

ORDINANCE NO. A-91C

AN ORDINANCE ADOPTING RULES FOR PUBLIC CONTRACTING, PERSONAL SERVICE AND OTHER CONTRACTS; REPEALING CONFLICTING ORDINANCES RESOLUTIONS AND ORDERS; AND DECLARING AN EMERGENCY.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

Section 1. Public Contracts – City of Coburg Policy.

- A. **Short Title.** The provisions of this Ordinance and all rules adopted under this Ordinance may be cited as the Coburg Public Contracting Regulations.
- B. **Purpose of Public Contracting Regulations.** It is the policy of the City of Coburg in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
 - (1) Promoting impartial and open competition;
 - (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
 - (3) Taking full advantage of evolving procurement methods that suit the contracting needs of the City as they emerge within various industries.
- C. **Interpretation of Public Contracting Rules.** In furtherance of the purpose of the objectives set forth in subsection B, it is the City's intent that the City of Coburg Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

Section 2. Application of Public Contracting Regulations.

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 between the City and a public body or agency of the State of Oregon or its political subdivisions, or between the City and 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. *The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by the City for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant*

to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.

- C. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested.
- D. **Real Property.** Acquisitions or disposals of real property or interests in real property.
- E. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- F. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- G. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:
 - (1) The incurring of debt by the City, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish 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, 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, based upon the findings of the Purchasing Manager.
- H. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.
- I. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.
- J. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

Section 3. Public Contracts – Regulation by the City of Coburg.

Except as expressly delegated under these regulations, the City of Coburg reserves to itself the exercise of all of the duties and authority of a contract review board *and a contracting agency* under state law, including, but not limited to, the power and authority to:

- A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;

- C. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- D. **Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- E. **Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the purchasing manager's determination of debarment, or concerning prequalification;
- F. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and
- G. **Award.** Award all contracts that exceed the authority of the Purchasing Manager.
- H. **Delegation.** Delegate to any employee or agent of the City any of the duties or authority of a contracting agency; and
- I. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the City shall review these regulations to determine whether any modifications to the regulations need to be adopted by the City to ensure compliance with statutory changes.

Section 4. Public Contracts – Model Rules.

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 Ordinance, including any amendments to this Ordinance, and *further provided that*, despite the provisions of the Model Rules concerning the selection of architects, engineers, land surveyors and related consultants, the City's evaluation of architects, engineers, land surveyors and related consultants may include price as a dominant criterion for selection.

Section 5. Public Contracts - Authority of Purchasing Manager.

- A. **General Authority.** The mayor, or the city administrator by the mayor's delegation, shall be the purchasing manager for the City and is hereby authorized to issue all solicitations and to award all City contracts for which the contract price does not exceed \$10,000. Subject to the provisions of this Ordinance the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City's contracting needs. The purchasing manager shall hear all solicitation and award protests.
- B. **Solicitation Preferences.** When possible, the purchasing manager shall use solicitation documents and evaluation criteria that:
 - (1) Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and
 - (2) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality,

and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

C. **Delegation of Purchasing Manager’s Authority.** Any of the responsibilities or authorities of the purchasing manager under this Ordinance may be delegated and sub-delegated by written directive.

D. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the City any modifications required to ensure compliance with statutory changes.

Section 6. Public Contracts – Definitions. The following terms used in these regulations shall have the meanings set forth below.

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 until the contract is executed and delivered by the City of Coburg

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

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, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire’s revenues or sales. The term “concession agreement” does not include a mere rental agreement, license or lease for the use of premises.

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 City of Coburg Council.

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

Debarment means a declaration by the Purchasing Manager under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City’s public contracts for a prescribed period of time.

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

Energy savings performance contract means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

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.

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's 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.

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.

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.

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 licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing Manager shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Public contract means 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 improvement means a project for construction, reconstruction or major renovation on real property by or for the City. "Public improvement" does not include:

- (1) 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; or
- (2) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Purchasing Manager means the mayor, or by the mayor's delegation, the city administrator or designee who exercise the authority of the purchasing manager under these public contracting regulations..

Qualified pool means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

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 with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the City requests, receives and evaluates potential contractors and awards public contracts.

Solicitation Agent means, with respect to a particular solicitation, the mayor, or the city administrator when so designated by the mayor or other designee to conduct the solicitation and make an award.

Solicitation documents means all informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

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:

- (1) 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;
- (2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (3) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (4) Qualified legally to contract with the City;
- (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the

determination of responsibility upon any available information or may find the offeror non-responsible; and

- (6) Not been debarred by the City, 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 which is no longer needed for use by the department to which such property has been assigned.

Section 7. Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.

A. Authority of City Council. In its capacity as contract review board for the city, the Council, upon its own initiative, or upon request of the purchasing manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section 7.

B. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:

- (1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
- (2) The estimated contract price or cost of the project, if relevant;
- (3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
- (4) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
- (5) A description of the proposed alternative contracting methods to be employed; and
- (6) The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

C. Hearing.

- (1) The City shall approve the special solicitation or exemption after a public hearing before the City Council following notice by publication in at least one newspaper of general circulation in the city's area.
- (2) At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.
- (3) The City council will consider the findings and may approve the exemption as proposed or as modified by the City council after providing an opportunity for public comment.

D. **Special Requirements for Public Improvement Contracts.**

- (1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.
- (2) The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

E. **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section 7, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the City Council approves the exemption. If the City Council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

Section 8. **Public Contracts - Solicitation Methods for Classes of Contracts.** The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the City Council:

A. **Purchases from Nonprofit Agencies for Disabled Individuals.** The City shall give a preference to goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

B. **Public Improvement Contracts.**

- (1) **Any Public Improvement.** Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued only under an invitation to bid.
- (2) **Non-Transportation Public Improvements Up to \$150,000.** Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price does not exceed \$150,000 may be awarded using an informal solicitation for quotes.
- (3) **Transportation Public Improvements Up to \$100,000.** Contracts for which the estimated contract price does not exceed \$100,000 for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes.

C. **Personal Services Contracts.**

- (1) **Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.
- (2) **Personal Service Contracts Not Exceeding \$150,000.** Contracts for personal services for which the estimated contract price does not exceed \$150,000 may be awarded using an informal solicitation for proposals.

- (3) **\$75,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.
- (4) **Personal Service Contracts Not Exceeding \$20,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$20,000 in any fiscal year or \$50,000 over the full term, including optional renewals, may be awarded under any method deemed in the City's best interest by the Solicitation Agent, including by direct appointment.
- (5) **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$50,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

D. **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

- (1) **Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the city Council or designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the City.
- (2) **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this section 8, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City's Public Contracting Regulations.

E. **Contracts for Goods and Services.**

- (1) **Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.
- (2) **Procurements Up to \$150,000.** The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$150,000 may be made under an informal solicitation for either quotes or proposals.

F. **Contracts Subject to Award at Solicitation Agent's Discretion.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the city's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

- (1) **Advertising.** 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) **Contracts Up to \$5,000.** Contracts of any type for which the contract price does not exceed \$5,000 without a record of the method of award.
- (5) **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 lending materials.
- (6) **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.
- (7) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (8) **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (9) **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
- (10) **Sole Source Contracts.** Contracts for goods or services which are available from a single source may be awarded without competition.
- (11) **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by the City for resale to consumers.
- (12) **Sponsor Agreements.** Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
- (13) **Structures.** Contracts for the disposal of structures located on City-owned property.
- (14) **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
- (15) **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
- (16) **Temporary Use of City-Owned Property.** The City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process if:
 - (a) The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
 - (b) The proposed use of the property is consistent with the City's use of the property and the public interest; and
 - (c) The city reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.

- (17) **Used Property.** A Solicitation Agent, for procurements up to \$20,000, and the Purchasing Manager, for procurements in excess of \$20,000 may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similarly 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. The Purchasing Manager shall record the findings that support the purchase.
- (18) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

G. **Contracts Required by Emergency Circumstances.**

- (1) **In General.** When an official with authority to enter into a contract on behalf of the City determines that immediate execution of a contract within the official's authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or City Council approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
- (2) **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (1) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City and the public, and (2) notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.
- (3) **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Purchasing Manager has made a written declaration of emergency. Any Public Improvement Contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the City Council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Purchasing Manager may waive the requirement for all or a portion of required performance and payment bonds.

H. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.

- (1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Manager. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum or other documentation from GSA establishing permission to the City to purchase under the federal program.
- (2) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

- (3) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.
- (4) If a single purchase of goods or services exceeds \$150,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

I. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

J. **Surplus Property.**

(1) **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the City. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

(a) **Governments.** Without competition, by transfer or sale to another City department or public agency.

(b) **Auction.** By publicly advertised auction to the highest bidder.

(c) **Bids.** By public advertised invitation to bid.

(d) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.

(e) **Fixed Price Sale.** The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

(f) **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.

(g) **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©(3) of the Internal Revenue Code of 1986, as amended.

(2) **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, 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 a record of the value of the item and the manner of disposal.

- (3) **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
- (4) **Police Officers' Handguns.** Upon honorable retirement from service with the City, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer the City shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
- (5) **Restriction on Sale to City Employees.** City 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 the sale is first publicly advertised.
- (6) **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver, a bill of sale signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

K. Concession Agreements.

- (1) **General.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.
- (2) **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
 - (a) **Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by the City will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.
 - (b) **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.

(3) **Competitive Award.** Concession agreements solicited by the City for the use of designated public premises for a term greater than a single event shall be awarded as follows:

(a) **Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.

(b) **Major Concessions.** Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a request for proposals.

Section 9. Public Contracts - Informal Solicitation Procedures. The City may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

A. Informally Solicited Quotes and Proposals.

(1) **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.

(2) **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than, or in addition to, price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of the City, based on the criteria for award.

(3) **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

B. Qualified Pools.

(1) **General.** To create a qualified pool, the Purchasing Manager may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

(2) **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals

- by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the City's main office and on its website.
- (3) **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City.
 - (4) **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City and all pool participants are parties. The Contract shall contain all terms required by the City, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City contract.
 - (5) **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Solicitation Agent shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants, unless the Solicitation Agent determines that best interests of the City require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
 - (6) **Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
 - (7) **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the City Council in the manner described in section 13.

Section 10. Public Contracts - Use of Brand Name Specifications for Public Improvements.

A. **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:

- (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public improvement Contracts or substantially diminish competition for Public improvement Contracts; or

- (2) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City; or
- (3) There is only one manufacturer or seller of the product of the quality required; or
- (4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

- B. **Authority of Purchasing Manager.** The Purchasing Manager shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection A.
- C. **Brand Name or Equivalent.** Nothing in this section 10 prohibits the City from using a “brand name or equivalent” specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City, or from establishing a qualified product list.

Section 11. Public Contracts - Bid, Performance and Payment Bonds.

- A. **Solicitation Agent May Require Bonds.** The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- B. **Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$75,000 shall require bid security. Bid security for a request for proposal may be based on the City’s estimated contract price.
- C. **Performance Bonds.**

- (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.
- (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the City and any public agency that is providing funding for the project for which the contract was awarded.
- (3) **Cash-in-Lieu.** The Purchasing Manager or City may permit the successful offeror to submit a cashier’s check or certified check in lieu of all or a portion of the required performance bond.

D. **Payment Bonds.**

- (1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.
- (2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor

must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

- E. **Design/Build Contracts.** If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.
- F. **Construction Manager/General Contractor Contracts.** If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection A. of this section upon execution of an amendment establishing the guaranteed maximum price. The City shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- G. **Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the City or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the Purchasing Manager.
- H. **Emergencies.** In cases of emergency, or when the interest or property of the City probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of section 8.G, unless the City Council requires otherwise.

Section 12. Public Contracts - Electronic Advertisement of Public Improvement Contracts. In lieu of publication in a newspaper of general circulation in the city's metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement 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 Solicitation Agent 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 city metropolitan area and will provide costs 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 City's metropolitan area in encouraging meaningful competition.

Section 13. Appeal of Debarment or Prequalification Decision.

- A. **Right to Hearing.** Any person who has been debarred from competing for City contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this section 13.
- B. **Filing of Appeal.** The person must file a written notice of appeal with the City's Purchasing Manager within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
- C. **Notification of City Council.** Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify the city Council of the appeal.
- D. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
 - (1) Promptly upon receipt of notice of appeal, the City shall notify the appellant of the time and place of the hearing;
 - (2) The City shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and
 - (3) At the hearing, the City shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
- E. **Decision.** The City shall set forth in writing the reasons for the decision.
- F. **Costs.** The City Council may allocate the City's costs for the hearing between the appellant and the City. The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the Council's opinion, warrant such allocation of costs. If the City Council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the City, if the decision is overturned.
- G. **Judicial Review.** The decision of the City Council may be reviewed only upon a petition in the circuit court of Lane County filed within 15 days after the date of the City Council's decision.

Section 14. Severability. In the event any section or subsection of this Ordinance is finally adjudged to be legally unenforceable, then such judgment shall only invalidate that section or subsection, and all remaining sections and subsections shall remain in full legal force and effect.

Section 15. Repeal. City of Coburg Ordinances No. A-91, A-91(a) and A-91(b), together with all implementing resolutions and orders, and all other ordinances to the extent of conflict with this ordinance, are hereby repealed.

Section 16. Declaration of Emergency. The City Council, finding that it is necessary for the general welfare of the City that the City's Public Contracting and Personal Service Contracts Rules become effective on March 1, 2005, the effective date of the revised State of Oregon Public Contracting

Code, hereby declares an emergency to exist and that this ordinance shall take effect immediately upon its passage by the Council and approval by the Mayor.

The foregoing ordinance was by City Council consent, after public notice, public hearing and council deliberations, read twice by title only in accordance with the City Charter on the 1st day of March, 2005, whereupon it was put to a vote, the results of which were:

(a) YES: _____

(b) NO: _____

(c) ABSTENTION: _____

PASSED: _____

REJECTED: _____

SIGNED AND APPROVED this ____ day of _____, 2005.

Judy Volta, Mayor

ATTEST:

Marlene Colbath, Acting City Recorder