



RESOLUTION NO. 2025-07

A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND SCHEDULE OF SIGNATURE AUTHORITY AND REPEALING RESOLUTION 2017-28

WHEREAS, The Oregon Public Contracting Code (“Code”), codified in ORS chapters 279A, 279B and 279C, governs most public contracting and procurement.; and

WHEREAS, The Code requires local governments to adopt rules governing personal service contracts, or else default to the Model Rules (defined below).; and

WHEREAS, The Oregon Attorney General’s Office promulgates rules implementing the Code (the “Model Rules”). The Model Rules are found in Oregon Administrative Rules Chapter 137, divisions 46, 47, 48 and 49. The Model Rules are applicable to the City’s contracting and procurement unless the City adopts alternative rules that are consistent with the Code.; and

WHEREAS, Sandy’s current public contracting rules are contained in Resolution 2017-28.; and

WHEREAS, The City wants to update its contracting rules. Therefore, the Sandy City Council repeals Resolution 2017-28 and adopts this resolution as the City’s contracting rules.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANDY:

Section 1. Public Contracting Rules for the City of Sandy.

1.10.010 General provisions

(1) Except as provided within these rules, City public contracting is governed by the Code and the Model Rules. These rules will prevail in the case of a conflict between them and the Model Rules.

(2) The Sandy City Council is the City’s Contract Review Board (“Board”). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies by the Code or Model Rules will be exercised by the City Manager acting as the City’s contracting agent.

(3) For the purposes of these rules, “City Manager” means the City Manager for the City of Sandy, or the City Manager’s designee.

(4) For the purposes of these rules, “emergency” means circumstances that:

- (a) Could not have been reasonably foreseen;
- (b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (c) Require prompt execution of a contract to remedy the condition.

1.10.020 Personal service contracts

(1) Definition. “Personal service contract” means a contract for personal or professional services performed by an independent contractor, primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, accounting and auditing services, information technology services, planning and development services, artists, performers, property managers and consultants. The City Manager has discretion to determine whether a particular contract or service falls within this definition. For the purposes of this section, personal services contracts do not include contracts for construction-related personal services when only such professionals may legally provide the service. The procedures for construction-related personal service contracts are found below at section 1.10.025.

(2) Small Procurements. The City Manager may enter into personal service contracts not exceeding an estimated \$25,000 in any manner, including direct selection. However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City’s needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

(3) Intermediate Procurements. The following informal selection procedure may be used when the estimated payment to the contractor is equal to or less than \$250,000. The City Manager will contact a minimum of three prospective contractors qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City’s best interests, as determined in the City Manager’s sole and exclusive discretion. If three quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

(4) Formal Procurements. Contracts for personal services for which (1) the estimated contract price exceeds \$250,000 in total, or (2) the City anticipates executing as an on-call, master, or other contract form with an indefinite value, shall be awarded under either a publicly advertised request for proposals (in accordance with ORS 279B.060) or invitation to bid (in accordance with ORS 279B.055). The City may adopt further guidelines to support this process.

(5) Direct Selection. The following classes of personal service contracts may be selected in any manner which the City Manager deems appropriate to the City’s needs, regardless of the estimated contract price:

- (a) city attorneys, special counsel, city prosecutors, litigators, and hearings officers.
- (b) Software as a service providers.
- (b) Auditors.
- (c) Information technology support service providers.
- (d) Advertising agencies.

1.10.025 Contracts for construction-related personal services

(1) Purpose. This section implements ORS 279C.100 to .125. The City will rely on this subsection, not the Model Rules, when it seeks to contract with an architect, engineer, photogrammetrist, land surveyor or (in very narrow instances) a transportation planner (collectively, “construction-related personal services”).

(2) Applicability. This section applies only to services meeting the following criteria:

(a) A contract with an Estimated Fee that exceeds \$100,000; and

(b) The contract is for a service that is *legally required* to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or structure, or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City would rely on this subsection to hire someone to perform those services. However, if the City were hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under section 1.10.020 of these rules. See definition of “Related Services” below.

(c) If either (a) or (b) above is not satisfied, then the City may rely on section 1.10.020 of these rules to solicit and award the contract.

(d) Mixed contracts. Some contracts will contain a mixture of services covered by this section (i.e. services that only the particular consultant may legally perform) and Related Services. Whether the City uses section 1.10.020 or this section to solicit and award a mixed contract will depend upon the contract’s predominate purpose. The City will determine the predominant purpose based upon either the amount of money it estimates it will spend for covered services versus Related Services or the amount of time it estimates it the consultant will spend working on covered services versus Related Services. If covered services predominate, the City will solicit the contract under this section. If Related Services predominate, the City will solicit the contract under section 1.10.020.

(3) Definitions. The following definitions apply to this section:

(a) "Construction-Related Consultant" means an architect, engineer, photogrammetrist, land surveyor, a transportation planner in narrow instances defined below or a provider of Related Services.

(b) "Estimated Fee" means the City's reasonably projected fee to be paid for a Construction-Related Consultant's services under the anticipated contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable contract solicitation method and is distinct from the total amount payable under the contract.

(c) "Price Agreement" is limited to mean an agreement related to the procurement of construction-related personal services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase, combined with a continuing obligation to provide construction-related personal services or Related Services where the City does not guarantee a minimum or maximum additional purchase.

(d) "Project" means all components of a City-planned undertaking that gives rise to the need for a Construction-Related Consultant's construction-related personal services, or Related Services, under a contract.

(e) "Transportation Planning Services" only includes Project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.

(f) "Related Services" means personal services, other than construction-related personal services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, 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. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

(4) Small Procurements. For clarity's sake, the City Manager may enter into construction-related personal service contracts when the Estimated Fee to the Construction-Related Consultant is less than \$100,000 in any manner the City Manager finds practical or convenient, including direct selection or award. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

(5) Intermediate Procurements. The following informal selection procedure may be used when the Estimated Fee to the Construction-Related Consultant is above \$100,000 and equal to or less than \$250,000. The City Manager will contact a minimum of three (3) prospective Construction-Related Consultants qualified to offer the services sought. The City Manager will request an estimated fee and make the selection consistent with the City's best interests, to the most qualified consultant, as determined in the City Manager's sole and exclusive discretion. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain three quotes.

(6) Large Procurements.

(a) When the Estimated Fee to the Construction-Related Consultant is above \$250,000, or when the City anticipates executing as an on-call, master, or other form of contract with an indefinite value, the City must award a contract to the most qualified consultant.

(b) Unless the City follows the process set forth in subsection (c) below, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Construction-Related Consultant's compensation *after* the City has selected the most qualified consultant.

(c) Notwithstanding subsection (b) of this Section, the City may request pricing policies or pricing proposals from prospective consultants, including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates, if the City:

(A) States in the following in its solicitation document:

- a. That the City will screen and select prospective consultants as provided in ORS 279C.110(5);
- b. How the City will rank proposals from prospective consultants, with a specific focus on:

- i. Which factors the City will consider in evaluating proposals, including pricing policies, proposals or other pricing information, if the City will use pricing policies, proposals or other pricing information in the evaluation; and
 - ii. The relative weight the City will give each factor, disclosing at a minimum the number of available points for each factor, the percentage each factor comprises in the total evaluation score and any other weighting criteria the City intends to use;
 - c. An estimate of the cost of professional services the City requires for the procurement; and
 - d. A scope of work that is sufficiently detailed to enable a prospective consultant to prepare a responsive proposal.
- (B) Evaluates each prospective consultant on the basis of the prospective consultant's qualifications to perform the professional services the City requires for the procurement.
- (C) Announces the evaluation scores and rank for each prospective consultant after completing the evaluation described in paragraph (B) of this subsection. The City may determine that as many as three of the top-ranked prospective consultants are qualified to perform the professional services the City requires for the procurement and may request a pricing proposal for the scope of work stated in paragraph (A)(d) of this subsection from each of the top-ranked consultants. The pricing proposal must consist of:
 - a. A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the City requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
 - b. A reasonable estimate of hours that the prospective consultant will require to perform the professional services the City requires for the procurement.
- (D) Permits a prospective consultant identified as qualified under paragraph (C) of this subsection to withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

- (E) Completes the evaluation and selects a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (D) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.

(d) When soliciting a Construction-Related Consultant under this section, the City will use a Request for Proposals ("RFP") or a Request for Qualifications ("RFQ") followed by a RFP, as described below. The City may advertise RFQs and RFPs in any manner it deems appropriate. If the City directly solicits qualifications or proposals from Construction-Related Consultants, it will attempt to contact at least three consultants.

(e) RFQ. The City may in its sole discretion issue a RFQ to evaluate potential Construction-Related Consultants and establish a short list of qualified Construction-Related Consultants to whom it may issue an RFP for some or all of the construction-related personal services or Related Services described in the RFQ. RFQs may include:

- (A) A brief Project description;
- (B) A description of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services required for the Project;
- (C) Any conditions or limitations that may constrain or prohibit the selected Construction-Related Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
- (D) A response deadline and a description of how or where to submit a response;
- (E) A statement that interested consultants respond solely at their own expense;
- (F) RFQ evaluation criteria; and
- (G) Any other elements the City Manager deems appropriate.

(f) RFP. The City will issue an RFP to select the most qualified Construction-Related Consultant, regardless of whether an RFQ precedes an RFP. RFPs will include:

- (A) A description of the Project and the specific architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific

architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services sought will be performed;

(B) The RFP evaluation process and the criteria that the City will use to select the most qualified Construction-Related Consultant, including the weight, points or other classifications applicable to each criterion. Without limitation, the criteria may include:

(i) Proposers' availability and capability to perform the services described in the RFP;

(ii) Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;

(iii) The amount and type of resources, and number of experienced staff persons Proposers will commit to the Project;

(iv) Proposers' demonstrated ability to successfully complete similar Projects on time and within budget, including the hourly rates for key personnel and related cost data for similar Projects in the previous 12 months;

(v) References and recommendations from past clients; and

(vi) Any other criteria the City Manager deems appropriate.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews will or may occur and, if so, how the interview will factor into the City's selection;

(E) A proposal deadline and a description of how or where to submit a proposal;

(F) A statement whether the City will accept proposals in electronic format;

(G) A statement that interested consultants respond solely at their own expense;

(H) A statement reserving the City's right to reject any or all proposals and its right to cancel the RFP at any time if doing either would be in the public interest;

(I) A statement directing proposers to the protest procedures set forth in the RFP;

(J) A statement whether or not the City will hold a pre-proposal meeting for all interested Construction-Related Consultants to discuss the Project and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(K) Any other elements the City Manager deems appropriate.

(g) After selecting the most qualified Construction-Related Consultant in accordance with a RFP, the City will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:

(A) The consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the consultant for the services required under the contract;

(C) Legally required terms; and

(D) Any other provisions the City believes to be in its best interest to negotiate.

(h) The City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as the City may determine in its sole discretion. The city may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, the City may end the particular solicitation. Nothing in this section precludes the City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

(7) Price agreements. Solicitation materials and the terms and conditions for a Price Agreement for construction-related personal services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a Construction-Related Consultant to decide whether to submit a proposal;

(b) Specify whether the City intends to award a Price Agreement to one consultant or to multiple consultants. If the City will award a Price Agreement to more than one consultant, the solicitation document and Price Agreement will describe the criteria and procedures the City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve architectural, engineering, photogrammetric mapping, transportation planning or land surveying services are at the City's sole discretion.

- (c) Specify the maximum term for assigning services under the Price Agreement.

1.10.030 Small procurements (Under \$25,000) for Goods and Services, and Public Improvements

(1) Any procurement of goods, services, or public improvements not exceeding \$25,000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.

(2) A small procurement contract may be amended in accordance with OAR 137-047-0800 or OAR 137-049-0910, as applicable, but the cumulative amendments may not increase the total contract price to greater than \$31,250.

(3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.10.040 Intermediate Procurements for Goods and Services, and Public Improvements

(1) If a contract for procurement of goods and services estimated to cost between \$25,000 and \$250,000, or a contract for a public improvement that is estimated to cost between \$25,000 and \$100,000, the City Manager will contact a minimum of three (3) prospective contractors qualified to offer the goods or services or public improvement sought. The City Manager will request an estimated fee and make the selection consistent with the City's best interests, as determined in the City Manager's sole and exclusive discretion. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain three quotes.

(2) The City may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800 or OAR 137-049-0910, as applicable, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than \$312,500 for goods or service contracts, or to a sum that is greater than \$125,000 for public improvement contracts.

(3) A procurement may not be artificially divided or fragmented to qualify for this Section.

1.10.050 Large Procurements for Goods and Services, and Public Improvements

(1) When the estimated payment to the contractor for goods or services is above \$250,000, or when the City anticipates executing as an on-call, master, or other form of contract with an indefinite value, the City shall either solicit an invitation to bid in accordance with OAR 137-047-0255 or a request for proposals in accordance with OAR 137-047-0260. The City may adopt further guidelines to support this process within the procurement documents approved by the City.

(2) When estimated payment to the contractor for a public improvement is above \$100,000, the City shall follow the solicitation procedures set forth in OAR 137-049-0200.

(3) A procurement may not be artificially divided or fragmented to avoid this Section.

1.10.060 Authority to electronically advertise public contracts

(1) Pursuant to ORS 279C.260 and ORS 279B.055, electronic advertisement of public contracts for goods, services, personal services, construction-related personal services, and public improvements in lieu of newspaper publication is authorized when it is cost effective to do so. As described in OAR 137-046-0110(16), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods, services, personal services, construction-related personal services, and public improvements. The City Manager shall have the authority to determine when electronic publication is appropriate, and consistent with the City's contracting policies.

(2) Notwithstanding Section (1), an advertisement for a public improvement contract with an estimated cost over \$125,000 must be published at least once in a trade newspaper of general statewide circulation, such as the Daily Journal of Commerce.

1.10.070 Special procurements, sole-source procurements, and exemptions

(1) Special Procurements. The Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods, services, and personal services according to the procedures described in ORS 279B.085. The Board shall document the authorization of a special procurement via written resolution.

(2) Sole Source. The Board may award a contract for goods, services, or personal services from a single source if the goods, services, or personal services are available from only one company, or the prospective company has special skills uniquely required for the provision of the goods or the performance of the services. The City must make written findings to demonstrate why the proposed company is the only company who can provide the goods or perform the services desired, in general compliance with ORS 279B.075, and shall document the authorization of a sole source procurement via written resolution.

(3) Exemption. The Board may exempt certain contracts or classes of contracts for public improvements from the invitation to bid process according to the procedures described in ORS 279C.335. When exempting a public improvement from the invitation to bid process, the Board may authorize the contract to be awarded using a request for proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690. In all instances, the Board shall document the authorization of an exemption via written resolution.

(4) Hybrid Contracts. After seeking and receiving an exemption pursuant to Section (3), the following classes of contracts which include elements of public improvement services as well as construction-

related personal services may be awarded under a request for proposals, unless otherwise exempt from competitive solicitation:

- (a) Design/Build and CM/GC Contracts. Contracts for public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals.
- (b) Energy Savings Performance Contracts. Unless the contract qualifies for award under another classification in these Public Contracting Rules, contractors for energy savings performance contracts shall be selected under a request for proposals.

1.10.080 Emergency Contracts

- (1) Emergency contracts for procurement of goods, services, and personal services may be awarded pursuant to ORS 279B.080.
- (2) Pursuant to ORS 279C.110(11), the City may directly appoint a construction-related personal service contract in an emergency.
- (3) The City hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.
- (4) An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances: (1) document in written findings 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 Board of the facts and circumstances surrounding the emergency execution of the contract.

1.10.090 Notice of intent to award certain contracts

- (1) At least seven days before the award of a public contract solicited under a formal invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.
- (2) If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.
- (3) As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

(4) The City may give less than seven days' notice of its intent to award a contract if the City determines in writing that seven days is impracticable.

(5) This section does not apply to public contracts awarded under Sections 1.10.020(2) and (3), 1.10.025(4) and (5), 1.10.030, 1.10.040, 1.10.070, or 1.10.080.

(6) A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740, OAR 137-048-0240, or OAR 137-049-0450, as applicable.

1.10.100 Procedure for surplus property

(1) Surplus property is personal property owned by the City such as office furniture, computers, equipment, vehicles, excluding real property, that the City Manager determines is surplus and no longer useful to the City. Real property is subject to a different procedure under state law.

(2) The City Manager may authorize the sale, donation, transfer to another government agency, auction, liquidation or fixed price sale, trade-in, or destruction of surplus property. Surplus property may be sold through the informal solicitation of bids or through an auction, including an online auction. The City Manager has the discretion to advertise the sale of surplus property in a newspaper of city-wide circulation or online.

(3) Employees of the City may purchase surplus property, so long as at least three individuals or entities have bid on the property and the employee's bid is the highest bid.

1.10.110 Signature authority

(1) The purpose of this section is to clarify when the City Manager may bind the City to a purchase of, or a contract for, goods, services (including personal services and construction-related personal services) and public improvements (collectively "Purchases") without additional Board authorization. In order to bind the City to a Purchase, the City Manager must sign a document related to the Purchase. For the purposes of this section, "signing" a document includes a digital signature or authorization.

(2) If the City's adopted budget for a given fiscal year includes or anticipates the Purchase and the cost of the purchase does not exceed \$125,000, the City Manager may bind the City without additional Board authorization. For the purposes of this section, the City Manager may exercise reasonable discretion in determining whether the adopted budget anticipates a Purchase.

(3) For Purchases with a value exceeding \$125,000 or if the City's adopted budget for a given fiscal year does not include or anticipate the Purchase regardless of the dollar amount, the Board must authorize the Purchase in order to bind the City to it.

Section 2: Resolution No. 2017-28 is repealed.

Section 3: If any provision, section, phrase, or word of this resolution or its application to any circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 4: A scrivener's error in any portion of this resolution may be corrected by the City Manager during codification.

This resolution is adopted by the City Council of the City of Sandy this 3rd day of March, 2025.

Kathleen Walker, Mayor

ATTEST:

Jeffrey Aprati, City Recorder