

RESOLUTION NO. 99-029

A RESOLUTION READOPTING THE RECENTLY REVISED
VERSION 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, the City Council recently adopted certain revisions to those rules by adoption of Resolution No. 99-028; and

WHEREAS, House Bill 2024 recently passed by the State Legislature provides that if a public contracting agency does not establish its own rules of procedure for public contracts, the agency shall be subject to the model public contract rules adopted by the Attorney General's office; and

WHEREAS, House Bill 2024 also provides that a public contracting agency may adopt its own local rules, and shall indicate the model rules adopted by the Attorney General do not apply to the public contracting agency, and also indicate if any portion of the rules adopted include portions of the model rules adopted by the Attorney General;

WHEREAS, House Bill 2024 is effective as of October 23, 1999, and the Attorney General's office has taken the position that public contracting agencies which have adopted their own local rules prior to the effective date of House Bill 2024, need to readopt those rules to be consistent with the legislative intent of House Bill 2024; NOW, THEREFORE,



BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Rules Readopted. The local contract review board rules which were revised as October 13, 1999, a copy of which is attached hereto as Exhibit "A", are hereby readopted as the rules for the City's local contract review board.

PASSED AND ADOPTED THIS 25TH DAY OF OCTOBER, 1999.

Voting Yes, Councilor: Davis, Broehl, Davison, Gosiak, Wasser
Voting No, Councilor: None
Absent, Councilor: None
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 25TH DAY OF OCTOBER, 1999.



Robb Van Cleave, Mayor

Attest:



Julie Krueger, CMC/A AE, City Clerk

RULES OF THE CITY OF THE DALLES
LOCAL CONTRACT REVIEW BOARD
(Revised as of 10-13-99)

Section 1. Purpose. These rules are promulgated by the local contract review board, pursuant to the authority granted to that board under ORS 279.055, for the purpose of establishing the rules and procedures for public contracts entered into by the City of The Dalles. The model rules of procedure adopted by the Attorney General for public contracts, in their entirety, shall not apply to the City of The Dalles. However, certain provisions of these rules may incorporate portions of the model rules adopted by the Attorney General.

Section 2. Definitions. The following words and phrases mean:

Board. The local contract review board as created by General Ordinance No. 91-1121.

Competitive bidding. The issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279, and the applicable rules of the Board.

Competitive quotes. The solicitation by the City of The Dalles of offers from competing vendors. The solicitation may be by advertisement or by the City of The Dalles initiating a request to vendors to make an offer. The solicitation and the offer may be in either oral or written form.

Person. Any individual, firm, company, association, partnership, corporation, or other entity.

Personal Property. Everything subject to ownership which is not real property and has exchangeable value.

Price agreement. The same as requirements contract defined below.

Public agency or Public contracting agency. Any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

Public contract. Any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal services.

Public improvement. Projects for construction, reconstruction or major renovation on real property by or for the City of The Dalles. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

Requirements contract. An agreement in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified time period.

Request for Proposal. The solicitation of competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

Service contract. A contract that calls primarily for a contractor's time and effort rather than for an end product.

Section 3. Award of Contracts over \$15,000.00. Subject to the provisions of Section 4(4), any public contract where the amount of purchase exceeds \$15,000.00 shall be awarded by the City Council, acting in its capacity as the Board. The Council shall have authorized the purchase through the budget process or by other special action. Following staff review of the bids or proposals received and staff's recommendation concerning the contract award, the Council shall award the contract to the lowest responsible bidder or the best proposer who has submitted the proposal which is in the best interest of the City, based upon the criteria set forth in the request for proposal.

Section 4. Competitive Bids; Exemptions. All public contracts shall be based upon competitive bids except:

1. Public Agencies. Contracts made with other public agencies or the Federal government.

2. Life Cycle Costing. In determining the lowest responsible bidder, in the award of a contract, the City of The Dalles may use the concept of life cycle costing if it complies with the provisions of this rule. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

- a. Prior to the time of writing specifications for the product, the City of The Dalles shall identify those factors which will have cost implications over the life of the product.
- b. The Invitation to Bid shall set out clearly the factors and methodology to be used in life cycle cost adjustments.
- c. At or after the formal bid opening, the results of life cycle costing adjustments shall be applied to the base bid, and the bidder whose total bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.

3. Timber Management. Contracts for the management of timber removal pursuant to a management program within the City of The Dalles watershed.

4. Contracts Under Certain Dollar Amounts. Any public contract where the amount of purchase exceeds \$15,000.00 shall be subject to competitive bid requirements. Any public contract where the amount of purchase is \$15,000.00 or less shall be subject to the following requirements:

- a. For purchases up to the sum of \$500.00, an authorized City employee may use a field purchase order to purchase needed items, without any other approval.

- b. For purchases in an amount in excess of \$500.00, and up to \$2,500.00, a department head can approve a purchase only after obtaining at least three (3) competitive quotes from responsible and responsive bidders.
- c. For purchases in an amount in excess of \$2,500.00 and up to \$7,500.00, a department head can approve a purchase only after obtaining at least three (3) written quotes from responsible and responsive bidders.
- d. For purchases in an amount in excess of \$7,500.00, and up to \$15,000.00, a purchase order must be approved by the City Manager only after three (3) written quotes have been obtained from responsible and responsive bidders.

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.

6. Emergency Contracts Under \$50,000.00. Pursuant to ORS 279.015 (4) and (5), the Board may, in its discretion, let public contracts without formal competitive bidding if an emergency exists, and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen, which requires prompt execution of a contract to remedy the condition.

- a. Declaration by the Contract Review Board. The Board may by resolution, or motion duly adopted at a regular, special, or emergency City Council meeting, declare the existence of an emergency stating with specificity, either in the resolution or in the minutes or record of its official proceedings, the emergency conditions that require prompt execution of the contract.
- b. Declaration by the City Manager. In the event emergency circumstances necessitate immediate action, to avoid imminent danger to persons or property, or to prevent an imminent threat to public health or safety, and there is not sufficient time to schedule a meeting for the Board to consider the award of an emergency contract, then the City Manager, or another officer authorized by the City of The Dalles, may declare the existence of an emergency, which shall authorize the City of The Dalles to enter into an emergency contract with a price under \$50,000.00. The City Manager, or his or her authorized designee, must make written findings describing the emergency conditions necessitating prompt execution of the contract, which findings must be provided to the Board for its review.
- c. Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board.

7. Emergency Contracts in Excess of \$50,000.00. The City of The Dalles may enter into a public contract in excess of \$50,000.00, without competitive bidding when circumstances that could not reasonably be anticipated necessitate the prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the City shall:

- a. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- b. Make written findings describing the circumstances that require the prompt performance of the contract, and of the harm anticipated to result from failing to establish the contract on an expedited basis;
- c. Record the measures taken under Subsection (a) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor; and
- d. Not contract pursuant to this exemption in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

8. Contracts for Price Regulated Items. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.

9. Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts. Contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts are exempt from formal competitive bidding requirements if the City seeks competitive quotes from a majority of vendors in the area, makes its purchases from the least expensive source, and retains written justification for the purchase made.

10. Copyrighted Materials. If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the City may contract for the purchase of the goods without competitive bidding.

11. Periodicals. The City may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

12. Investment Contracts. The City may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

13. Advertising Contracts. Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

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 set out in Appendix 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.

15. Single Seller of Product Required. The City may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specifications of a compatible product for which there is only one seller.

16. Insurance Contracts. Contracts for the purchase of insurance.

17. Contract Amendments (Including Change Orders and Extra Work). Any contract amendment for additional work including change orders, extra work, field orders, or other changes in the original specifications which increases the original contract price, may be made with the contractor without competitive bidding subject to the following conditions:

- a. The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
- b. The amount of the aggregate cost increase resulting from all amendments shall not exceed 20% of the initial contract. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33% of the initial contract. Amendments made pursuant to section (a) of this rule are not included in computing the aggregate amount under this section.

18. Requirements Contracts. The City may enter into requirements contracts whereby it is agreed to purchase requirements for an anticipated need at a pre-determined price. The contract must be let in accordance with competitive bid requirements.

- a. When the price of goods and services has been established by a requirements contract, the City may purchase the goods and services from the supplier without subsequent competitive bidding.

19. Exemptions for Additional Contracts. The board may by resolution exempt certain public contracts or classes of public contracts from the competitive bid requirements, not otherwise exempted by these rules, based upon the following findings:

- a. It is unlikely that granting of the exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- b. The awarding of the public contract pursuant to the exemption will result in substantial cost savings to the City. In making this finding, the board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as may be deemed appropriate.

20. Oil or Hazardous Material Removal. The City may enter into public contracts without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS 466.605 through 466.680 and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous materials. In exercising its authority under this exemption, the City shall:

- a. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- b. Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- c. Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected; and
- d. Not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

21. Brand Name Specification in Contracts. Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under this section. However, this section shall not be construed to prevent reference in the specification to a particular product as a description of the type of item required.

The board may exempt certain products or classes of products from the requirements of this section upon any of the following findings:

- a. It is unlikely that such exemption will encourage favoritism in awarding of public contracts or substantially diminish competition for public contracts;
- b. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the public agency;
- c. There is only one manufacturer or seller of the product of the quality required; or
- d. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

22. Goods purchased through the State of Oregon. Contracts for the purchase of goods or materials if competitive bids for the same goods or materials have been obtained by the State of Oregon, the contract is awarded to the same party that the State dealt with, and the price of the goods or materials is the same or lower than that paid by the State.

23. Auction Sales of Personal Property. Personal property may be sold at auction, after the property has been declared surplus, if the City determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

24. Sales of Personal Property. The City may sell personal property after the property has been declared surplus, including recyclable or reclaimed materials, without formal competitive bidding if the City has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

- a. When the current market value per item is deemed to be less than \$1,000.00, the City may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or
- b. When the current value per item is deemed to exceed \$1,000.00, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the City may negotiate a sale subject to the following conditions:
 - i. An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

- ii. The sale amount exceeds the highest bid received through the bidding or auction process.

25. Donations of Personal Property. (1) The City may transfer personal property after the property has been declared surplus, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities;

- a. Another public agency; or
- b. Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or
- c. Any recognized non-profit activity which is certified to receive federal surplus property.

(2) The City may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:

- a. A determination has been made that the property is not needed for other public purposes;
- b. If the property has a current market value of \$250.00 or more, the donation or sale shall:
 - i. Be approved by the City Manager;
 - ii. Be documented by the City to be clearly in the public interest;
- c. The City determines this is the most efficient and cost-effective method for disposing of the property.

(3) The City shall maintain a record of all transfers, donations or sales authorized by sections (1) and (2) of this rule.

26. Intergovernmental Agreements. Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is a party to the contract for which

- a. The original contract met the requirements of ORS Chapter 279;
- b. The contract allows other public agency usage of the contract; and
- c. The original contracting agency concurs.

No written agreement under ORS Chapter 190 is necessary under this subsection if the agreement is between or among units of local government.

Section 5. Exemption Hearing. Whenever the Board is considering an exemption to the requirements for competitive bids or brand name specification, it shall schedule a public hearing to consider testimony and evidence as to whether the exemption should or should not be allowed.

- a. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.
- b. The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the competitive bidding requirements. At the time of the notice, copies of the draft findings shall be made available to the public.
- c. At the public hearing the board shall offer an opportunity for any interested person to appear and present comment.
- d. If the City is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the City's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.
- e. For purposes of this rule, "findings" means the justification for the City's conclusion that includes, but is not limited to, information regarding:
 1. Operational, budget and financial data.
 2. Public benefits.
 3. Value engineering.
 4. Specialized expertise required.
 5. Public safety.
 6. Market conditions.
 7. Technical complexity.
 8. Funding sources.
- f. Upon completion of and final payment for any public improvement contract in excess of \$100,000.00 for which the City did not use the competitive bidding process, the City Manager shall prepare and deliver to the board an evaluation of the public improvement project. The evaluation shall include but not be limited to the following matters:

1. The actual project cost as compared with original project estimates.
2. The amount of any guaranteed maximum price.
3. The number of project change orders issued by the City.
4. A narrative description of successes and failures during the design, engineering and construction of the project.
5. An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279.015.

Evaluations required by this section shall be made available for public inspection, and must be completed within 30 days of the date that the City accepts the public improvement project.

Section 6. Responsive and Nonresponsive Bids or Proposals: Acceptance and Rejection.

- a. A "responsive bid or proposal" is one which complies in all material aspects with an Invitation to Bid or Request for Proposals (hereafter referred to as ITB and RFP, respectively) and with all prescribed public bidding procedures and requirements.
- b. A "nonresponsive bid or proposal" is, except in the case of minor informalities as provided in OAR 137-030-0075(2), one which:
 - i. omits, or is unclear as to, the price;
 - ii. offers good or services of a quality or quantity different from that requested in the ITB or RFP;
 - iii. requires a delivery date different from that required in the ITB or RFP;
 - iv. takes exception to the terms and conditions of the ITB or RFP, unless the ITB or RFP specifically allow for an exception to be taken;
 - v. is conditional upon the public contracting agency's acceptance of terms and conditions different from those contained in the ITB or RFP; or
 - iv. contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the ITB or RFP;
- c. The City shall accept, and consider for award, only those bids or proposals which are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected, as provided in Section 7 of these rules.

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) and OAR 137-030-0102(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.

Section 8. Cancellation of Invitations to Bid or Request for Proposals.

- a. Cancellation in the Public Interest. An invitation to bid or request for proposal may be canceled in whole or in part when it is in the public interest as determined by the City. The reasons therefore shall be made part of the bid or proposal file.
- b. Notice of Cancellation. When an invitation to bid or request for proposal is canceled prior to bid or proposal opening, notice of cancellation shall be sent to all holders of bid or proposal documents. Such notice of cancellation shall:
 - i. Identify the invitation to bid or request for proposals;
 - ii. Briefly explain the reason for cancellation; and
 - iii. Where appropriate, explain that an opportunity will be given to compete on any resolicitation.

Section 9. Responsible Bidders; Responsibility Investigation; Disqualification of Bidders or Proposers for Nonresponsibility.

- (1) A responsible bidder is one who has:
 - a. Adequate financial resources to perform the contract, or the ability to obtain such resources. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. Evidence of ability to obtain required resources may also include a commitment or specific arrangement, that will be in existence at the time of the contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;

- b. The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments;
- c. A satisfactory performance record. Evidence that the person has repeatedly breached contractual obligations to public and/or private contracting agencies constitutes strong evidence of nonresponsibility. The City shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation;
- d. Key personnel available of sufficient experience, as determined by the City, to perform the contract;
- e. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities, as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);
- f. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- g. Be otherwise qualified and eligible to receive the contract under applicable laws and regulations.

(2) The City has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible. This investigation may include an inquiry into the responsibility of the bidder's proposed subcontractors and suppliers. If a bidder fails to promptly supply, or have supplied, information required by the City during its responsibility investigation, such failure shall be grounds for finding of nonresponsibility.

(3) A responsible proposer is one who has the attributes, qualities or capabilities of a responsible bidder as set forth in Section 9(1)(a) through (g). The City has the right, as set forth in Section 9(2), to make such investigations as necessary to determine whether a proposer is responsible.

(4) If the prospective bidder or proposer is disqualified for nonresponsibility, the notice shall specify the reasons for the disqualification and shall advise the person that any appeal of the disqualification must be filed by giving written notice to the City Manager within three (3) business days after receipt of the notice.

Section 10. Appeals of Disqualifications. The procedures for appeals shall be as follows:

- a. Any person who wishes to appeal disqualification as a bidder or proposer shall, within three (3) business days after receipt of notice of disqualification, notify the City Manager that the person appeals the disqualification.
- b. Notices of appeal need not be in any particular form so long as they are in writing addressed to the City Manager.
- c. Upon receipt of notice of appeal, the board shall notify the person appealing of the time and place of the hearing.
- d. The board shall conduct the hearing according to the provisions of ORS 279.045 (3) and shall decide the appeal within thirty (30) days after receiving the notification from the City Manager and shall set forth in writing the reasons for its decisions.

Section 11. Protest of Award.

- a. Notice of Award. The written notice of award of the contract shall constitute a final decision of the City to award the contract if no written protest of the notice of award is filed with the City within ten (10) calendar days of the notice of award or such other period as provided in the City's solicitation. If a protest is timely filed, the notice of award is a final decision of the City only upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision denying a protest shall only be sent to a vendor who either submitted a letter stating that no bid or proposal would be submitted at this time or a qualified bid or proposal prior to the deadline specified in the solicitation documents.
- 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.

- c. Procedure. The City Manager shall promptly notify the board as to the receipt of the protest of award. The board shall schedule a hearing to review the protest, and shall decide to affirm or deny the protest within 14 days after receiving notification of the protest from the City Manager. The board shall issue a written decision on the protest.

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.

The Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(2) Criteria. The Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract; or

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer; or

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process; or

(d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document.

(e) Any other circumstance indicating completion of the solicitation would not be in the public interest.

Stat. Auth.: ORS 279.049

Stats. Implemented: ORS 279.035

Protest of Contractor Selection, Contract Award

137-030-0104 (1) Purpose. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Agency's Contractor selection or Contract award decision.

(2) Notice of Competitive Range. Unless otherwise provided in the RFP, the Agency shall provide Written notice to all Proposers of the Agency's determination of the Proposers included in the Competitive Range. The Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following: (i) 10 Days after the date of the notice, unless otherwise provided therein; or (ii) until the Agency provides a Written response to all timely filed

protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) Notice of Award.

(a) Unless otherwise provided in the Solicitation Document, the Agency shall provide Written notice to all Offerors of the Agency's intent to award the Contract. The Agency's notice of award shall not be final until the later of the following: (i) 14 Days after the date of the notice, unless otherwise provided therein; or (ii) until the Agency provides a Written response to all timely filed protests that denies the protest and affirms the award.

(4) Right to Protest.

(a) Any Offeror (i) who has submitted an Offer to the Agency, and (ii) who is adversely affected by the Agency's Contract award to another Offeror has 14 Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document, to submit a Written protest of the award to the Agency. The Offeror's Written protest must specify the grounds upon which the protest is based. An Offeror is adversely affected only if the Offeror is eligible for award of the Contract as the lowest responsive, responsible Bidder or best responsive and responsible Proposer and is next in line for award, *i.e.*, the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for award (i) because their Offers were nonresponsive or (ii) the Agency committed a material violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such material violation, been the lowest Bidder or the highest-ranked Proposer. The Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Agency's solicitation.

(b) Any Proposer (i) who has submitted a Proposal to the Agency, and (ii) who is adversely affected by the decision to exclude the Proposer from the Competitive Range has 14 Days after

**RULES OF THE CITY OF THE DALLES
LOCAL CONTRACT REVIEW BOARD**

APPENDIX 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.

1. 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.

2. 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.

1. 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:
 - a. The required services cannot be performed within a reasonable time using the public contracting agency's own work force;
 - b. The skills necessary to perform the required services are not available within the public contracting agency; or
 - c. An impartial opinion or evaluation is necessary or appropriate.
2. Formal. Consultant services may be obtained using the formal selection procedure set forth in Section F. The formal procedure shall be used whenever the estimated cost of consultant services exceeds \$15,000.
3. Informal. When the estimated cost of consultant services is equal to or less than \$15,000, the informal selection procedure set forth in Section E may be used.
4. Direct Appointment. When the circumstances set forth in Section D are found to exist, the direct appointment procedure provided for in that rule may be used.
5. Notice. Except where the circumstances stated in Section D(2) 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 D(2)** shall provide notice in accordance with ORS 200.035 as soon as it is reasonably practicable to do so.

6. 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

1. A qualified consultant may be appointed directly from:
 - a. The public contracting agency's current list of consultants;
 - b. 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
 - c. Among all consultants offering the necessary consultant services that the public contracting agency reasonably can locate, following public advertisement.
2. The direct appointment procedure may be used when:
 - a. 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
 - b. The estimated cost of consultant services does not exceed \$15,000; or
 - c. The project:
 - (1) 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;
 - (2) The estimated cost of consultant services for such project does not exceed \$15,000; and
 - (3) The selection procedure used for the original project was the formal selection procedure set forth in Section F (or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules); or

- d. 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.
- 3. A direct appointment, pursuant to subsection D(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:
 - a. The consultant's availability', capabilities, staffing, experience, and compensation information; and
 - b. The project's location.
- E. Informal Selection Procedure.
 - 1. 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.
 - 2. A written solicitation inviting written proposals shall be sent to a minimum of five prospective consultants drawn from:
 - a. The City's current list of consultants; and
 - b. 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
 - c. Among all consultants offering the necessary consultant services that the public contracting agency reasonably can locate.
 - 3. All proposals shall be reviewed and the three most qualified consultants selected and ranked.
 - 4. 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:
 - a. Particular capability to perform the consultant services for the project being considered;
 - b. Number of experienced staff available to perform the consultant services required by the project, including each consultant's recent, current, and projected workloads;

- c. Performance history on past projects for public or private clients;
 - d. Project approach and design philosophy;
 - e. Compensation information; and
 - f. Geographic proximity to the project;
 - g. 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.
5. 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:
- a. The consultant's tasks and a performance schedule;
 - b. 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.
6. 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 F, or, depending upon the circumstances, the direct appointment procedure provided for in Section D.
7. 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 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:

- a. Not encourage favoritism in the awarding of consultant contracts or substantially diminish competition for consultant contracts; and
 - b. Will result in substantial cost savings to the public contracting agency.
8. 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.

- 1. The formal selection procedure shall be used whenever the estimated cost of consultant services exceeds \$15,000.00.
- 2. Responses shall be solicited through public advertisement and:
 - a. An RFP; or
 - b. An RFQ to establish a short list, followed by an RFP:
 - (1) 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:
 - (a) The project;

- (b) The consultant services sought;
 - (c) Where copies of the solicitation may be obtained; and
 - (d) The deadline for submitting a response.
 - (2) 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).
3. 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:
- a. The information listed in subsection F(2)(b)(1)(a) through (d) of this rule;
 - b. A statement of the particular consultant qualifications required for the project;
 - c. The evaluation criteria (including the weights or points applicable to each criterion); and
 - d. The screening or evaluation method to be used. The RFQ may request any or all of the following:
 - (1) The information set forth in Section B(1), unless it has already been obtained;
 - (2) The consultant's particular capability to perform the consultant services required for the project, and the consultant's recent, current, and projected workloads;
 - (3) 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;
 - (4) A list of similar projects completed by the consultant with references concerning past performance, including copies of any performance records maintained pursuant to Section B(1);
 - (5) Information concerning the consultant's geographic proximity to the project.

- (6) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.
4. 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.
5. 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:
- a. A short list of fewer than three qualified consultants may be established; or
 - b. 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.
6. Any reasonable screening or evaluation method may be used to establish a short list of qualified consultants, including, but not limited to:
- a. Requiring potential consultants to achieve a threshold score to be placed on a short list;
 - b. Placing the three, or more, highest scoring consultants on a short list; or
 - c. 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.

7. RFP Procedures: The RFP, whether or not proceeded by an RFQ, shall describe or contain the following information:
 - a. 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;
 - b. The evaluation process and the criteria which will be used to select the consultant, including the weight or points applicable to each criterion;
 - c. Whether interviews are anticipated;
 - d. The closing date and time of the solicitation and the delivery location for consultant proposals;
 - e. Reservation of the right to seek clarifications of each consultant's proposal;
 - f. 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;
 - g. 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
 - h. 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.
8. The RFP, whether or not preceded by an RFQ, should also describe or contain the following information, when applicable:
 - a. A sample of the contract the consultant will be expected to execute; and
 - b. Any other information which is reasonably necessary to evaluate, rank and select consultants.

9. The RFP shall require each consultant's proposal to provide the information required in Section F(3)(d) 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:
 - a. 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;
 - b. The consultant's compensation information;
 - c. The availability of any required special resources or equipment; and
 - d. The identity of any proposed subconsultants and the portions of the work to be performed by subconsultants.
10. 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.
11. 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 F(12). 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.
12. 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:
 - a. Availability, and capability to perform the work;
 - b. Experience of key staff on comparable project(s);

- c. Demonstrated ability to successfully complete similar projects on time and within budget, including whether there is evidence of satisfactory performance as provided in Section B(2);
 - d. References and recommendations from past clients, public and private;
 - e. Consultant's performance history in:
 - (1) Meeting deadlines;
 - (2) Submitting accurate estimates;
 - (3) Producing high quality work; and
 - (4) Meeting financial obligations.
 - f. Status and quality of any required licensing or certification;
 - g. Consultant's knowledge and understanding of the project as shown in the consultant's:
 - (1) Approach to the project's staffing and scheduling needs; and
 - (2) Proposed solutions to any perceived design and constructability problems.
 - h. The consultant's compensation requirements;
 - i. Results from oral interviews, if conducted;
 - j. Design philosophy and project approach; and
 - k. 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.
13. Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:
- a. The consultant's tasks and a performance schedule;

- b. 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.
- 14. 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 D.
- 15. 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.
- 16. 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:
 - a. Not encourage favoritism in the awarding of consultant contracts or substantially diminish competition for consultant contracts; and
 - b. Will result in substantial cost savings to the City.

G. Protest Procedures.

- 1. 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 five 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.

2. 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 ten 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 (1) their proposals were non-responsive or the consultants nonresponsive, 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 protester was unfairly evaluated, and would have, but for such material violation, been the highest-ranked proposer. 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.
3. 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.

1. 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:
 - a. Cost-plus-a-percentage of-cost; or
 - b. A percentage of construction or project costs.
2. Except in:
 - a. Cases of emergency as defined in ORS 279.011(4); or
 - b. 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:

- (1) Where a consultant is providing architectural or engineering services under a contract with the City to provide:
 - (a) Construction manager/general contractor services; or
 - (b) Design build services; or
- (2) 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.