

**ORDINANCE NO. 1281
INTRODUCED BY ALL COMMISSIONERS**

**AN ORDINANCE AMENDING IN ITS ENTIRETY, CHAPTER 3.28 OF THE WARRENTON MUNICIPAL
CODE; PUBLIC CONTRACTING, AND REPEALING ALL ORDINANCES IN CONFLICT**

WHEREAS, State standards regarding public contracting law thresholds have increased; and

WHEREAS, current Warrenton Municipal Code language is outdated and not current with State standards, including prevailing wage and public contract minimum thresholds; and

WHEREAS, Warrenton Municipal Code Chapter 3.28 has been reviewed and significantly updated with the assistance of legal counsel.

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

Section 1. Warrenton Municipal Code Chapter 3.28 Public Contracting is hereby amended in its entirety to read as follows:

Title 3. Revenue and Finance

Chapter 3.28. PUBLIC CONTRACTING

3.28.010 Public contracts – City of Warrenton policy.

A. **Short Title.** The provisions of this chapter and all rules adopted under this chapter may be cited as the “Public Contracting Regulations.”

B. **Purpose of the Public Contracting Regulations.** It is the policy of the City of Warrenton in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:

1. Promoting impartial and open competition;
2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
3. Taking full advantage of evolving procurement methods that suit the contracting needs of the City of Warrenton as they emerge within various industries.

C. **Interpretation of Public Contracting Regulations.** In furtherance of the purpose of the objectives set forth in subsection B of this section, and except as provided within these regulations, City public contracting is governed by the Oregon Public Contracting Code (ORS

Chapters 279, 279A, 279B and 279C) (the “State Statutes”) and the Oregon Attorney General’s Model Public Contract Rules (OAR Chapter 137, divisions 46, 47 and 49) (the “Model Rules”).

For purposes of these Public Contracting Regulations, “emergency” means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare, or safety; and require prompt execution of a contract to remedy the condition.

3.28.020 Application of public contracting regulations.

In accordance with ORS 279A.025, the City of Warrenton’s public contracting regulations and the State Statutes do not apply to the following classes of contracts:

- A. **Between Governments.** Contracts between the City of Warrenton (A) Another contracting agency; (B) The Oregon Health and Science University; (C) A public university listed in ORS 352.002; (D) The Oregon State Bar; (E) A governmental body of another state; (F) The federal government; (G) An American Indian tribe or an agency of an American Indian tribe; (H) A nation, or a governmental body in a nation, other than the United States; or (I) An intergovernmental entity formed between or among: (i) Governmental bodies of this or another state; (ii) The federal government; (iii) An American Indian tribe or an agency of an American Indian tribe; (iv) A nation other than the United States; or (v) A governmental body in a nation other than the United States.
- B. **Insurance and service contracts** as provided for under ORS 414.115, 414.125, 414.135 and 414.145, for purposes of source selection.
- C. **Grants.** A grant contract is an agreement under which the City of Warrenton is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. The making or receiving of a grant is not a public contract subject to the State Statutes; however, any grant made by City of Warrenton for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the State Statutes and these regulations.
- D. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Warrenton is or may become interested.
- E. **Real Property.** Acquisitions or disposal of real property or interests in real property.

- F. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- G. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- H. **Finance Contracts,** agreements or other documents entered into, issued or established in connection with:
 1. The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of the City;
 2. Program loans and similar extensions or advances of funds, aid, or assistance that a public body makes to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 3. The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085.
- I. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565, or contracts for employee benefit plans as provided in ORS 243.860 to 243.886.
- J. **Exempt Under State Laws.** Any other public contracting specifically exempted from the State Statutes by another provision of law.
- K. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the State Statutes or these regulations, or require additional conditions in public contracts not authorized by the State Statutes or these regulations.

3.28.030 Public Contracts – Regulation and Authority.

- A. **City Commission General Authority.** Except as expressly delegated under these regulations, the Warrenton City Commission reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:
- B. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
 1. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

2. Exempt the use of brand name specifications for public improvement contracts;
3. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
4. Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation, subject to the requirements of the State Statutes and the Public Contracting Regulations;
5. Hear properly filed and timely appeals of the Purchasing Manager's determination of debarment, or concerning prequalification;
6. Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services, Construction-Related Personal Services, and public improvements; and
7. Award all contracts that exceed the authority of the Purchasing Manager.

C. **City Manager General Authority.** For the purposes of these Public Contracting Regulations, "City Manager" means the City Manager for the City of Warrenton, or the City Manager's designee. The City Manager shall be the purchasing manager for the City of Warrenton and is hereby authorized to issue all solicitations and to award all City of Warrenton contracts for which the contract price does not exceed \$50,000.00. Subject to the provisions of these Public Contracting Regulations, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the State Statutes or otherwise convenient for the City of Warrenton's contracting needs. Notwithstanding the foregoing, as required by City Charter section 39, the City Commission shall approve the plans and specifications of any public improvement in excess of \$10,000.00 to be made by a private contractor. The purchasing manager shall hear all properly filed and timely solicitations and award protests.

D. **Solicitation Preferences.** When practical, the Warrenton City Commission and Purchasing Manager shall use solicitation documents and evaluation criteria that:

1. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability, and quality are otherwise equal;
2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products; and

3. Give a preference to goods, services, and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.
- E. **Delegation of Purchasing Manager's Authority.** Any of the responsibilities or authorities of the Purchasing Manager under these Public Contracting Regulations may be delegated and sub-delegated by written directive.
- F. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager shall review the public contracting regulations, other than the Model Rules, and recommend to the City Commission any modifications required to ensure compliance with statutory changes.

3.28.040 Public Contracts – Direct Appointment Contracts; Pre-Authorized Contracts.

A. **Direct Appointment Contracts.** Notwithstanding anything contained within these Public Contracting Regulations, the following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the City of Warrenton's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

1. **Advertising.** Contracts for the placing of notices or advertisements in any medium.
2. **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.
3. **Animals.** Contracts for the purchase of animals.
4. **Copyrighted Materials—Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
5. **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
6. **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
7. **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

8. **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City of Warrenton.
9. **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Warrenton for resale to consumers.
10. **Sponsor Agreements.** Sponsorship agreements, under which the City of Warrenton receives a gift or donation in exchange for recognition of the donor.
11. **Structures.** Contracts for the disposal of structures located on City of Warrenton owned property.
12. **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
13. **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.
14. **Temporary Use of City of Warrenton Owned Property.** The City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process if:
 - a. The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
 - b. The proposed use of the property is consistent with the City's use of the property and the public interest; and
 - c. The City of Warrenton reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.
15. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

B. Contracts Required by Emergency Circumstances.

1. **In General.** When the City Manager determines that immediate execution of a contract is necessary to address an emergency, the City Manager may execute a contract not to exceed \$50,000.00 without competitive selection and award or City of Warrenton approval, but, where time permits, the City Manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (a) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City of Warrenton and the public, and (b) notify the Warrenton City Commission of the facts and circumstances surrounding the emergency execution of the contract.
3. **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Warrenton City Commission has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the Warrenton City Commission grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Warrenton City Commission may waive the requirement for all or a portion of required performance and payment bonds.

C. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (“GSA”) as provided in this subsection.

1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Manager. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the City of Warrenton to purchase under the federal program.
2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.
4. If a single purchase of goods or services exceeds \$250,000.00, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

D. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the State Statutes.

E. Concession Agreements.

1. **General.** No part of a concession agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City of Warrenton concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.
2. **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
 - a. **Contracts Under \$5,000.00.** Contracts under which the Solicitation Agent estimates that receipts by the City of Warrenton will not exceed \$5,000.00 in any fiscal year and \$50,000.00 in the aggregate.
 - b. **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
3. **Competitive Award.** Concession agreements solicited by the City of Warrenton for the use of designated public premises for a term greater than a single event shall be awarded as follows:
 - a. **Small Concessions.** For concession agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000.00 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000.00, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.
 - b. **Major Concessions.** Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000.00 annually shall be awarded using a request for proposals.

3.28.050 Public contracts – Process for approval of special solicitation methods and exemptions.

A. **Authority of City of Warrenton.** In its capacity as contract review board for the City, the City Commission, upon its own initiative, or upon request of the Purchasing Manager, may

create or approve special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

B. Sole Source Procurements. Pursuant to ORS 279B.075(1), the Purchasing Manager is authorized to declare in writing certain goods and services to be available from only one source. The determination of a sole source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms that are advantageous to the City.

C. Special Procurements.

1. Pursuant to ORS 279B.085, to seek approval of a special procurement, the Purchasing Manager shall submit a written request to the City Commission that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement.
2. The written findings must demonstrate that the use of the special procurement:
 - a. Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and;
 - b. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or;
 - c. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.
3. City shall provide public notice of the special procurement approval in the same manner as provided in ORS 279B.055(4).

D. Procurement Exemptions. Pursuant to ORS 279C.335(2), the Purchasing Manager is authorized to seek the procurement of Construction-Related Personal Services or public improvements via procurement or contracting methods, or both, that deviate from those set forth in these Public Contracting Regulations, the State Statutes, and the Model Rules. In order to qualify for an exemption under this section, the Purchasing Manager must produce written findings that demonstrate all applicable elements of ORS 279C.335(2)(a) and (b), present such findings to the City Commission, and follow the notice and hearing requirements of ORS 279C.335(5). For clarity's sake, this exemption process shall be used if the City seeks to use any alternate contracting method, including a design-build contract, construction-manager/general-contractor contract, or energy-saving performance contract, each as defined by state law.

E. Hearing.

1. The City of Warrenton shall approve the sole source procurement, special solicitation, or exemption after a public hearing before the Warrenton City Commission following notice by publication in at least one newspaper of general circulation in the City of Warrenton area in accordance with the requirements set forth in this section.
2. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
3. The Warrenton City Commission will consider the findings and may approve the exemption as proposed or as modified by the Warrenton City Commission after providing an opportunity for public comment.

F. **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Warrenton City Commission approves the exemption. If the Warrenton City Commission fails to approve a requested exemption or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

3.28.060 Public Contracts – Surplus Property; City Funded Private Construction Projects.

A. Surplus Property.

1. **Definition.** “Surplus property” means personal property owned by the City of Warrenton which is no longer needed for use by the department to which such property has been assigned.
2. **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the City Commission that the method of disposal is in the best interest of the City of Warrenton. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the City of Warrenton. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
 - a. Governments. Without competition, by transfer or sale to another City of Warrenton department or public agency.
 - b. Auction. By publicly advertised auction to the highest bidder.
 - c. Bids. By public advertised invitation to bid.

- d. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with Public Contracting Regulations for the award of personal services contracts.
 - e. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 - f. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 - g. Donation. By donation to any organization operating which is recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
3. **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$1000.00, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost effective, including by disposal as waste, upon such determination by the Solicitation Agent. The official making the disposal shall make a record of the value of the item and the manner of disposal.
4. **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$300.00 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
5. **Police Officers' Handguns.** Upon honorable retirement from service with the City of Warrenton, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the City shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.
6. **Restriction on Sale to City of Warrenton Employees.** City of Warrenton employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

7. **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Warrenton shall make, execute and deliver, a bill of sale signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

B. City of Warrenton Funded Privately Constructed Public Improvements. The City of Warrenton may contribute funding to a privately constructed public improvement project without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:

1. The City's contribution to the project may not exceed 25% of the total cost of the project;
2. The City must comply with all applicable laws, if any, concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
3. The general contractor for the project must agree in writing to comply with all applicable laws, if any, concerning reporting and payment of prevailing wages for the project;
4. The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;
5. The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the Purchasing Manager to protect the City of Warrenton against defective performance and claims for payment; and
6. The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the City of Warrenton for all claims for payment, injury or property damage arising from or related to the construction of the project.

3.28.070 Public Contracts – Personal Service Contracts.

A. **“Personal services contract”** means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors, health care professionals, land use consultants, urban renewal consultants, landscape architects and other licensed professionals, artists, designers, computer programmers, performers, consultants, appraisers, realtors,

geologists, hydrologists, and property managers. The Warrenton City Commission shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

B. **Large Procurements.** The following formal selection procedure will be used when the estimated payment to the contractor for a personal service contract exceeds \$250,000.

1. **Announcement.** The City will give notice of its intent to procure personal services through the League of Oregon Cities, and/or any other means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:
 - a. A description of the proposed project;
 - b. The scope of the services required;
 - c. The project completion dates;
 - d. A description of special requirements;
 - e. When and where the application may be obtained and to whom it must be returned;
 - f. The closing date; and
 - g. Other necessary information, as determined by City in its sole discretion.
2. **Application.** Applications will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection. Applications shall include, at minimum:
 - a. Specialized experiences in the type of work to be performed;
 - b. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;
 - c. Education and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and
 - d. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

- e. Any other factors relevant to the particular contract.
- 3. **Initial screening.** The Purchasing Manager will evaluate the qualifications of all applications and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is the best qualified to meet the City's needs.
- 4. **Final Selection.**
 - a. The Purchasing Manager will interview the finalists selected from the initial screening. At the Purchasing Manager's discretion, the interviews may be conducted before the City Commission.
 - b. After the interview process concludes, the Purchasing Manager will make the final selection. If the interviews are conducted before the City Commission, the City Commission will make the final selection.
 - c. The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.

C. **Intermediate Procurements.** The following informal selection procedure may be used when the estimated payment to the contractor for a personal service contract is equal to or less than \$250,000 and above \$25,000, or when the Purchasing Manager determines that the informal procedure will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs. The Purchasing Manager will contact a minimum of three (3) prospective contractors qualified to offer the services sought. The Purchasing Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three (3) quotes are not received, the Purchasing Manager will make a written record of efforts to obtain the quotes.

D. **Small Procurements.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$25,000.00, including optional renewals, may be awarded under any method deemed in the City of Warrenton's best interest by the Solicitation Agent, including by direct appointment. However, the Purchasing Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

E. **\$50,000.00 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$50,000.00 may be awarded by direct appointment without competition from a qualified pool.

F. **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$250,000.00 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if

the prior contract was awarded under a competitive process and the City Commission determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

G. Sole Source. The Purchasing Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written finds to demonstrate why the proposed contractor is the only contractor who can perform the services desired, in general compliance with ORS 279B.075.

H. Emergency. The Purchasing Manager may select a contractor without following any procedures when an emergency is determined to exist. In such instances, the Purchasing Manager must make written declarations of the circumstances that justify the emergency appointments.

3.28.080 Public contracts – Construction-Related Personal Service Contracts.

A. Purpose. This section implements ORS 279C.100 to 279C.125. The City will rely on these Public Contracting Regulations, not the Model Rules, for a contract with an architect, engineer, photogrammetrist, land surveyor, as each is defined in ORS 279C.100, and (in very narrow instances) a transportation planner (collectively referred to herein as “Construction-Related Personal Services”).

B. Applicability. This section applies only to a Construction-Related Personal Service contract that meets the following criteria:

1. The estimated payment to the contractor exceeds \$100,000; and
2. The contract is for a personal service that is *legally required* to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City may rely on this subsection to hire someone to perform those services. However, if the City is hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under Section 3.28.070 of these Public Contracting Regulations. *See* definition of “Related Services” below.
3. If either (1) or (2) above is not satisfied (i.e. the contract is for a personal service that is legally required to be provided by a licensed architect, etc. *but* is estimated to not exceed \$100,000; *or* the contract will require an engineer, etc. to perform a Related Service) then the City may rely on Section 3.28.070 of these Public Contracting Regulations to solicit and award the contract.

C. **Mixed contracts.** Some contracts will contain a mixture of services covered by this section (i.e., services that only the particular consultant may legally perform) and Related Services. Whether the City uses this section or Section 3.28.070 to solicit and award a mixed contract will depend upon the predominate purpose of the contract. The City will determine the predominate purpose based upon either the amount of money it estimates it will spend for covered services versus Related Services or the amount of time it estimates it the consultant will spend working on covered services versus Related Services. If covered services predominate, City will solicit the contract under this section. If Related Services predominate, City will solicit the contract under Section 3.28.070.

D. **Small Procurements.** For clarity's sake, the Purchasing Manager may enter Construction-Related Personal Service contracts when the estimated payment is less than \$100,000 in any manner the Purchasing Manager finds practical or convenient, including direct selection or award. However, the Purchasing Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

E. **Exception for Previous Work.** Pursuant to ORS 279C.115, the City may procure a Construction-Related Personal Service contract pursuant to Section 3.28.070 if the project described in the procurement document:

1. Involves work that was described, planned, or rendered in an earlier contract with the Construction-Related Personal Services consultant;
2. The earlier contract was awarded in accordance with the City's contracting rules in effect at the time of the earlier contract; and
3. The contemplated new contract is a continuation of the project described in the earlier contract.

F. **Exception for Emergencies.** Pursuant to ORS 279C.110(9), the City may directly appoint a Construction-Related Personal Service contract in an emergency.

G. **Definitions.** The following definitions apply to this section:

1. "Price Agreement" means an agreement related to the procurement of Construction-Related Personal Services or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
 - a. No guarantee of a minimum or maximum purchase; or
 - b. An initial order or minimum purchase, combined with a continuing obligation to provide Construction-Related Personal Services or Related Services where the City does not guarantee a minimum or maximum additional purchase.

2. "Transportation Planning Services" only includes project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.
3. "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

H. **Intermediate Procurements.** The following informal selection procedure may be used when the estimated payment to the consultant for Construction-Related Personal Services is equal to or less than \$250,000 and above \$100,000. The Purchasing Manager will contact a minimum of three (3) prospective consultants qualified to offer the services sought. The Purchasing Manager will request an estimated fee and make the selection consistent with the City's best interests, to the most qualified consultant. If three (3) quotes are not received, the Purchasing Manager will make a written record of efforts to obtain the quotes.

I. **Large Procurements.** The following formal selection procedure will be used when the estimated payment for Construction-Related Personal Services exceeds \$250,000.

1. When selecting a consultant to perform Construction-Related Personal Services under this section, the City must award a contract to the most qualified consultant.
2. Unless the City follows the process set forth in subsection (3) of this Section, when determining which consultant is most qualified, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a consultant's compensation *after* the City has selected the most qualified consultant.
3. Notwithstanding subsection (2) of this section, if the solicitation documents include the information described in ORS 279C.110(5)(a), City may request pricing policies or

pricing proposals from prospective consultants, including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates. A pricing policy or pricing proposal also may include a description of the tasks included in the proposal, a list of persons or labor classifications who will perform the tasks, and a list of expenses. A proposer that does not wish to provide pricing information may withdraw its bid. City may use the pricing policies or pricing proposals to select a consultant, provided City does not assign more than 15 percent of weight in its evaluation to the pricing policies or information.

4. When soliciting a Construction-Related Personal Service under this section, City will use a Request for Proposals (“RFP”) or a Request for Qualifications (“RFQ”) followed by a RFP, as described below. City may advertise RFQs and RFPs in any manner it deems appropriate, including electronically.
5. **RFQ.** City may in its sole discretion issue an RFQ to evaluate potential Construction-Related Personal Service consultants and establish a short list of qualified Construction-Related Personal Service consultants to whom it may issue an RFP for some, or all of the Construction-Related Personal Services or Related Services described in the RFQ. RFQs shall follow the process set forth in section 3.28.120.
6. **RFP.** City will issue an RFP to select the most qualified Construction-Related Personal Service consultant, regardless of whether an RFQ precedes an RFP. RFPs will include:
 - a. A description of the project and the specific Construction-Related Personal Services or Related Services sought for the project, the estimated project cost (if deemed necessary and appropriate to provide, in the discretion of the Purchasing Manager), the estimated time period during which the project is to be completed, and the estimated time period in which the specific Construction-Related Personal Services or Related Services sought will be performed;
 - b. The RFP evaluation process and the criteria that the City will use to select the most qualified Construction-Related Personal Service consultant, including the weight, points, or other classifications applicable to each criterion. Without limitation, the criteria may include:
 - 1) Proposers' availability and capability to perform the services described in the RFP;
 - 2) Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;
 - 3) The amount and type of resources, and number of experienced staff persons proposers will commit to the project;

- 4) Proposers' demonstrated ability to successfully complete similar projects on time and within budget, including the hourly rates for key personnel and related cost data for similar projects in the previous 12 months;
 - 5) References and recommendations from past clients;
 - 6) Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Personal Service consultant's ability to provide additional services related to the project, including but not limited to construction services;
 - 7) Whether interviews will or may occur and, if so, how the interview will factor into City's selection;
 - 8) A proposal deadline and a description of how or where to submit a proposal;
 - 9) A statement whether City will accept proposals in electronic format;
 - 10) A statement that interested consultants respond solely at their own expense;
 - 11) A statement reserving City's right to reject any or all proposals and its right to cancel the RFP at any time if doing either would be in the public interest;
 - 12) A statement directing proposers to the protest procedures set forth in the RFP;
 - 13) A statement whether City will hold a pre-proposal meeting for all interested Construction-Related Personal Service consultants to discuss the project and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
 - 14) Any other elements the Purchasing Manager deems appropriate.
- c. After selecting the most qualified Construction-Related Personal Service consultant in accordance with an RFP, Purchasing Manager will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:
- 1) The consultant's performance obligations and performance schedule;
 - 2) Payment methodology and a maximum amount payable to the consultant for the services required under the contract;

- 3) Insurance and indemnification provisions;
 - 4) Legally required terms; and
 - 5) Any other provisions City believes are in its best interest to negotiate.
- d. City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as City may determine in its sole discretion. City may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, City may end the particular solicitation. Nothing in this section precludes City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

J. **Price agreements.** Solicitation materials and the terms and conditions for a Price Agreement for Construction-Related Personal Services or Related Services must:

1. Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity, and purpose of the procurement that will reasonably enable a consultant to decide whether to submit a proposal;
2. Specify whether the City intends to award a Price Agreement to one consultant or to multiple consultants. If City will award a Price Agreement to more than one consultant, the solicitation document and Price Agreement will describe the criteria and procedures City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Construction-Related Personal Services are at City's sole discretion; and
3. Specify the maximum term for assigning services under the Price Agreement.

3.28.090 Public Contracts – Small Procurements of Goods and Services.

A. Any procurement of goods or services estimated by the City Manager to not exceed \$25,000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.

B. A procurement may not be artificially divided or fragmented to qualify for this section.

3.28.100 Public Contracts – Intermediate Procurements of Goods and Services.

A. The following informal selection procedure may be used when the estimated payment to the contractor for goods or services is equal to or less than \$250,000 and above \$25,000. The City Manager will contact a minimum of three (3) prospective contractors qualified to offer the goods or services or public improvement sought. The City Manager will request an estimated fee and make the selection consistent with the City's best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

B. An intermediate procurement contract may be amended in accordance with OAR 137-047-0800.

C. A procurement may not be artificially divided or fragmented to qualify for this section.

3.28.110 Large Procurements of Goods and Services, and Public Improvements.

A. When the estimated payment to the contractor for goods or services is above \$250,000, the City shall either seek competitive sealed bidding in accordance with OAR 137-047-0255 or competitive sealed proposals in accordance with OAR 137-047-0260.

B. When estimated payment to the contractor for a public improvement is above \$5,000, the City shall follow the solicitation procedures set forth in OAR 137-049-0200.

C. A procurement may not be artificially divided or fragmented to avoid this section.

3.28.120 Public contracts – Qualified Pools.

A. **General.** To create a qualified pool, the Purchasing Manager may invite prospective contractors to submit their qualifications to the City of Warrenton for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services, Construction-Related Personal Services, and public improvements. The City Commission shall approve the use of a qualified pool appointment and will approve the qualified pool membership on an annual basis.

B. **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be republished at least once per year and shall be posted at the City of Warrenton's main office and on its website.

C. **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to

qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City of Warrenton.

D. **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Warrenton and all pool participants are parties. The contract shall contain all terms required by the City, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City of Warrenton contract.

E. **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Warrenton City Commission shall award all contracts of the type for which a qualified pool is created from among the pool's participants, unless the Solicitation Agent determines that best interests of the City of Warrenton require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

F. **Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

G. **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that he or she may appeal a qualified pool decision to the Warrenton City Commission in accordance with these rules.

3.28.120 Public contracts – Electronic advertisement of public improvement contracts.

A. In lieu of publication in a newspaper of general circulation in the City of Warrenton metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement with an estimated cost not exceeding \$125,000 may be published electronically by posting on the City of Warrenton's website, provided that the following conditions are met:

B. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

C. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation the City of Warrenton metropolitan area and will provide costs savings for the City, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the City of Warrenton metropolitan area in encouraging meaningful competition.

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

3.28.130 Authority to electronically advertise solicitation for goods and services.

A. The Purchasing Manager is authorized to develop an “electronic procurement system” in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(15), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.

B. Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

3.28.140 Appeal of debarment or prequalification decision.

A. Right to Hearing. Any person who has been debarred from competing for City of Warrenton contracts or for whom prequalification has been denied, revoked, or revised may appeal the City’s decision to the Warrenton City Commission as provided in this section.

B. Filing of Appeal. The person must file a written notice of appeal with the City’s Purchasing Manager within three business days after the prospective contractor’s receipt of notice of the determination of debarment, or denial of prequalification.

C. Notification of Warrenton City Commission. Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify the Warrenton City Commission of the appeal.

D. Hearing. The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

1. Promptly upon receipt of notice of appeal, the City of Warrenton shall notify the appellant of the time and place of the hearing;
2. The Warrenton City Commission shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and

3. At the hearing, the Warrenton City Commission shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

E. Decision. The Warrenton City Commission shall set forth in writing the reasons for the decision.

F. Costs. The Warrenton City Commission may allocate the Commission's costs for the hearing between the appellant and the City of Warrenton. The allocation shall be based upon facts found by the City Commission and stated in the Warrenton City Commission's decision that, in the Commission's opinion, such allocation of costs. If the City of Warrenton does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City, if the decision is overturned.

G. Judicial Review. The decision of the Warrenton City Commission may be reviewed only upon a petition in the circuit court of Clatsop County filed within 15 days after the date of the Warrenton City Commission's decision. (Ord. 1076-A § 13, 2005)

3.28.150 Notice of Intent to award certain contracts.

A. At least seven days before the award of a public contract solicited under any invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.

B. If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.

C. As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

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

E. This section does not apply to any goods or service contract, public improvement contract or class of public improvement or goods or services contracts exempted from competitive bidding requirements.


F. A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740, OAR 137-048-0240, or OAR 137-049-0450, as applicable. Protests to the City's intent to award a personal service contract under Section 3.28.070 may only be filed in accordance with OAR 137-047-0740.

Section 2. Effective Date. This Ordinance shall be effective on the 30th day following its passage.

First Reading:
Second Reading:

ADOPTED by the City Commission of the City of Warrenton, Oregon this 22nd day of October 2024.

Attest: 
Dawne Shaw, CMC, City Recorder


Henry A. Balensifer III, Mayor
Gerald Poe, Mayor Pro Tem