

A BILL FOR AN ORDINANCE REPEALING AND REPLACING CHAPTER 3.04 PUBLIC CONTRACTING OF THE LEBANON MUNICIPAL CODE AND DECLARING AN EMERGENCY) **ORDINANCE BILL NO. 2018-2**
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) **ORDINANCE NO. 2909**

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) (“The Public Contracting Code”), which was signed by the Governor, and has an operative date of March 1, 2005, and which has been amended from time to time since; and

WHEREAS, the Public Contracting Code requires the City of Lebanon to designate a Local Contract Review Board, and provides that a City may establish its own policies for public contracting and purchasing.

NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:

3.04 is repealed, including Appendix A and Appendix B, and replaced as follows.

3.04.010 Purpose of Purchasing Policy

This Code is adopted by the Lebanon City Council as the governing body of Lebanon (“Lebanon” or the “city”) to establish the rules and procedures for contracts entered into and purchases made by the city. It is the policy of the city in adopting this Code to utilize public contracting and purchasing practices and methods that maximize the efficient use of city resources and the purchasing power of city 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 purchasing needs of the city as they emerge within various industries.

3.04.020 Interpretation of Purchasing Policy.

- A. Except as specifically provided in this Code, public contracts and purchases shall be awarded, administered and governed according to ORS Chapters 279A, 279B and 279C (the "Public Contracting Code") and the Attorney General's Model Public Contract Rules ("Model Rules"), as they now exist.
 1. In furtherance of the purposes of the objective set forth above in subsection A, it is the city's intent that this Code be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279A, 279B and 279C.
 2. The Model Rules adopted under ORS 279A.065 shall apply to the contracts and purchases of the city to the extent they do not conflict with this Code and the rules and regulations adopted by the city.
 3. In the event of a conflict between any provisions of this Code and the Model Rules, the provisions of this Code shall prevail.

- B. **Specific Provisions' Precedence over General Provisions.** In the event of a conflict between the provisions of this Code, the more specific provision shall take precedence over the more general provision.
- C. **Conflict with Federal Statutes and Regulations.** Except as otherwise expressly provided in ORS Chapters 279A, 279B and/or 279C, applicable federal statutes and regulations govern when federal funds are involved.

3.04.030 **Definitions.**

Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following terms have the meanings set forth herein. Additionally, any term defined in the singular includes the meaning of the plural, and vice versa.

- A. **Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.
- B. **Affected person/offenor.** A person whose ability to participate in a procurement is adversely impaired by a city decision.
- C. **Architectural, engineering and land surveying services.** Professional services performed by an architect, engineer or land surveyor and includes architectural, engineering or land surveying services, separately or any combination thereof, as appropriate within the context of a section of this Model.
- D. **Award.** The decision to enter into a contract or purchase order with a specific offeror.
- E. **Bid.** A response to an invitation to bid.
- F. **Bidder.** A person who submits a bid in response to an invitation to bid.
- G. **Business with which a city employee is associated.** Any business in which a city employee is a director, officer, owner or employee, or any corporation in which a city employee owns or has owned ten percent (10%) or more of any class of stock at any point in the preceding calendar year.
- H. **City.** The city of Lebanon, a municipal corporation and a contracting and purchasing agency.
- I. **City manager.** The person appointed by the city council to the position of city manager.
- J. **Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
- K. **Contract.** See Public Contract.
- L. **Contractor.** The person who enters into a contract with the city.
- M. **Contract price.** As the context requires:

1. The maximum payment that the city will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts;
 2. The maximum not-to-exceed payment specified in the contract; or
 3. The unit prices set forth in the contract.
- N. **Contracting agency.** A public body authorized by law to conduct a procurement.
- O. **Cooperative procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies.
- P. **Days.** Calendar days.
- Q. **Emergency.** Involves circumstances that:
1. Could not have been reasonably foreseen;
 2. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 3. Require prompt execution of a contract or amendment in order to remedy the condition.
- R. **Findings.** The justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:
1. Operational, budget and financial data;
 2. Public benefits;
 3. Value engineering;
 4. Specialized expertise;
 5. Market conditions;
 6. Technical complexity; and
 7. Funding sources.
- S. **Goods and/or services.** Supplies, equipment, materials and services, other than personal services, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. The term includes combinations of any of the items identified in the definition.
- T. **Grant.** An agreement under which:
1. The city receives moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - a. The assistance received by the city is from a grantor for the purpose of supporting or stimulating a program or activity of the city; and
 - b. No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or

2. The city provides moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - a. The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - b. No substantial involvement by the city is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
- U. **Immediate family member.** An employee's: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; siblings, and spouses thereof; grandparents and grandchildren, and spouses thereof; and domestic partner, and parents thereof.
- V. **Offer.** A bid, proposal, quote or other response to a solicitation document.
- W. **Offeror.** A person who submits an offer.
- X. **Opening.** The date, time and place announced in the solicitation document for the public opening of written sealed offers.
- Y. **Original contract.** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- Z. **Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.
- AA. **Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.
- BB. **Personal services.** Services, other than professional services, that require specialized skill, knowledge and resources in the application of technical or scientific expertise or in the exercise of professional, artistic or management discretion or judgment.
 1. Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary.
 2. Personal services contracts include, but are not limited to, the following classes of contracts:
 - a. Contracts for services performed in a professional capacity, including but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, physician or broadcaster;

- b. 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;
- c. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
- d. Contracts for services that are specialized, creative or research-oriented; and/or
- e. Contracts for services as a consultant.

CC. **Price agreement.** A contract for the procurement of goods or services at a set price which has:

- 1. No guarantee of a minimum or maximum purchase; or
- 2. An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.

DD. **Procurement.** The act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.

EE. **Professional services.** Architectural, engineering, land surveying, photogrammetric, transportation planning or related services, or any combination of these services, provided by a consultant.

FF. **Proposal.** A response to a request for proposals.

GG. **Proposer.** A person that submits a proposal in response to a request for proposals.

HH. **Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.

II. **Public contract.** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the city of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.

JJ. **Public contracting.** Procurement activities relating to obtaining, modifying or administering contracts or price agreements.

KK. **Public improvement.** A project for construction, reconstruction or major renovation on real property, by or for the city. It does not include projects for which no funds of the city are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.

- LL. **Public improvement contract.** A contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.
- MM. **Recycled product.** All materials, goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. It includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
- NN. **Related services.** Personal services, other than architectural, engineering and land survey services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to:
1. Landscape architectural services;
 2. Facilities planning services;
 3. Energy planning services;
 4. Space planning services;
 5. Environmental impact studies;
 6. Hazardous substances or hazardous waste or toxic substances testing services;
 7. Wetland delineation studies;
 8. Wetland mitigation services;
 9. Native American studies;
 10. Historical research services;
 11. Endangered species studies;
 12. Rare plant studies;
 13. Biological services;
 14. Archaeological services;
 15. Cost estimating services;
 16. Appraising services;
 17. Material testing services;
 18. Mechanical system balancing services;
 19. Commissioning services;
 20. Project management services;
 21. Construction management services and owner's representatives service; and/or
 22. Land use planning services.
- OO. **Request for proposals.** A solicitation document used for soliciting proposals.
- PP. **Request for qualifications.** A written document issued by the city describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the city.

- QQ. **Revenue generating agreements.** Contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.
- RR. **Scope.** The range and attributes of the goods or services described in a procurement document.
- SS. **Signed or signature.** Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.
- TT. **Solicitation.** As the context requires:
1. A request for the purpose of soliciting offers, including an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;
 2. The process of notifying prospective offerors of a request for offers; and/or
 3. The solicitation document.
- UU. **Work.** The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.
- VV. **Written or in writing.** Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

3.04.040 **Authority**

- A. **City Council as Local Contract Review Board.** The city council is designated as the local contract review board of the city and has all the rights, powers and authority necessary to carry out the provisions of this Code, the Public Contracting Code, and/or the Model Rules.
- B. **Application of Attorney General's Model Rules of Procedure.** Pursuant to ORS 279A.065(6), the city has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules do not apply to the city.
- C. **Inapplicability of Code.** This Code does not apply to the following:
1. Federal agreements where 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 this code, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or this Code.
 2. Contracts or agreement to which the Public Contracting Code does not apply;
 3. Contracts, intergovernmental and interstate agreements entered into pursuant to ORS Chapter 190;

4. Grants;
5. Acquisitions or disposals of real property or interests in real property;
6. Procurements from an Oregon Corrections Enterprise program;
7. Contracts, agreements or other documents entered into, issued or established in connection with:
8. The incurring of debt, 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;
9. The making of program loans and similar extensions or advance 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;
10. The investment of funds by the city as authorized by law; or
11. Banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the city manager.
12. Contracts for employee benefit plans;
13. Contracts with newspapers and other publications for the placement of advertisements or public notices;
14. Contracts for items where the price is regulated and available from a sole source or limited number of sources;
15. Insurance contracts;
16. Revenue-generating agreements;

D. **Authority of City Manager.** For contracts and purchases covered by this Code, the city manager is authorized to:

1. Award contracts and amendments without specific authorization by the city council whenever the contract amount is \$100,000 or less and the proposed expenditure is included in the current fiscal year budget.
2. Execute contracts and amendments with specific authorization by the city council whenever the contract or amendment amount is greater than \$100,000 and the proposed expenditure is included in the current fiscal year budget.
3. As the purchasing agent for the city, the city manager is authorized to:
 - a. Advertise for bids or proposals without specific authorization from the city council, when the proposed purchase is included within the current fiscal year budget.
 - b. Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the city council approves the proposed budget transfer.
 - c. Purchase goods, services and/or property without specific authorization by the city council whenever the amount is \$100,000 or less and the proposed expenditures are included in the current fiscal year budget.

- d. Purchase goods, services and/or property with specific authorization by the city council whenever the amount is greater than \$100,000 and the proposed expenditure is included in the current fiscal year budget.
 - e. Purchases of any goods or services in excess of \$7,500 from city employees require authorization of the city manager.
 - f. Departments shall communicate purchase requirements to the city manager and plan sufficiently in advance so that orders can be placed in economical quantities.
4. Delegate, in writing, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3). In the absence of a written delegation to the contrary, and in the absence of the city manager, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3) are delegated in order as follows:
 - a. Finance director; and
 - b. Department managers within their budget
 5. Adopt forms, procedures, computer software, and administrative rules for all city purchases regardless of the amount.
 - a. When adopting the forms, procedures, computer software, and/or administrative rules, the city manager shall establish practices and policies that:
 - i. Do not encourage favoritism or substantially diminish competition; and
 - ii. Allow the city to take advantage of the cost-saving benefits of alternative contracting methods and practices;
 - b. The city shall use these forms, procedures, computer software and administrative rules unless they conflict with the Code.
- E. **Favorable Terms.** Contracts and purchases shall be negotiated on the most favorable terms in accordance with this Code, other adopted ordinances, state and federal laws, policies and procedures.
- F. **Unauthorized Contracts or Purchases.** Public contracts entered into or purchases made without authorization herein shall be voidable at the sole discretion of the city.
1. The city may take appropriate action in response to execution of contracts or purchases made contrary to this provision.
 2. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such contracts or purchases.

G. **Purchasing from City Employees or Employees' Immediate Family Prohibited.** No contract shall be entered into with or purchase made from any city employee or employee's immediate family member, or any business with which the employee is associated, unless:

1. The contract or purchase is expressly authorized and approved by the city council; or
2. The need for the contract or purchase occurs during a state of emergency, and the city manager finds, in writing, that the acquisition from the employee, employee's immediate family member or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare.

3.04.050 **Preferences.**

A. **Discretionary Local Preference.** If the solicitation is in writing, the city manager may provide a specified percentage preference of not more than ten percent (10%) for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon.

1. When a preference is provided under this subsection, and more than one offeror qualifies for the preference, the city manager may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.
2. The city manager may establish a preference percentage of ten percent (10%) or higher if the city manager makes a written determination that good cause exists to establish the higher percentage, explains the reasons, and provides evidence of good cause.
3. The preference described in this subsection cannot be applied to a contract for emergency work, minor alterations, and ordinary repairs or maintenance of public improvements.

B. **Mandatory Tie Breaker Preference.** If offers are identical in price, fitness, availability and the quality is identical, and the city desires to award the contract, the preferences provided in ORS 279A.120 shall be applied prior to the contract award.

C. **Reciprocal Preference.** Reciprocal preferences must be given when evaluating bids, if applicable under ORS 279A.120.

D. **Preference for Recycled Materials and Supplies.** Preferences for recycled goods shall be given when comparing goods, if applicable under ORS 279A.125. The city manager shall adopt standards to determine if goods are manufactured from recycled materials.

3.04060 **General Provisions.**

A. **Public Notice.** Unless otherwise specifically provided by this Code, any notice required to be published by this Code may be published using any method the city manager deems appropriate, including but not limited to, mailing notice to

persons that have requested notice in writing, placing notice on the city's website, or publishing in statewide trade or local publications.

B. Procedure for Competitive Verbal Quotes and Proposals. Where allowed by this Code, solicitations by competitive verbal quotes and proposals shall be based on a description of the quantity of goods or services to be provided, and may be solicited and received by phone, or facsimile or email if authorized by the city manager.

1. A good faith effort shall be made to contact at least three (3) potential providers.
2. If three (3) potential providers are not reasonably available, fewer will suffice, provided the reasons three potential providers are not reasonably available is documented as part of the procurement file.

C. Procedure for Informal Written Solicitation. Where allowed by this Code, informal written solicitations shall be made by a solicitation document sent to not less than three (3) prospective providers.

1. The solicitation document shall request competitive price quotes or competitive proposals, and include:
 - a. The date, time and place that price quotes or proposals are due;
 - b. A description or quantity of the good or service required;
 - c. Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposed format.
2. Price quotes or proposals shall be received by the city manager at the date, time and place established in the solicitation document.
 - a. The city manager shall keep a written record of the sources of the quotes or proposals.
 - b. If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the city manager shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

D. Procurement Methods for Professional Services and Public Improvements. The city shall apply the Public Contracting Code and the Model Rules when procuring professional service contracts and public improvements and processing protests thereof.

E. Retroactive Approval. Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The city manager may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the city manager, along with a written request for contract retroactive approval, that contains:

1. An explanation of the reason work was commenced before the contract was finally awarded or executed;
2. A description of steps being taken to prevent similar occurrences in the future;
3. Evidence that, but for the failure to finally award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
4. A proposed form of contract.

3.04070 Source Selection Methods for Goods or Services, Other Than Personal or Professional Services.

A. **Small Procurements.** Contracts for or purchases of goods or services with a contract price of \$10,000 or less are small procurements.

1. Purchases less than \$7,500. The city manager may use any procurement method the city manager deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contract price of less than \$7,500.
2. Purchases between \$7,500 and \$10,000. The city manager may use competitive verbal quotes or proposals and informal written solicitations for small procurements of goods or services with a contract price between \$7,500 and \$10,000.
3. Negotiations. The city manager may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals, or to make modifications that will make the quote or proposal acceptable or more advantageous to the city.
4. Award. If a contract is awarded, the award shall be made to the offeror whose verbal quote or proposal the city manager determines will best serve the interests of the city, taking into account price as well as any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
5. Amendments. Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price.
6. Public notice. No public notice of small procurements is required.

B. **Intermediate Procurements.** Contracts for goods or services with a contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements.

1. Intermediate procurements shall be by informal written solicitation.

2. Negotiations. The city manager may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the city.
3. Award. If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation the city manager determines will best serve the interests of the city, taking into account price or any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.
4. Amendments. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price.

C. **Large Procurements.** Contracts for goods or services with a contract price greater than \$150,000 are large procurements.

1. The city manager may use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
2. When using either competitive sealed bidding or competitive sealed proposals, the city manager shall follow the applicable procedures set out in the Model Rules.
3. The city shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.

3.04.080 **Personal Services Contracts.**

A. **Classification of Services as Personal Services.** In addition to the classes of personal services contracts identified in the definition of personal services contracts, the city manager may classify additional specific types of services as personal services. In determining whether a service is a personal service, the city manager shall consider:

1. Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
2. Whether the city intends to rely on the contractor's specialized skills, knowledge and expertise to accomplish the work; and
3. Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the city's needs and result in obtaining satisfactory contract performance and optimal value.
4. A service shall not be classified as personal services for the purposes of this Code if:
 - a. The work has traditionally been performed by contractors selected primarily on the basis of price; or

- b. The services do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

B. Requests for Qualifications. At the city manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for individual negotiation, informal written solicitations or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
2. A request for qualifications may require information including, but not limited to:
 - a. The contractor's particular capability to perform the required personal services;
 - b. The number of experienced personnel available to perform the required personal services;
 - c. The specific qualifications and experience of personnel;
 - d. A list of similar personal services the contractor has completed;
 - e. References concerning past performance; and
 - f. Any other information necessary to evaluate the contractor's qualifications.
3. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time and location of the meeting.
4. Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, and all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

C. Direct Negotiations. Personal services may be procured through direct negotiations if:

1. The contract price does not exceed \$75,000 and the work is within a budgetary appropriation or approved by the city council; or
2. The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the city may have and interest; or

3. The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
4. Amendments. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty- five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
5. Public Notice. No public notice of personal services contracts procured by direct negotiations is required.

D. **Informal Written Solicitations.** An informal written solicitation process may be used for personal services when the contract price is less than \$125,000.

1. An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the city manager determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons three (3) providers are not reasonably available are documented in the procurement file.
2. The solicitation document shall include:
 - a. The date, time and place that proposals are due;
 - b. A description of personal services sought, or the project to be undertaken;
 - c. Any statement of the time period for which proposals must remain firm, irrevocable, valid and binding on the offerer. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposal format.
3. Selection and ranking of proposals may be based on the following criteria:
 - a. Particular capability to perform the personal services required;
 - b. Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
 - c. Performance history;
 - d. Approach and philosophy used in providing personal services;
 - e. Fees or costs;
 - f. Geographic proximity to the project or the area where the services are to be performed; and
 - g. Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
4. The city manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.

5. Amendments. Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.
 6. Public Notice. No public notice of personal services contracts procured by informal written solicitations pursuant to this section is required.
- E. **Requests for Proposals.** A request for proposals shall be used to procure personal services when the contract price is \$125,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the city.
1. The request for proposal shall include:
 - a. Notice of any pre-offer conference, including:
 1. The time, date and location;
 2. Whether attendance at the pre-offer conference is mandatory or voluntary; and
 3. A provision that statements made by representatives of the city at the pre-offer conference are not binding unless confirmed by written addendum.
 - b. The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, e.g., whether proposals may be submitted by electronic means;
 - c. The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
 - d. A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;
 - e. A statement that the city may cancel the procurement or reject any or all proposals;
 - f. The date, time and place of opening;
 - g. The office where the request for proposals may be reviewed;
 - h. A description of the personal services to be procured;
 - i. The evaluation criteria;
 - j. The anticipated schedule, deadlines, evaluation process and protest process;
 - k. The form and amount of any proposal security deemed reasonable and prudent by the city manager to protect the city's interests;
 - l. A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;

- m. If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
 - n. If contracts will be awarded to more than one personal services contractor, an identification of the manner in which the city will determine the number of contracts to be awarded, or that the manner will be left to the city's discretion at time of award;
 - o. If contracts will be awarded to more than one personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;
 - p. All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and
 - q. Any terms and conditions authorized for negotiation.
2. Public Notice. The city manager shall provide public notice of a request for proposals for personal services.
- a. Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals, unless the city manager determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.
 - b. The city manager shall document the specific reasons for the shorter public notice period in the procurement file.
3. Amendments. Personal services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty- five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work.

3.04.090 Alternative Source Selection Methods for Goods or Services & Personal Services.

- A. Sole-Source Procurements.** A contract may be awarded as a sole-source procurement without competition pursuant to this section.
- 1. Determination of Sole Source. Before a sole-source contract may be awarded, the city manager shall make written findings that the goods or services, or personal services are available from only one source, based on one or more of the following criteria:
 - a. The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one source;
 - b. The goods or services, personal services or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;

- c. The goods or services, personal services or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or
 - d. Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.
 2. Negotiations. To the extent reasonably practical, contract terms advantageous to the city shall be negotiated with the sole source provider.
 3. Notice. The city manager shall post notice of any determination that the sole source selection method will be used on the city's website not less than ten (10) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.
- B. **Special Procurements.** In its capacity as contract review board for the city, the city council, upon its own initiative or upon request of the city 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.
 1. 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:
 - a. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - b. The estimated contract price or cost of the project, if relevant;
 - c. 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;
 - d. 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;
 - e. A description of the proposed alternative contracting methods to be employed; and
 - f. The estimated date by which it would be necessary to let the contract(s).
 2. 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.

3. Notice Requirements for Public Hearing. The city shall approve the special solicitation or exemption after a public hearing before the city council.
 - a. At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.
 - b. The city council shall consider the findings and may approve the exemption as proposed or as modified by the city council after providing an opportunity for public comment.

- C. **Contracts.** Subject to award at the city manager's discretion. The following classes of contracts may be awarded in any manner that the city manager deems appropriate to the city's needs, including by direct appointment or purchase. Except where otherwise provided, the city manager shall make a record of the method of award.
 1. Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with the Code.
 2. 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.
 3. 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.
 4. Government-Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
 5. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the city.
 6. Specialty Goods for Resale. Contracts for the purchase of specialty goods by the city for resale to consumers.
 7. Sponsorship Agreements. Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.
 8. Structures. Contracts for the disposal of structures located on city-owned property.
 9. 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.
 10. Temporary Extensions or Renewals. Contracts for a single period of one (1) 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.

11. 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.
12. Used Property. The city manager 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 similar new property.
 - a. 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.
 - b. The city manager shall record the findings that support the purchase.
13. Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
14. Conference/Meeting Room Contracts. Contracts entered into for meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and city-sponsored workshops and trainings.

D. **Emergency Procurements.** When the city manager determines that immediate execution of a contract within the city manager's authority is necessary to prevent substantial damage or injury to persons or property, the city manager may execute the contract without competitive selection and award or city council approval, but, where time permits, competitive quotes should be sought from at least three (3) providers.

1. When the city manager enters into an emergency contract, the city manager shall, as soon as possible in light of the emergency circumstances, 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.
2. The city manager shall also notify the city council of the facts and circumstances surrounding the emergency execution of the contract.

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

3.04.100 **Surplus Property.**

- A. **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the city manager that the method of disposal is in the best interest of the city. Factors that may be considered by the city manager include costs of sale, administrative costs, and public benefits to the city.
1. Governments. Without competition, by transfer or sale to another government department or public agency.
 2. Auction. By publicly advertised auction to the highest bidder.
 3. Bids. By publicly advertised invitation to bid.
 4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with this Code for the award of personal services contracts.
 5. Fixed Price Sale. The city manager 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.
 6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 7. Donation. By donation to any organization operating within or providing a service to residents of the state of Oregon, which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the costs of sale or demolition are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by transfer, donation or disposal. The employee making the disposal shall make a record of the value of the item and the manner of disposal.
- C. **Personal-Use Items.** An item (or indivisible set) of specialized and personal use items 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 city manager.
- D. **Restriction on Sale to City Employees.** City employees shall not compete, as members of the public, for the purchase of publicly sold surplus property.
- E. **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the city shall make, execute and deliver a bill of sale or similar instrument 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.

3.04.110 **Protest and Appeal Procedures.**

- A. Appeal of Debarment or Prequalification Decision.

1. Right to Hearing. Any person who has been debarred from competing for the city's 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.
2. Filing of Appeal. The person shall file a written notice of appeal with the city manager within five (5) business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
3. Notification of City Council. Immediately upon receipt of such notice of appeal, the city manager shall notify the city council of the appeal.
4. Hearing. The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:
 - a. Promptly upon receipt of notice of appeal, the city shall notify the appellant of the date, time and place of the hearing;
 - b. The city council shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the city manager; and
 - c. At the hearing, the city council shall reconsider, without regard to the underlying decision giving rise to the appeal, 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.
5. Decision. The city council shall set forth in writing the reasons for the decision.
6. Costs. The city council may allocate its costs for the hearing between the appellant and the city.
 - a. The allocation shall be based upon facts found by the city council and stated in the city council's decision that, in the city council's opinion, warrant such allocation of costs.
 - b. 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.
 - c. Judicial Review. The decision of the city council may be reviewed only upon a petition in the circuit court of {County} filed within fifteen (15) days after the date of the city council's decision. The appeal must be filed in accordance with all applicable state laws and trial court procedures.

- B. Protests and Judicial Review of Special Procurements.** An affected person may protest the request for approval of a special procurement as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the city manager within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the city manager to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:
 - a. Identification of the requested special procurement;
 - b. A detailed statement of the legal and factual grounds for the protest;
 - c. Evidence or documentation supporting the grounds on which the protest is based;
 - d. A description of the resulting harm to the affected person; and
 - e. The relief requested.
3. Additional Information. The city manager may allow any person to respond to the protest in any manner the city manager deems appropriate, by giving such persons written notice of the time and manner whereby any response shall be delivered.
4. City Response. The city manager shall issue a written disposition of the protest in a timely manner.
 - a. If the city manager upholds the protest, in whole or in part, the city manager may, in the city manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
 - b. If the city manager upholds the protest, in whole or in part, the city shall refund the fee required to be delivered with the protest.
5. Judicial Review. An affected person may not seek judicial review of a denial of a request for a special procurement.
 - a. Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with ORS 279B.400.

C. Protests and Judicial Review of Sole-Source Procurements. An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the city manager within seven (7) days after the first date of public notice of

a proposed sole source procurement is placed on the city's website, unless a different period is provided in the public notice.

- a. The written protest shall include a fee in an amount established in a schedule adopted by the city manager to cover the costs of processing the protest.
- b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.

2. Content of Protest. The written protest shall include:

- a. A detailed statement of the legal and factual grounds for the protest;
- b. Evidence or documentation supporting the grounds on which the protest is based;
- c. A description of the resulting harm to the affected person; and
- d. The relief requested.

3. Additional Information. The city manager may allow any person to respond to the protest in any manner the city manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.

4. City Manager Response. The city manager shall issue a written disposition of the protest in a timely manner.

- a. If the city manager upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.
- b. If the city manager upholds the protest, in whole or in part, the city shall refund the fee required to be delivered with the protest.

5. Judicial Review. An affected person may not seek judicial review of an election not to make a sole-source procurement.

- a. Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.
- b. Judicial review shall be in accordance with ORS 279B.400.

D. Protests and Judicial Review of Personal Services Procurements. An affected person may protest the procurement of a personal services contract as provided in this section.

1. Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the city manager.

- a. The written protest shall include a fee in an amount established in a schedule adopted by the city manager to cover the costs of processing the protest.
- b. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.

- c. Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.
 - d. Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.
 2. Contents of Protest. The written protest shall:
 - a. Specify all legal or factual grounds for the protest as follows:
 - i. A person may protest the solicitation on the grounds that the contract is a personal services contract or was otherwise in violation of this Code or applicable law. The protest shall identify the specific provision of this Code or applicable law that was violated.
 - ii. A person may protest award or intent to award for the reason that:
 - All proposals ranked higher than the affected persons are nonresponsive;
 - The city failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
 - The city abused its discretion in rejecting the affected person's proposal as nonresponsive; or
 - The evaluation of proposals or the subsequent determination of award is otherwise in violation of this Code or applicable law.
 - iii. The protest shall identify the specific provision of this Code or applicable law that was violated by the city's evaluation or award;
 - b. Include evidence or supporting documentation that supports the grounds on which the protest is based;
 - c. A description of the resulting harm to the affected person; and
 - d. The relief requested.
3. Additional Information. The city manager may allow any person to respond to the protest in any manner the city manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
4. City Manager Response. The city manager shall issue a written disposition of the protest in a timely manner.
 - a. If the city manager upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.

- b. If the city manager upholds the protest, in whole or in part, the city shall refund the fee required to be delivered with the protest.
- 5. Judicial Review. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

E. **Protests of Cooperative Procurements.** Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the city only if the city is the administering agency and under the applicable procedure described herein.

Passed by the Lebanon City Council and executed by the Mayor on this 14th day of March, 2018 by a vote of 6 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Bob Elliott, Council President

ATTESTED BY:



Linda Kaser, City Clerk