

**A BILL FOR AN ORDINANCE AMENDING
CHAPTER 3.04 OF THE LEBANON MUNICIPAL
CODE PUBLIC CONTRACTS**

) **ORDINANCE BILL NO. 2021-06**
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)
) **ORDINANCE NO. 2962**

WHEREAS, a review of Lebanon Municipal Code Chapter 3.04 has identified a need for some updates to match State law; and

WHEREAS, some changes in local purchasing practices could improve efficiency.

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

Chapter 3.04 is amended to read as follows:

Chapter 3.04 - PUBLIC CONTRACTS^[1]

Sections:

Footnotes:

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Editor's note— Ord. No. 2909, adopted March 14, 2018, repealed the former Ch. 3.04, §§ 3.04.010—3.04.110 and App. A and B of Ch. 3.04, and enacted a new Ch. 3.04 as set out herein. The former Ch. 3.04 and appendices pertained to similar subject matter and derived from Ord. 2371 § 1 (part), 2005; Ord. 2377 § 1, 2005; Ord. 2710 §§ 1—2, 2006; Ord. No. 2804, § 1, 8-25-2010; Ord. No. 2831, §§ 1—5, 3-14-2012.

3.04.010 - Purpose.

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.

(Ord. No. 2909, 3-14-2018)

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 objective set forth in 3.01.010, 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.

(Ord. No. 2909, 3-14-2018)

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. **Real Property.** City Council will authorize all purchases of real property.
- C. **Application of Attorney General's Model Rules of Procedure.** The following rules are adopted as the city's public contracting rules. As provided by ORS 279A.065(6), the city has elected to establish its own policy for public contracting and the Model Rules do not apply to the city, unless otherwise provided for herein or as adopted by ordinance or resolution by the city's Local Contract Review Board.
- D. **Authority of City Manager.** For contracts and purchases covered by this code, the city manager is authorized to:
1. Advertise for bids or proposals and award contracts and amendments without specific authorization by the city council whenever the contract amount is one hundred-fifty thousand dollars or less and the proposed expenditure is included in the current fiscal year budget.
 2. Advertise for bids or proposals for contracts greater than one hundred-fifty thousand dollars that are included in the current fiscal year budget. Execute contracts and amendments after specific authorization by the city council to award the contract or amendments. The annual budget will identify the planned purchases over one hundred-fifty thousand dollars, and the city council's approval of the annual budget will authorize staff to initiate these purchases.
 3. Present information to the city council about unplanned purchases over one hundred-fifty thousand dollars that may be necessary during a year. The presentation will include information about projects that will not be completed or will be deferred because of the unplanned purchase or will include a new revenue source associated with a supplemental budget.
 4. 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.

5. Develop, with Department Directors, the list of purchase requirements and plan sufficiently in advance so that orders can be placed in economical quantities.
 6. Delegate, in writing, the signature authority described in subsection (2) and the purchasing powers described in 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 subsection (2) and the purchasing powers described in subsection (3) are delegated in order as follows:
 - a. Finance director; and
 - b. Department Directors within their budget
 7. 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.

(Ord. No. 2909, 3-14-2018)

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 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 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.

(Ord. No. 2909, 3-14-2018)

3.04.060 - 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 potential providers.
 2. If three 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 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 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 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.

(Ord. No. 2909, 3-14-2018)

3.04.070 - 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 ten thousand dollars or less are small procurements.
- 1. *Purchases less than ten thousand dollars.* 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 \$10,000.
 - 2. *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.

3. *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.
 4. *Amendments.* Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent of the original contract price.
 5. *Public notice.* No public notice of small procurements is required.
- B. Intermediate Procurements.** Contracts for goods or services with a contract price greater than ten thousand dollars and less than or equal to one hundred fifty thousand dollars 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 of the original contract price.
- C. Large Procurements.** Contracts for goods or services with a contract price greater than one hundred fifty thousand dollars 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 procedure set out in the Model Rules for processing protests of large procurements.

(Ord. No. 2909, 3-14-2018)

3.04.080 - Personal services contracts.

- A. Classification of Services as Personal Services.** In addition to the classes of personal services contracts identified in Oregon Revised Statutes 279A, 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.
- B. A service shall not be classified as personal services for the purposes of this code if:
1. The work has traditionally been performed by contractors selected primarily on the basis of price; or
 2. 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.
- C. **Requests for Qualifications.** At the city manager's discretion, a request for qualifications may be used to allow staff to determine if a contractor will be qualified to perform the work in advance of a solicitation 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 will result in a list of qualified contractors who will be sent the request for proposals.
- D. **Direct Negotiations.** Personal services may be procured through direct negotiations if:
1. The contract price does not exceed seventy-five thousand dollars 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 an 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 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.

E. **Informal Written Solicitations.** An informal written solicitation process may be used for personal services when the contract price is less than one hundred-fifty thousand dollars.

1. An informal written solicitation shall solicit proposals from at least three qualified providers. If the city manager determines three qualified providers are not reasonably available, fewer shall suffice if the reasons three 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 offeror. If no time is stated in the solicitation document, the period shall be thirty 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 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.

F. **Requests for Proposals.** A request for proposals shall be used to procure personal services when the contract price is one hundred-fifty thousand dollars 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:

- i.. The time, date and location;
- ii. Whether attendance at the pre-offer conference is mandatory or voluntary; and
- iii. 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 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 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.

(Ord. No. 2909, 3-14-2018)

3.04.090 - Alternative source selection methods for goods or services and personal services.

- A. **Alternative Procurement Methods.** The City Manager is authorized to use such alternative procurement methods as are outlined in ORS 279A, including cooperative procurements, and use of the Oregon State price agreements.
- B. **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 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.

- C. **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; and
 - e. A description of the proposed alternative contracting methods to be employed.
 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.
- D. **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 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 Personal Property.* The city manager may contract for the purchase of used personal 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 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.

(Ord. No. 2909, 3-14-2018)

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 five hundred dollars, 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 one hundred dollars 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 may 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 by the city, 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. If the person is on the State of Oregon's debarred vendor list, the person may only appeal to the State.
 2. *Filing of Appeal.* The person shall file a written notice of appeal with the city manager within five 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 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.
 7. *Judicial Review.* The decision of the city council may be reviewed only upon a petition in the circuit court of Linn County filed within fifteen 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.* An affected person shall deliver a written protest to the city manager within seven 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.* An affected person shall deliver a written protest to the city manager within seven 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 days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight 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.

(Ord. No. 2909, 3-14-2018)

Passed by the Lebanon City Council and executed by the Council President on this 14th day of April 2021 by a vote of 6 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Jason Bolen, Council President

ATTESTED BY:


Kim Scheafer, MMC, City Recorder