the measures taken under subsection (1) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reasons for selecting the particular contractor; and

(4) Not enter into a contract pursuant to this exemption unless the order from DEQ to cleanup a site contains a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

(h) Advertising Contracts: Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

(i) Investment Contracts: Contracts for the purpose of investment of public funds or the borrowing of funds.

(j) Requirements Contracts: Purchase of goods or services from a supplier when the price of the goods and services has been established under a previously competitive bid requirements contract whereby it is agreed to purchase requirements on an anticipated need at a predetermined price.

(k) Single Source or Price of Product Required: Contracts for purchase of goods or services where there is only one source or price for a product of required quality available within a reasonable purchase area.

(l) Data processing Contracts: Contracts for purchase or acquisition of data processing hardware or software may be let without competitive bid subject to the following conditions:

(1) Prior to selection of the contractor, reasonable efforts have been made to solicit proposals from all known vendors. If the amount of the contract exceeds \$150,000, written proposals shall be solicited from vendors.

(2) The contractor is selected on the basis of the most competitive offer in both cost and quality of the product to be purchased or acquired.

(m) Insurance Contracts: Contracts for employee benefit or other insurance.

(n) Contract Amendments: Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed, may be made subject to the following conditions:

(1) The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work;

(2) The amended contract does not substantially alter the scope and nature of the project; or

(3) If the amendment has the effect of substantially altering the scope or nature of the project, the amount of the aggregate cost change resulting from all amendments creating new obligations shall not exceed ten percent (10%) of the initial contract price.

(o) Equipment Maintenance: Contracts for the purchase of services, equipment, or supplies for the maintenance, repair or conversion of existing equipment, if required for the efficient utilization of the equipment. Where practicable, competitive quotes shall be obtained.



(p) Bids Obtained by the State for the Same Materials: Contracts for the purchase of materials where competitive bids for the same materials have been obtained by the State of Oregon, and the contract is awarded to the same party with whom the State dealt, and the price of the materials is the same or lower than that paid by the State.

(q) Sale of Personal Property: Personal property may be disposed of without competitive bidding pursuant to Section 21.

(r) Franchise Agreements: Where practicable, competitive quotes shall be obtained.

(s) Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature, music, or materials even if not entitled to copyright, purchased for use as library lending materials.

(t) Artists. Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, film maker, painter, weaver, or sculptor.

(u) Other. Any contract exempted by the State of Oregon Public Contracting Code or Model Rules.

#### **Section 7. Award of Bids or Proposals.**

(a) Evaluation of Bids or Proposals. The Board shall accept and consider for award only those bids or proposals which are responsive as defined by these rules. Nonresponsive bids or proposals shall be rejected.

(b) Award of Contracts above \$75,000. Any public contract, other than Public Improvement Contracts, where the amount of purchase exceeds \$75,000 shall be awarded by the City Council, acting in its capacity as the Board. The City Council shall authorize the purchase through a motion. Following staff review of competitive sealed bids or proposals received and recommendation concerning the award, the City Council shall award the contract to the lowest responsible bidder or the best proposer who has submitted the lowest bid or best proposal which is in the best interest of the City, based upon the criteria set forth in the solicitation documents.

**Section 8. Public Contracts for Goods and Services**. This section applies to public contracts that are not contracts for public improvements or personal services. The following classes of public contracts are created and the procedures for awarding such contracts are determined not to encourage favoritism or substantially diminish competition and to result in substantial cost savings.

(a) Contracts up to \$75,000: Contracts for purchase of goods, materials, and supplies or for construction, maintenance, repair, or similar labor and materials contracts where the amount does not exceed \$75,000 may be exempted subject to the following conditions:

(1) For purchases up to the sum of \$5,000, an authorized City employee-purchase needed items, without any other approval.

(2) For purchases in an amount in excess of \$5,000, and up to \$25,000, a department head can approve a purchase only after obtaining at least three (3) informally solicited competitive quotes by telephone from responsible and responsive bidders.

(3) For purchases in an amount in excess of \$25,000 and up to \$75,000, the Director can approve a purchase only after obtaining at least three (3) informally solicited written quotes from responsible and responsive bidders.

(4) For (2) and (3) above, a written record of the sources of quotes received is required. If three (3) quotes are not reasonably available, fewer will suffice, but a written record of the effort shall be made.

(b) Each department shall operate within its budget, or seek supplemental budgetary authority from the City Council with respect to the contract.

#### **Section 9. Public Improvement Contracts.**

(a) A contract for a public improvement shall be awarded by the Board based upon competitive bids.

(b) Exemptions. The requirements of subsection “a” do not apply to the following classes of public improvement contracts. The following exemptions are unlikely to encourage favoritism or substantially diminish competition, and awarding contracts under these exemptions will result in substantial cost savings to the City.

(1) Public improvement contracts valued at \$5,000 or less, may be awarded by authorized City staff based upon verbal quotes.

(2) Public improvement contracts valued up to \$100,000, may be awarded by the Board based upon written quotes. The Director may award contracts up to \$75,000, the Board shall award all contracts that exceed \$75,000.

(3) With regard to subparagraphs “1” and “2,” price quotes from at least 3 prospective contractors shall be requested. If three prospective contractors are not available, then fewer quotes may be solicited. The Board (or City) shall maintain records of the attempts to obtain quotes. The Board shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Board (or City) shall make a written record of the basis for the award.

#### **Section 10. Request for Proposal.**

a) The Board may exempt any public contract or class of contracts from competitive bidding requirements. Solicitation for any public contract or class of contracts through the RFP process shall be undertaken only after findings have been made:

(1) The lack of bids are unlikely to result in favoritism or to diminish substantially competition for the contract; and

(2) The exemption will result in substantial cost savings. In making such findings the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate; and

(b) Public Hearing. Prior to making the findings supporting the exemption of a particular public contract or class of contracts, the Board shall hold a public hearing, where interested parties shall be afforded an opportunity to appear and present testimony. Notice of the hearing shall be published not less than 14 days prior to the hearing in one trade newspaper of general circulation in the state. The notice shall state that the purpose of the public hearing is to take comments on the Board's draft findings for exemption, and that copies of the draft findings are available, upon request, from the Director.

(c) Contents of the Solicitation Document. Any RFP solicitation document shall contain a clear statement of the following:

- (1) Contractual terms and conditions;
- (2) Evaluation criteria to be applied in awarding the contract and their relative importance. Criteria may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential;
- (3) A statement of any terms and conditions which may be subject to negotiation, and an authorization for the proposal of alternative terms and conditions to those set forth in the RFP;
- (4) Provisions for vendors to comment on any specifications which the proposer feels limit competition.

#### **Section 11. Emergency Contracts.**

(a) Emergency Contracts up to \$100,000. The Board may let public contracts without competitive procurement if an emergency exists. For the purposes of this rule, an emergency consists of circumstances creating an unforeseen and substantial risk of loss or damage to property, a significant interruption of governmental services or a threat to public health or safety which requires prompt execution of a contract to remedy the condition.

- (1) The Director may declare an emergency, which shall authorize the City to enter into an emergency contract with a price up to \$100,000. The Director must make written findings describing the emergency conditions necessitating prompt execution of the contract.
- (2) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board.

(b) Emergency Contracts in Excess of \$100,000. The Board may enter into public contracts in excess of \$100,000 without competitive bidding when circumstances that could not reasonably be anticipated necessitate the prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the Board shall:

- (1) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(2) Make written findings describing the circumstances that require the prompt performance of the contract, and of the harm anticipated to result from failing to establish the contract on an expedited basis;

(3) Make specific finding of the measures taken under Subsection (1) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the particular contractor.

(c) No contract shall be let pursuant to this section in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract award awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

**Section 12. Brand Name Specification in Contracts.** Specifications for contracts shall not require any product by any brand name or mark nor the product of any particular manufacturer or seller, unless the product is exempt from this requirement under the provisions of subsection (a) or (b). This section shall not be construed to prohibit reference in the specifications to a particular product or products as examples of the quality, performance, functionality or other characteristics of the product needed, or from establishing a qualified product list.

(a) A contract shall be exempt from the requirement of this section under any of the following conditions:

(1) The specification is for a specific copyrighted product. This exemption does not include patented or trade mark goods.

(2) If there is only one manufacturer or seller of a product of the quality required, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, a contract may specify such particular product subject to the following conditions:

(A) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price but also other items of expense such as costs related to quality or conversion;

(B) Prior to awarding the contract, reasonable efforts have been made to notify known vendors of competing or comparable products of the intended specifications; and such vendors have been invited to submit competing proposals. If the amount of the purchase does not exceed \$75,000 such notice and invitation may be informal. If the amount of the purchase exceeds \$75,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timed to allow competing vendors a reasonable opportunity to make proposals; and

(C) If the amount of the purchase exceeds \$75,000, and the contract is not otherwise exempt under Section 6, the Director shall notify the Board of the specification. The notice shall be written and include a brief description of the proposed contract, a detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that

were rejected. The description shall also include the efforts made to notify and invite proposals from competing vendors.

(3) When it is impractical to create specific design or performance specifications for a type of product to be purchased, a list of approved products by reference to particular manufacturer or sellers may be specified in accordance with the following product prequalification procedure:

(A) Reasonable efforts shall be made to notify known manufacturers or vendors of competitive products of the intention to accept applications for inclusion in the list of prequalified products. Notification shall include advertisement in a trade journal or statewide distribution when possible. In lieu of advertising, notification may be made to vendors and manufacturer appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.

(B) Applications for prequalification of similar products are permitted up to 15 days prior to advertisement for bids on the product.

(C) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the applicant shall be notified in writing. The applicant may, within three (3) days after receipt of the notice, appeal the denial or revocation to the Board according to the procedure in Section 10.

(b) The Board may by resolution exempt certain additional products or classes of products upon any of the following findings:

(1) It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

(2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings.

(3) There is only one manufacturer or seller of the product of the quality required

(4) Efficient utilization of existing equipment or supplied require the acquisition of compatible equipment or supplies.

**Section 13. Investigation of Bidders or Proposers for Responsibility; Disqualification of Bidders or Proposers for Nonresponsibility.**

(a) The Director has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible, as defined by these rules. This investigation may include an inquiry into the responsibility of the bidder's proposed subcontractors and suppliers. If a bidder fails to promptly supply, or have supplied, information required by the Director during its responsibility investigation, such failure shall be grounds for finding of nonresponsibility.

(b) A responsible proposer is one who has the attributes, qualities or capabilities of a responsible bidder as defined by these rules. The Director has the right, to make such investigations as necessary to determine whether a proposer is responsible.

(c) If the prospective bidder or proposer is disqualified for nonresponsibility, the notice shall specify the reasons for the disqualification and shall advise the person that any appeal of the disqualification must be filed by giving written notice to the Director within three (3) business days after receipt of the notice.

**Section 14. Cancellation of Invitations to Bid or Request for Proposals.**

(a) Cancellation in the Public Interest. An invitation to bid or request for proposal may be canceled in whole or in part when it is in the public interest. The reasons therefore shall be stated in writing, and shall be made part of the bid or proposal file.

(b) Notice of Cancellation. When an invitation to bid or request for proposal is canceled prior to the bid or proposal opening, notice of cancellation shall be sent to all holders of bid or proposal documents. Such notice of cancellation shall:

- (1) Identify the invitation to bid or request for proposals;
- (2) Briefly explain the reason for cancellation; and
- (3) Where appropriate, explain that an opportunity will be given to compete on any resolicitation.

**Section 15. Negotiation.** Except as otherwise provided by these rules, the City shall not negotiate with bidders on competitively bid contracts.

a) Change Orders or Contract Amendments. After award of the contract, the City and the Contractor may modify a contract by negotiated change order or amendment, so long as the change order or amendment complies with Section 6(n) of these rules.

(b) Negotiation When Bids Exceed Cost Estimate.

(1) For the purposes of this subsection, the following definitions apply:

(A) Cost estimate: the City's most recent pre-bid, good faith assessment of anticipated contract costs.

(B) Value engineering: proposed changed to plans, specifications, or other contract requirements consistent with industry practice which may be made in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the public improvement.

(C) Other options: Items generally considered appropriate in the negotiation of the details of contract performance, including, but not limited to, proposed methods of construction, proposed dates of completion, firm and personnel experience on similar projects and other matters relating to cost or quality. As used in this rule "other options" does not include material changes in

requirements set forth in the bid documents which would likely affect the field of competition.

(D) Project: a contract for a public improvement as defined by ORS 279.011(8).

(2) If the bids submitted by all responsive and responsible bidders on a competitively bid project exceed the City's cost estimate, the City may negotiate value engineering and other options with the lowest responsive and responsible bidder in an attempt to bring the project within the City's cost estimate.

(3) Negotiations shall not result in contract award if the scope of the project is significantly changed from the original contract bid documents. The scope is significantly changed if other bidders would reasonably have been expected to participate in the bidding process had the change been made during the solicitation process rather than during negotiations.

(4) The City may discontinue negotiations at any time, and shall do so if it appears to the City that the low bidder is not negotiating in good faith or fails to share cost and pricing information upon request.

(5) Negotiations may only be undertaken with the lowest responsible bidder; no negotiations may be conducted with any other bidder on the contract.

**Section 16. Rejection of Bids and Proposals.** The Board may reject any bid or proposal not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids or proposals upon a written findings that it is in the public interest to do so, as based upon the criteria for rejection set forth in the Oregon Attorney General's Model Public Contract Rules Manual. In any case where competitive bids or proposals are required, all bids or proposals are rejected, and the proposed contract is not abandoned, new bids or proposals may be called for as in the first instance.

**Section 17. Appeals of Disqualifications as Bidder or Proposer.** The procedures for appeals shall be as follows:

(a) Any person who wishes to appeal disqualification as a bidder or proposer shall, within three (3) business days after receipt of notice of disqualification, notify the Director that the person appeals the disqualification. Notices of appeal need not be in any particular form so long as they are in writing addressed to the Director.

(b) Immediately upon receipt of such written notice of appeal, the Director shall inform the Board.

(c) Upon receipt of notice of appeal, the Board shall notify the person appealing of the time and place of the hearing.

(d) The Board shall conduct the hearing according to the provisions of ORS 279.045(3) and decide the appeal within ten (10) days after receiving the notification from the Director and shall set forth in writing the reasons for its decisions.

**Section 18. Protest of Award of Contract.**

(a) Notice of Award. The notice of award shall only be sent to a bidder or proposer who either submitted a letter stating that no bid or proposal would be submitted or who submitted a qualified bid or proposal prior to the deadline specified in the solicitation documents.

(b) Protest.

(1) Only an adversely affected bidder or proposer shall have the right to protest the award. An adversely affected bidder or proposer is that bidder or proposer who can claim eligibility for award of the contract by virtue of his or her status as the next lowest responsible bidder or next best proposer. i.e., the adversely affected bidder or proposer must be able to claim that all lower bidders or better proposers are ineligible for the award because they are nonresponsive or nonresponsible.

(2) Unless otherwise provided by specific provision in the solicitation documents, such adversely affected bidder or proposer shall have seven (7) calendar days after receipt of notice of award to submit to the City the written protest of the Board's decision to award the contract. No protest shall be entertained unless filed within the time period specified in this rule or in the solicitation documents.

(3) The written protest shall specify with particularity the basis for the protest, and shall contain such facts as to establish the bidder's or proposer's right to protest under paragraph (1) of this subsection.

(c) Procedure. The Director shall promptly notify the Board upon receipt of the protest of award. Within fourteen (14) days after receipt of the protest, the Board shall conduct a hearing to review the protest and issue a written opinion affirming or denying the protest. The written decision denying a protest shall only be sent to the adversely affected bidder or proposer.

(d) Finality of Award. If no written protest is filed within the period provided, the written notice of award shall constitute a final decision of the Board to award the contract. If a protest is timely filed, the notice of award is a final decision of the Board only upon issuance of a written decision denying the protest and affirming the award.

**Section 19. Personal Services Contracts.**

(a) A contract for personal services is any contract which calls for specialized skill, knowledge or resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Contracts for personal services are not public contracts as defined by Oregon law and these rules, and are not subject to competitive procurement requirements.

(b) Personal services contracts may include, but are not limited to, the following:

(1) Contracts for services as a consultant

(2) Contracts for services performed as an independent contractor, including but not limited to the services of an accountant; attorney; land use planning consultant; physician or dentist;; appraiser; passenger aircraft pilot; timber cruiser; data processing consultant or broadcaster.

(3) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.

(4) Contracts for educational services.

(5) An agent of record to perform insurance services in connection with insurance contracts.

(c) The City may enter into a personal services contract when selecting an independent contractor for a personal services contractor on the basis of qualifications, rather than price, would



most likely meet the City's needs, result in satisfactory contract performance and provide optimal value for the City.

(d) Selection Procedures. The Board shall use a Request for Qualification (RFQ) or Request for Proposal (RFP) selection procedure where the estimated contract price will be more than \$75,000.00. For any personal services contract where the estimated contract price will be in excess of \$25,000.00 and up to \$75,000, at least three informal proposals shall be solicited by the Director from qualified contractors. Any personal services contract with a contract price of \$25,000.00 or less, a department head may directly negotiate with the consultant or contractor. Notwithstanding any provision in this subsection, the Director may enter into personal services contracts, without formal or informal solicitation, if an emergency exists.

(e) Protest Procedures. Every proposer who submits a proposal shall be notified of contract award. Any proposer who claims to be adversely affected by the selection of a competing proposer shall have five business days after receiving notification to submit written protest. To be adversely affected, the proposer must demonstrate that all higher-ranked proposers were ineligible for selection. No protest submitted after the deadline for submitting a protest shall be considered. The Director shall have authority to resolve a written protest. No formal protest is available for any contract under \$25,000.00.

**Section 20. Direct Appointment Procedure for Personal Services Contracts.**

(a) A qualified consultant may be appointed directly from:

- (1) a Local Board of Contract Review's current list of consultants.
- (2) another public contracting agency's current list of consultants, pursuant to an intergovernmental agreement entered into in accordance with ORS Chapter 190.
- (3) among all consultants offering the necessary services that the Director can reasonably locate under the circumstances.
- (4) among all the consultants responding to an RFQ/RFP if the direct appointment is undertaken pursuant to Subsection b(3) of this Section.

(b) The direct appointment procedure may be used when:

- (1) circumstances which could not reasonably have been foreseen create a substantial risk of loss, damage, interruption of services, or threat to the public health or safety and require the prompt performance of services to remedy the situation; or
- (2) the estimated cost of services for the Project does not exceed \$75,000; or
- (3) the Project:
  - (A) consists of work which has been substantially described, planned, or otherwise previously studied or rendered in an earlier contract, and is in continuation of that Project; and
  - (B) the selection procedure used for the original Project was the formal selection procedure set forth under Section 19 of these Rules and the result for proposals specifically identifies the project as one for which direct appointment may be considered in executing contracts in continuation of that Project.

(c) Direct appointment pursuant to this Section shall be competitive to the extent practicable and may be based on criteria, including, but not limited to, the consultant's availability, capabilities, staffing, experience, and compensation information.

**Section 21. Disposition of Personal Property.**

(a) The Director shall have the authority to determine when personal property owned by the City is surplus.

(b) The Director shall select the method of disposal which maximizes the value the City will realize from disposal of the surplus property. Surplus property shall be disposed of as follows:

(1) Sold to the highest qualified buyer meeting the sale terms when the value of each item so offered is less than \$5,000, and the sale has been advertised at least once in a newspaper of general circulation in the Coos Bay area, not less than one week prior to the sale;

(2) Traded in on the purchase of replacement equipment or supplies;

(3) Sold at public auction advertised at least once in a newspaper of general circulation in the Coos Bay area not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a general description of the personal property to be sold;

(4) Sold at a fixed price retail sale if doing so will result in greater net revenue to the city; or

(5) Contracted for use, operation or maintenance by one or more private or public entities. Prior to approval of such a contract, the Director shall determine that the contract will promote the economic development of the City.

(c) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind.

**Section 22. Electronic Advertisement of Public Improvement Contracts.** In lieu of publication in a newspaper of general circulation in the Coos Bay area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement or the sale of personal property may be published electronically by posting on the City's website, provided that the following conditions are met:

(a) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

(b) The Director, or his designee, determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the Coos Bay area, and will provide cost savings for the City, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the Coos Bay area in encouraging meaningful competition.