

RESOLUTION NO. 99-028

A RESOLUTION AMENDING CERTAIN PROVISIONS OF
THE CITY'S LOCAL CONTRACT REVIEW BOARD RULES

WHEREAS, the City Council established itself as the local contract review board by adoption of General Ordinance No. 91-1121, and adopted local rules for the board by adoption of Resolution No. 91-011; and

WHEREAS, on July 26, 1999, the City Council conducted a discussion to review certain changes to the local contract review board rules recommended by the City Attorney, and indicated their approval of the proposed recommendations with some modifications; and

WHEREAS, on August 23, 1999, the City Council reviewed the draft of the resolution setting forth the proposed changes to the Council's Local Contract Review Board Rules, and requested some additional changes to the proposed revisions to the rules;

WHEREAS, the Council desires to adopt a resolution incorporating the proposed changes into the Council's local contract review board rules; NOW, THEREFORE,

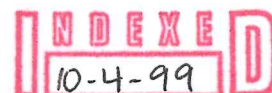
BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Rules Amended. The rules adopted by the City Council, acting as the local contract review board, by Resolution No. 91-011, and subsequently amended by Resolution Nos. 92-081, 94-023, and 98-004, shall be amended in the following manner:

A. **Section 4(5) Request for Proposal, shall be amended to read as follows:**

5. Request for Proposal. The City of The Dalles may, at its discretion, use request-for-proposal competitive procurement methods subject to the following conditions:

- a. The procurement is advertised and a written solicitation document is issued that invites the submission of sealed written proposals to be opened publicly at a designated time and place; and



- b. Contractual requirements are stated clearly in the solicitation document; and
- c. Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the City's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential, proposer qualifications and experience; and
- d. The solicitation document clearly states all complaint processes and remedies available; and
- e. The solicitation document states the provisions made for proposers to comment on any specifications which they feel limit competition.

Prior to issuing a solicitation document, staff shall submit the solicitation document to the Board for its review and approval, including justification for the use of a request for proposal method of solicitation.

B. Section 4 (14), Personal Services Contracts shall be amended to read as follows:

14. Personal Services Contracts. A contract for personal services is a contract that calls for 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. Qualifications and performance history, expertise, knowledge 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. "Architect, Engineer, and Land Surveying" are a special class of personal service contracts which are covered by the provisions of Section 4(14)(A) of these rules. Personal service contracts may include, but are not limited to the following:

- a. Contracts for services performed in a professional capacity including services of an accountant, attorney, physician or dentist, information technology consultant, or broadcaster;
- b. Contracts for services as an artist in the performing or fine arts including any person identified as a photographer, filmmaker, painter, weaver, or sculptor;
- c. Contracts for services that are specialized, creative and research-oriented;
- d. Contracts for services as a consultant; and
- e. Contracts for educational services.

Personal Services Contracts do not include:

In order to qualify as a personal service contract, the contract must provide that a minimum of seventy-five percent (75%) of the contract price be allocated for the purchase of personal services. For example, a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract. A Personal Services Contract does not include a contract with a temporary service or personnel agency to supply labor which is of a type that can generally be done by any skilled worker.

C. A new Section 4(14)(A), Architectural, Engineering and Land Surveying

Personal Services Contracts, shall be added to the rules, which section shall read as follows:

14(A). Architectural, Engineering and Land Surveying Personal Services Contracts.

- a. Definitions. As used in this section, unless the context requires otherwise:

Architect. A person defined by and described in ORS 671.010 to 671.220.

Compensation information. Pricing policies and proposals or other pricing information solicited and used by a public contracting agency to determine a consultant's compensation, including but not limited to a consultant's:

1. Costing procedures and/or pricing structure;
2. Hourly rates and fee schedules;
3. Overhead costs;
4. Fee range, as a percentage of direct construction costs, on previous similar projects; and
5. Proposed rates and fees under a particular cost proposal (including but not limited to direct salary and direct non-salary costs, overhead and profit).

Consultant. A registered architect, a registered professional engineer, or a registered professional land surveyor.

Consultant contract. A contract between a public contracting agency and a consultant.

Consultant services. Professional services of a consultant.

Proposal. A competitive written offer submitted in response to a public contracting agency's Request for Proposals.

Public contracting agency. An agency of the State of Oregon or an agency of a political subdivision thereof or a public body created by intergovernmental agreement, as the context requires.

Registered professional engineer. A person defined by and described in ORS 672.002 to 672.325.

Registered professional land surveyor. A person defined by and described in ORS 672.002 to 672.325.

Request for Proposals or "RFP". A public contracting agency's written document soliciting competitive written proposals and setting forth the criteria and method to be used by the public contracting agency to select the best proposal. The document:

1. Provides a general description of a proposed project or projects, including a proposed statement of work;
2. Indicates the type of consultant services needed; and
3. Requests prospective consultants to submit written proposals that address the specific requirements of the project or projects.

Request for Qualifications or "RFQ". A public contracting agency's written document which:

1. Provides a general description of a proposed project;
2. Indicates the type of consultant services needed, including, if deemed necessary or appropriate, a description of particular services needed for part or all of a proposed project or projects; and
3. Requests each prospective consultant to provide a written response setting forth the consultant's specific experience and qualifications for performing the type of services required.

Statement of Work. A written statement that describes the:

1. Phases of work, major tasks, or areas of responsibility to be performed by the consultant;

2. On an individual project or series of projects, or within a particular locale during a stated period of time. Such statement may be altered or modified during contract negotiations, but only as reasonably necessary to accurately describe the project approach and exact scope of services agreed to by the public contracting agency and the consultant.

b. List of Interested Consultants; Performance Record.

i. Consultants who are engaged in the lawful practice of their profession and interested in performing consultant services may submit annually a statement of qualifications and performance data to the office address provided by the City. The City will compile and maintain the information as a list of prospective consultants and will review and update this list at least once every two years.

ii. A record of each consultant's performance, including information gained during an exit interview, may be compiled and maintained by the City. A copy of such record shall be made available by the City to the consultant upon request. Unless lawfully exempt, in whole or in part, from disclosure pursuant to ORS 192.410 to 192.505 (*e.g.*, as a trade secret or other confidential information), a copy of the record may also be made available by the City to other persons and organizations upon request.

c. Use of Consultants; Selection Methods; Notice; Solicitation Provision.

i. A contract with a qualified consultant for consultant services, as defined in ORS 671.010(5), 671.310(3) and 672.005 to 672.007, respectively, may be entered into when:

1. The required services cannot be performed within a reasonable time using the public contracting agency's own work force;
2. The skills necessary to perform the required services are not available within the public contracting agency; or
3. An impartial opinion or evaluation is necessary or appropriate.

ii. Formal. Consultant services may be obtained using the formal selection procedure set forth in Section 14(A)(f). The formal procedure shall be used whenever the estimated cost of consultant services exceeds \$15,000.

iii. Informal. When the estimated cost of consultant services is equal to or less than \$15,000, the informal selection procedure set forth in Section 14(A)(e) may be used.

iv. Direct Appointment. When the circumstances set forth in Section 14(A)(d) are found to exist, the direct appointment procedure provided for in that rule may be used.

v. Notice. Except where the circumstances stated in Section 14(A)(4)(d)(ii) exist, requiring direct appointment of a qualified consultant and making timely notice impracticable, a public contracting agency shall provide timely *prior* notice pursuant to ORS 200.035 for *all* solicitations for consultant services with an estimated cost exceeding \$5,000. A public contracting agency using the direct appointment procedure pursuant to Section 14(A)(4)(d)(ii) shall provide notice in accordance with ORS 200.035 as soon as it is reasonably practicable to do so.

vi. Solicitation Provision. All RFPs for consultant services shall, regardless of amount, include the following language: "In accordance with ORS 279.555(2), consultants shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document."

d. Direct Appointment Procedure

i. A qualified consultant may be appointed directly from:

1. The public contracting agency's current list of consultants;
2. Another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190; or
3. Among all consultants offering the necessary consultant services that the public contracting agency reasonably can locate, following public advertisement.

ii. The direct appointment procedure may be used when:

1. Circumstances which could not reasonably have been foreseen create a substantial risk of loss, damage, interruption of services or threat to the public health or safety and require the prompt performance of consultant services to remedy the situation; or
2. The estimated cost of consultant services does not exceed \$15,000; or
3. The project:
 - A) Consists of work which has been substantially described, planned or otherwise previously studied

or rendered in an earlier contract, and is in continuation of a project;

- B) The estimated cost of consultant services for such project does not exceed \$15,000; and
- C) The selection procedure used for the original project was the formal selection procedure set forth in Section 14(A)(f) (or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules); or

- 4. The consultant will be assisting legal counsel, through expert analysis, testing, testimony or otherwise, on a project which is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

iii. A direct appointment, pursuant to subsection (ii)(1) or (2) of this rule, shall be competitive to the extent practicable and may be based on criteria which include but are not limited to:

- 1. The consultant's availability', capabilities, staffing, experience, and compensation information; and
- 2. The project's location.

e. Informal Selection Procedure.

i. The informal selection procedure may be used to obtain consultant services if the estimated cost of consultant services is equal to or less than \$15,000.

ii. A written solicitation inviting written proposals shall be sent to a minimum of five prospective consultants drawn from:

- 1. The City's current list of consultants; and
- 2. Another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS Chapter 190; and/or
- 3. Among all consultants offering the necessary consultant services that the public contracting agency reasonably can locate.

iii. All proposals shall be reviewed and the three most qualified consultants selected and ranked.

iv. The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking may be based on criteria which, include but are not limited to a consultant's:

1. Particular capability to perform the consultant services for the project being considered;
2. Number of experienced staff available to perform the consultant services required by the project, including each consultant's recent, current, and projected workloads;
3. Performance history on past projects for public or private clients;
4. Project approach and design philosophy;
5. Compensation information; and
6. Geographic proximity to the project;
7. The City may also consider the volume of work, if any, previously awarded to each consultant, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most highly qualified consultant.

v. The City and the highest ranked consultant shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:

1. The consultant's tasks and a performance schedule;
2. The level of compensation and a maximum, not-to-exceed contract price which is fair and reasonable to the City, as determined solely by the City taking into account the estimated value, scope, complexity, and nature of the consultant services.

vi. Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant. This second round of negotiations may be formally terminated if it, too, fails to result

in a contract within a reasonable amount of time. Negotiations with the third ranked consultant will then begin promptly. If this third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Thereafter, the services of a qualified consultant may be solicited using the formal selection procedure set forth in Section 14(A)(f), or, depending upon the circumstances, the direct appointment procedure provided for in Section 14(A)(d).

vii. If the scope of a project is revised during negotiations so that the estimated cost of the consultant's services exceeds \$15,000, then the informal process shall be terminated and the services of a qualified consultant solicited using the formal selection procedure set forth in Section 14(A)(f); provided, however, that negotiations with the informally selected consultant may continue if the public contracting agency makes written findings that contracting with the consultant will:

1. Not encourage favoritism in the awarding of consultant contracts or substantially diminish competition for consultant contracts; and
2. Will result in substantial cost savings to the public contracting agency.

viii. Notwithstanding the submission of proposals from potential consultants during an informal selection process, the City may at any time during the solicitation process or during contract negotiations reject all consultant proposals and cancel the solicitation, without liability therefor, upon a finding by the City that there is good cause for rejecting all proposals and that it would be in the public interest to cancel the solicitation. Further, the City shall under no circumstances be responsible for any consultant costs and expenses incurred in submitting responses to the solicitation. Each prospective consultant who responds to the City's solicitation does so solely at the consultant's cost and expense and each solicitation shall so provide.

f. Formal Selection Procedure.

i. The formal selection procedure shall be used whenever the estimated cost of consultant services exceeds \$75,000.

ii. Responses shall be solicited through public advertisement and:

1. An RFP; or
2. An RFQ to establish a short list, followed by an RFP:
 - A) The advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located and in as many additional issues and publications as may be necessary or desirable to achieve adequate

competition. Such other publications may include, but are not limited to local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences. The advertisement(s) shall be published a reasonable time before the deadline for responding but in any event no fewer than 14 calendar days before close of the solicitation. The advertisement(s) shall briefly describe:

- i) The project;
 - ii) The consultant services sought;
 - iii) Where copies of the solicitation may be obtained; and
 - iv) The deadline for submitting a response.
- B) In addition, direct notice of the solicitation may be sent to all consultants on the City's current list of consultants (or on a list of consultants available pursuant to an interagency or intergovernmental agreement).

iii. RFQ Procedures: When an RFQ is used to evaluate qualifications, screen potential consultants and establish a short list, the RFQ shall contain, at a minimum:

- 1. The information listed in subsection (ii)(2)(A)(i) through (iv) of this rule;
- 2. A statement of the particular consultant qualifications required for the project;
- 3. The evaluation criteria (including the weights or points applicable to each criterion); and
- 4. The screening or evaluation method to be used. The RFQ may request any or all of the following:
 - A) The information set forth in Section 14(A)(b)(i), unless it has already been obtained;
 - B) The consultant's particular capability to perform the consultant services required for the project, and the consultant's recent, current, and projected workloads;

- C) The number of the consultant's experienced staff available to perform the consultant services required by the project, including such personnel's specific qualifications and experience;
- D) A list of similar projects completed by the consultant with references concerning past performance, including copies of any performance records maintained pursuant to Section 14(A)(b)(ii);
- E) Information concerning the consultant's geographic proximity to the project.
- F) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.

iv. An RFQ consultant screening and evaluation committee of no fewer than two individuals shall be established to review, score and rank the consultants according to the solicitation criteria and the results of any oral interviews.

v. Following screening and evaluation, a short list of at least three qualified consultants shall be established; provided, however, that if four or fewer potential consultants respond to the RFQ, then:

- 1. A short list of fewer than three qualified consultants may be established; or
- 2. The RFQ may be canceled and an RFP issued; provided, further, that no person or firm shall be eligible for placement on an RFQ consultant short list during the period in which any of the person's or firm's principals, partners or associates are participating as members of the public contracting agency's consultant screening and evaluation committee. Except where the RFQ is canceled, every consultant who is placed on a short list shall thereafter receive a copy of the RFP and have an opportunity to submit a proposal. Notwithstanding the foregoing, issuance of an RFQ shall under no circumstances make the City responsible for any consultant costs and expenses incurred in submitting responses to the RFQ. All potential consultants who respond to an RFQ do so solely at the consultant's cost and expense and each RFQ shall so provide.

vi. Any reasonable screening or evaluation method may be used to establish a short list of qualified consultants, including, but not limited to:

1. Requiring potential consultants to achieve a threshold score to be placed on a short list;
2. Placing the three, or more, highest scoring consultants on a short list; or
3. Placing on a short list only those consultants who possess certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ. Thereafter, an RFP shall be issued in accordance with the procedures set forth in subsections (vii) through (xvi) of this rule to each of the consultants placed on the short list.

vii. RFP Procedures: The RFP, whether or not proceeded by an RFQ, shall describe or contain the following information:

1. General background information, including a description of the project and the specific consultant services sought, the estimated construction cost, and the time period in which the project is to be completed;
2. The evaluation process and the criteria which will be used to select the consultant, including the weight or points applicable to each criterion;
3. Whether interviews are anticipated;
4. The closing date and time of the solicitation and the delivery location for consultant proposals;
5. Reservation of the right to seek clarifications of each consultant's proposal;
6. Reservation of the right to negotiate a final contract which is in the best interest of the City, considering cost effectiveness, and reservation of the right to negotiate a final contract under which the compensation paid to the consultant is fair and reasonable to the City as determined solely by the City;
7. The level of consultant time and effort required for the project, provided that responses are solicited and utilized to ascertain a proposer's understanding of the workscope,

alternative approaches to accomplishing the work or resources available to perform the work; and

8. Reservation of the right to reject any or all proposals if there is good cause therefor and, further, reservation of the right to cancel the solicitation if doing so would be in the public interest.

viii. The RFP, whether or not preceded by an RFQ, should also describe or contain the following information, when applicable:

1. A sample of the contract the consultant will be expected to execute; and
2. Any other information which is reasonably necessary to evaluate, rank and select consultants.

ix. The RFP shall require each consultant's proposal to provide the information required in Section 14(A)(f)(iii)(4) for responses to an RFQ (unless the RFP follows an RFQ and such information was previously supplied to the public contracting agency), and may also require each consultant's proposal to contain:

1. A description of the consultant's proposed project approach, including an estimate of the amount of time that the consultant will need to complete each major task, and a preliminary schedule for performing major elements;
2. The consultant's compensation information;
3. The availability of any required special resources or equipment; and
4. The identity of any proposed subconsultants and the portions of the work to be performed by subconsultants.

x. A pre-qualification or pre-proposal meeting may be held for all interested consultants to discuss the proposed project and the required consultant services. Attendance at such a meeting, if held, may be mandatory.

xi. An RFP consultant selection committee of no fewer than two individuals shall be established to review, score and rank the consultants' responses to the RFP according to such criteria as those listed in Section 14(A)(f)(xii). If the RFP follows an RFQ, the members of the RFP consultant selection committee may be the same individuals who served on the City's RFQ consultant screening and evaluation committee. If considered necessary or desirable, the RFP consultant selection committee may elect to interview the consultants. Provided, however, that no person or firm shall be eligible for award of a consultant contract during the period in which any of the person's or firm's principals, partners or associates are

participating as members of the City's consultant screening and evaluation committee or as members of its consultant selection committee.

xii. The RFP consultant selection committee shall review, score and rank all responsive proposals according to criteria which may include, but are not limited to the following:

1. Availability, and capability to perform the work;
2. Experience of key staff on comparable project(s);
3. Demonstrated ability to successfully complete similar projects on time and within budget, including whether there is evidence of satisfactory performance as provided in Section 14(A)(b)(ii);
4. References and recommendations from past clients, public and private;
5. Consultant's performance history in:
 - A) Meeting deadlines;
 - B) Submitting accurate estimates;
 - C) Producing high quality work; and
 - D) Meeting financial obligations.
6. Status and quality of any required licensing or certification;
7. Consultant's knowledge and understanding of the project as shown in the consultant's:
 - A) Approach to the project's staffing and scheduling needs; and
 - B) Proposed solutions to any perceived design and constructability problems.
8. The consultant's compensation requirements;
9. Results from oral interviews, if conducted;
10. Design philosophy and project approach; and

11. Any other criteria that are deemed to be relevant to the project, including, where the nature and budget of the proposed project so warrant, a design competition between competing consultants. Each of the evaluation criteria shall be listed in the RFP and shall be of equal weight, or worth the same number of points, unless the RFP provides otherwise and states the weights or points applicable to each criterion.

xiii. Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:

1. The consultant's tasks and a performance schedule;
2. A maximum, not-to-exceed contract price which is consistent with the consultant's proposal and fair and reasonable to the City, taking into account the estimated value, scope, complexity, and nature of the consultant services.

xiv. Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant. This second round of negotiations may be formally terminated if it, too, fails to result in a contract within a reasonable amount of time. Negotiations with the third ranked consultant will then begin promptly. If this third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Thereafter, the services of a qualified consultant may be obtained, depending upon the circumstances, through the direct appointment procedure provided for in Section 14(A)(d).

xv. Notwithstanding the submission of proposals and the recommendations of the RFP consultant selection committee, the City may at any time during the solicitation process or during contract negotiation reject all consultant proposals and cancel the solicitation, without liability therefor, upon a finding by the City that there is good cause for rejecting all proposals and that it would be in the public interest to cancel the solicitation. Further, unless consultant compensation is expressly provided for in the solicitation document, under no circumstances shall the City be responsible for any consultant costs and expenses incurred in submitting responses to the solicitation. Except where the solicitation document expressly provides for consultant compensation, all prospective consultants who respond to the City's RFP do so solely at the consultant's cost and expense and each RFP shall so provide.

xvi. If a project for which a consultant has been selected and awarded a contract becomes inactive or is materially altered or terminated, whether due to project phasing, insufficient appropriations, or other reasons, the City may, if the project is reactivated or continued after material alteration, retain the same consultant to complete the project if the City makes written findings that retaining the consultant will:

1. Not encourage favoritism in the awarding of consultant contracts or substantially diminish competition for consultant contracts; and
2. Will result in substantial cost savings to the City.

g. Protest Procedures.

i. Solicitation protest. Unless a different deadline is specified in the solicitation document, prospective consultants may submit a written protest, or request for change, of particular solicitation provisions, specifications or contract terms and conditions to the no later than seven calendar days prior to the close of the solicitation. Such protest or request for change shall include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications or contract terms and conditions. No protest against selection of a consultant or award of a consultant contract, because of the content of the solicitation provisions, specifications, or contract terms and conditions, shall be considered after the deadline established for submitting such protest.

ii. Selection protest. Every consultant who submits a proposal in response to an RFP shall be copied with the selection notice sent to the highest ranked consultant. Unless a different deadline is specified in the RFP, a consultant who has submitted a proposal and claims to have been adversely affected or aggrieved by the selection of a competing consultant shall have seven calendar days after the date of the notice of selection to submit a written protest of the selection to the City. To be adversely affected or aggrieved, a protester must claim that the protester was the highest ranked consultant eligible for selection, *i.e.*, the protester must claim that *all* higher ranked consultants were ineligible for selection because their proposals were non-responsive or the consultants nonresponsive. The City will not consider a selection protest submitted after the time period established in this section, unless a different deadline is provided in the RFP.

iii. The Board shall have the authority to settle or resolve a written protest submitted in accordance with this section. The Board shall promptly issue a written decision on the protest.

h. Prohibited Fee Provisions, Purchases.

i. Except as otherwise required by law, no consultant contract shall be awarded which contains fee provisions or fee schedules that are based on or limited to:

1. Cost-plus-a-percentage of-cost; or
2. A percentage of construction or project costs.

ii. Except in:

1. Cases of emergency as defined in ORS 279.011(4); or

2. The particular instances noted below, no building materials, supplies or equipment for any building, structure or facility constructed by or for the City shall be sold by or purchased from any person or firm employed as a consultant by the City to provide consultant services for such building, structure or facility. The prohibition stated in this section shall not apply:
 - A) Where a consultant is providing architectural or engineering services under a contract with the City to provide:
 - i) Construction manager/general contractor services; or
 - ii) Design build services; or
 - B) Where that portion of the consultant contract relating to the acquisition of building materials, supplies or equipment was awarded pursuant to applicable law governing the award of such contracts.

D. Section 7. Rejection of Bids and Proposals, shall be amended to read as follows:

Section 7. Rejection of Bids and Proposals. The City may reject any bid or proposal not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids or proposals upon a finding that it is in the public interest to do so, based upon the criteria for rejection set forth in OAR 137-030-0100(2), a copy of which is attached hereto and incorporated herein by this reference. In any case where competitive bids or proposals are required and all bids or proposals are rejected, and the proposed contract is not abandoned, new bids or proposals may be called for as in the first instance.

E. In Section 10(d), concerning Appeals of Disqualifications, the time period for deciding an appeal shall be changed from ten (10) to thirty (30) days.

F. Section 11(b) concerning Protest of Award, shall be amended to read as follows:

- b. Right to Protest. Any actual bidder or proposer who is adversely affected or aggrieved by the City's notice of award of the contract to another

bidder or proposer on the same solicitation shall have ten (10) calendar days after notice of award to submit to the City a written protest of the notice of award. The written protest shall specify the grounds upon which the protest is based. The period of ten (10) calendar days in which to submit a written protest may be shortened or lengthened by the City, as provided in the City's solicitation. In order to be an adversely affected or aggrieved bidder or proposer with a right to submit a written protest, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsive, responsible bidder or best responsive and responsible proposer, and must be next in line for the award; i.e. the protestor must claim that all lower bidders or higher-ranked proposers are ineligible for the award because (1) the other bids or proposals were non-responsive, or (2) the City committed a material violation of a provision in the solicitation document or of an applicable procurement statute or administrative rule, and the protestor was unfairly evaluated, and would have, but for such material violation, been the lowest bidder or the highest-ranked proposer. The City shall not entertain a protest submitted after the time period established in this rule or such different period as may be provided in the City's solicitation.

G. Section 12, Negotiation with Lowest Responsible and Responsive Bidder, shall be deleted.

PASSED AND ADOPTED THIS 13TH DAY OF SEPTEMBER, 1999.

Voting Yes, Councilor: Wasser, Broehl, Davison, Gosiak

Voting No, Councilor: None

Absent, Councilor: Davis

Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 13TH DAY OF SEPTEMBER, 1999.



Robb Van Cleave, Mayor

Attest:



Julie Krueger, CMC/AAE, City Clerk

award the Contract by drawing lots among any tied Offerors. Such Offerors shall be given notice and an opportunity to be present when the lots are drawn.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.021, 279.029

Rejection of Individual Bids or Proposals

137-030-0100 (1) General. In accordance with ORS 279.035, the Agency may reject in whole or in part, any Offer not in compliance with all prescribed solicitation procedures and requirements, and may reject for good cause any Offer upon a Written finding of the Agency that it is in the public interest to do so.

(2) Rejection. The Agency may reject any Offer in whole or in part upon a finding:

(a) The Offeror has not prequalified under ORS 279.039, or is disqualified under ORS 200.075, 279.037 or OAR 137-030-0110; or

(b) The Commissioner of the Bureau of Labor and Industries has declared the Offeror ineligible under ORS 279.361; or

(c) The Offer is nonresponsive, *i.e.*, the Offer does not conform in all material respects to Solicitation Document, including all prescribed solicitation procedures and requirements; or

(d) The Offer takes exception to the Specifications or other terms and conditions, or is contingent upon the Agency's acceptance of different or additional Specifications or terms and conditions; or

(e) The supply, service or construction item Offered is unacceptable due to failure to meet the requirements of the Solicitation Document; or

(f) The Offeror is nonresponsive, *i.e.*, is not capable of satisfying the terms and conditions of the Contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history or other good cause; or

(g) A court of competent jurisdiction has determined or an Agency has determined in Writing that the Offeror has committed or engaged in fraud, misrepresentation, price-rigging, unlawful

anti-competitive conduct or similar behavior within 5 years prior to Closing; or

(h) A court of competent jurisdiction has determined or an Agency has determined in Writing that the Offeror is responsible for more than one breach of a public or private Contract within 3 years prior to Closing; or

(i) The Bid or Proposal security has not been submitted or properly Signed as required by the Solicitation Document; or

(j) The Offeror has not met the emerging small business, disadvantaged business, minority business and women business enterprise requirements, if any, established by the Agency, and has not made a good faith effort in accordance with ORS 200.075 and 279.059 to comply with such requirements prior to the time Offers are Opened; or

(k) The Offeror has failed to provide the certification required under section (4) of this rule; or

(l) Other circumstances relevant to Offer, or Offeror, indicate that acceptance of the Offer may impair the integrity of the selection process or result in an imprudent Contract.

(3) Form of Business Entity. For purposes of this rule, the Agency may investigate any Entity submitting an Offer so that previously-disqualified Entities, or their officers and directors, or principle owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this rule or of the disqualification provisions of ORS 279.037 to 279.045 and OAR 137-030-0110.

(4) Certification of Non-Discrimination. The Offeror shall certify and deliver to the Agency Written certification as part of the Offer, that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.035

Rejection of All Offers

137-030-0102 (1) Rejection. The Agency may reject all Offers for good cause upon the Agency's Written finding it is in the public interest to do so.