



AGENDA STAFF REPORT

AGENDA LOCATION: Item #10A

MEETING DATE: January 26, 2026

TO: Honorable Mayor and City Council

FROM: Jonathan Kara, City Attorney

ISSUE: Adopting Resolution No. 26-005, a resolution updating the City's *Local Contract Review Board Rules* (Effective January 26, 2026)

BACKGROUND:

The City Council, acting as the Local Contract Review Board (**LCRB**), may adopt rules of procedure for public contracting under ORS 279A.065. Staff recommends adoption of the proposed 2026 LCRB Rules, which replace the City's February 2023 Rules.

This update is a modernization and alignment effort. The 2023 Rules have served well as the City's baseline rules, but several provisions are now out of step with the structure of and thresholds provided by the Oregon Public Contracting Code and with how procurements are commonly administered in practice (especially for goods and services and personal services). The 2026 Rules preserve competition and transparency while reducing unnecessary administrative friction and strengthening defensibility through clearer documentation, amendment standards, and protest procedures.

For transparency and to inform the public's and Council's review here, both **(1)** a full redline comparison of the 2023 Rules to the proposed 2026 Rules and **(2)** a high-level comparison table are included as attachments to this staff report.

The summary table and rules are organized around the following categories:

1. **Goods** are supplies, equipment, materials, and personal property (including intangible and intellectual property rights and licenses).
2. **Services** are "ordinary"/vendor-interchangeable services that do not require specialized skills. **Examples:** portable toilet or temporary security fencing rental during construction, routine janitorial cleanup, and various software subscriptions.

Primary considerations: competitive price/responsiveness matter most.

3. **Personal Services** are services requiring specialized judgment or trusted relationships more than project-by-project needs. **Examples:** grant administration consultant to manage the City's reporting/reimbursements, public engagement consultants to run open-houses and stakeholder outreach, auditor/accounting services, and legal services. **Primary considerations:** qualifications/judgment/track-record with the City matter most.
4. **Professional Services** refers to both (a) A&E services and (b) related services.
 - (a) **A&E Services** are only the following 5 types of special services: architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services. **Examples:** civil engineering to design a site, grading, stormwater, and utilities, land surveyor for boundary and construction staking, and traffic control plan engineering. **Primary considerations:** competition for most qualified team then a negotiated and fair/reasonable fee.
 - (b) **Related Services** are personal services (other than A&E services) that *relate to* the administration, design, engineering, or oversight of public improvement projects. **Examples:** geotechnical investigations and reporting, environmental consultant for wetland delineation or hazardous materials testing, and archaeological consultant for monitoring and compliance during construction. **Primary considerations:** still specialized and project-tied like A&E services, but the City has more flexibility in how to select (i.e., continuation of prior project, qualifications, capability) then negotiate price depending on risk, project schedule, and market.

Unchanged under the Proposed 2026 Rules

1. Council approval threshold remains the same. Council approval is still required for contract awards and amendments committing more than \$100,000 of City funds.
2. Staff spending authorities remain the same. The City Manager, Department Managers, and other employees retain the same purchasing and signature authorities as under the 2023 Rules. The proposed 2026 Rules do not expand staff spending authority.
3. Public improvement contracting remains governed by ORS Chapter 279C. Competitive selection remains the default for public improvement contracts unless a statutory exception or authorized alternative method applies. The 2026 Rules are intended to better organize and operationalize the City's existing statutory options (not to create new exemptions from applicable Oregon law).
4. The City's procurement objectives remain the same. The public interest is best served when the City uses sound contracting practices to maximize the purchasing power of taxpayer funds and to avoid favoritism or unfair competition. The proposed 2026 Rules continue to emphasize impartial competition where required or practicable, clear solicitation requirements, and negotiating contracts on

favorable terms for the City.

Key Changes under the Proposed 2026 Rules

The attached comparison table provides the best concise current 2023/proposed 2026 view by procurement type. To summarize the substantive changes proposed in these 2026 Rules:

1. **Model Rules and Applicability**. The proposed 2026 Rules clarify when the Attorney General’s Model Rules apply and when they do not, consistent with the City’s authority under ORS 279A.065 to adopt its own rules of procedure for public contracting. The 2026 Rules are intended to reduce unnecessary procedural steps that can occur when staff default to Model Rules where they are not legally required while still preserving Model Rule compliance where Oregon law requires it and allowing staff to use Model Rules as procedural guidance for formal solicitations when helpful.
2. **Goods and Services (Not Personal or Professional Services)**. The comparison table reflects two key changes:
 - (a) ***Intermediate Procurement Ceiling***. Under the 2023 Rules, many goods/services procurements above \$100,000 were treated as “large” procurements that generally required formal sealed processes. The 2026 Rules align the intermediate ceiling to the state-law structure under ORS Chapter 279B and allow informal competition methods for goods/services procurements up to \$250,000 with documented competition efforts and a written record. Council approval remains required for awards and amendments over \$100,000.
 - (b) ***Amendments***. The 2026 Rules replace rigid percentage-based amendment limits used in several places in the 2023 Rules with a clearer scope-and-material change standard and required procurement-file documentation. The intent is to reflect how contracts are actually administered while still requiring a documented basis for the amendment and preserving competition when a change is outside the original scope.
3. **Personal Services**. The comparison table reflects 3 practical changes:
 - (a) ***Clearer Designation and Classification***. The 2026 Rules more clearly tie personal services designation and classification to the criteria used in practice (specialized judgment, discretion, qualifications-based selection, and trust or confidentiality factors) and include an exception when work is traditionally selected primarily on price.
 - (b) ***Direct Negotiations***. The 2026 Rules preserve direct negotiations as a personal services option but strengthen the record by requiring a written best-interest determination and procurement-file documentation supporting both selection and negotiated compensation.
 - (c) ***Informal/Formal Threshold***. The 2026 Rules generally use \$250,000 as the

dividing line between informal written solicitations and a formal RFP for personal services (while still allowing a formal process when complexity warrants it at any value). This should improve internal consistency and reduce ambiguity about when a more formal process is expected.

4. **Professional Services (A&E and Related Services)**. The 2023 Rules primarily relied on the Oregon Public Contracting Code and Model Rules without a standalone City professional services section. The 2026 Rules add a dedicated professional services section to reduce ambiguity and improve defensibility for A&E and related services procurements. The governing statutes remain the same. The recommended change here is that the City's rules of procedure and documentation expectations are clearer and better organized for consistent implementation. In practical terms, the 2026 Rules:
 - (a) separate A&E services (qualifications-based selection under ORS 279C.110) from related services (selection options under ORS 279C.120);
 - (b) provide a clearer framework for mixed contracts that include both A&E and related services; and
 - (c) require a complete procurement file for professional services selections and negotiations (including a selection memorandum, evaluation records, negotiation notes, and cost/price reasonableness documentation).

5. **Public Improvements**. Separate from the ORS chapter 279B goods and services thresholds, ORS Chapter 279C includes construction-specific statutory exceptions for smaller public improvement work. The 2026 Rules more clearly describe and operationalize the City's use of the most common statutory exceptions under ORS 279C.335(1) and including recordkeeping guardrails to support consistent and defensible use. The key exceptions addressed are:
 - (a) direct award for smaller public improvement contracts under \$25,000; and
 - (b) competitive quote procedures for public improvement contracts estimated not to exceed \$100,000, with baseline competition expectations and required documentation.

6. **Notice Modernization and Electronic Advertising**. The 2026 Rules modernize notice practices (including electronic advertising where Oregon law permits) and standardized handling of notices of intent to award when Oregon law requires them. This reduces publication costs and helps ensure the City's procurement record clearly reflects when and why a particular notice method or notice period was used.

7. **Protests and Appeals**. The 2026 Rules reorganize protest and appeal procedures by procurement type and clarify deadlines and fee handling, including fee waiver and refund provisions in appropriate cases. The intent is to improve clarity for vendors and staff and to reduce litigation risk created by unclear or inconsistent procedures.

Note for Adoption: The City has one currently active solicitation—*Sanitary Sewer CIPP Lining* (Contract No. 2025-016)—which will continue under the 2023 Rules through award. Competitive sealed bids will be opened tomorrow (January 27) and award is slated for the City Council’s consideration at the February 9 regular meeting.

BUDGET IMPLICATIONS: No direct new expenditure is required to adopt the 2026 Rules. The primary fiscal impact is expected to be from more efficient processes through reduced procurement costs and delays, including reducing the City’s avoidable overhead and improving the City’s ability to match procurement methods to our project needs. The Rules should also provide risk reduction through clearer procedures and documentation standards.

COUNCIL ALTERNATIVES:

1. **Staff recommendation:** *Move to adopt Resolution No. 26-005, as presented.*
2. Make modifications to then move to adopt Resolution No. 26-005, as amended.
3. Decline formal action and provide Staff additional direction.

I. **Introduction.**

A. **Purpose of Purchasing Policy.** These Rules are adopted by the City Council as the governing body of the City of The Dalles to establish the rules and procedures for contracts entered into and purchases made by the City. The City's policy in adopting these Rules is to utilize public contracting and purchasing practices and methods maximizing the efficient use of City resources and the purchasing power of City funds by:

1. promoting impartial and open competition;
2. using complete solicitation materials containing a clear statement of contract specifications and requirements; and
3. taking full advantage of evolving procurement methods fulfilling the City's purchasing needs as they emerge within various industries.

B. **Interpretation of Purchasing Policy.** These Rules are adopted by the City Council acting as the City's *Local Contract Review Board* pursuant to ORS 279A.060 and as the City's rules of procedure for public contracting pursuant to ORS 279A.065(6). In furtherance of the purposes set forth in Subsection I.A, the City intends these Rules to be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279A, 279B, and 279C (**Public Contracting Code**), as amended, and including successor provisions.

1. **Governing Law.** The City shall comply with all applicable federal and state law governing public contracting. If a provision of these Rules conflicts with applicable law, the law controls and the conflicting provision of these Rules is superseded to the extent of the conflict.
2. **Model Rules Opt-Out.** Pursuant to ORS 279A.065(6)(a)(A), the City specifically states that the Attorney General's model public contracting rules adopted under ORS 279A.065 (OAR Chapter 137, Divisions 46 through 49, **Model Rules**) do not apply to the City except to the extent **(a)** these Rules expressly adopt, incorporate, or require compliance with specific Model Rules provisions or **(b)** Oregon or federal law requires their application. Notwithstanding the foregoing, under ORS 279A.065(3)(b) the City may not adopt its own rules for procuring construction manager/general contractor services and shall comply with applicable Model Rules when CM/GC contracting is used.
3. **Interpretation and Administration.** The City Attorney may issue written legal guidance for internal administration of these Rules and such guidance does not amend these Rules or any solicitation unless incorporated into a written addendum or otherwise provided to all prospective offerors in a manner consistent with applicable law. The City Manager may adopt administrative procedures, templates, and forms consistent with these Rules and applicable law.
4. **Future-Proofing.** References in these Rules to statutes, administrative rules, dollar thresholds, and Model Rules include amendments and successor provisions. If a dollar threshold stated in these Rules differs from a current threshold stated in

applicable law, the City may apply the current statutory or regulatory threshold and the conflicting dollar figure in these Rules is superseded to that extent.

5. **Supplemental Local Contract Review Board Resolutions.** The City Council, acting as the Local Contract Review Board, may adopt supplemental procurement programs, rules, and exemptions by separate resolution as authorized by the Oregon Public Contracting Code, including (without limitation) to mandatory prequalification for public improvement contracts under ORS 279C.430 and exemptions from competitive bidding for public improvement contracts under ORS 279C.335(2). All supplemental Local Contract Review Board resolutions are incorporated by reference into these Rules as appendices and are maintained on file in the Office of the City Clerk. If a conflict exists between these Rules and an applicable supplemental resolution, the more specific provisions govern.

C. Specific Provisions' Precedence over General Provisions. In the event of a conflict between the provisions of these Rules, the more specific provision shall take precedence over the more general provision.

D. Conflicts with Federal Statutes and Regulations. Consistent with ORS 279A.030, and 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 ORS Chapters 279A, 279B, or 279C or require additional conditions in public contracts not authorized by those chapters.

II. **Definitions.**

A. Specific Definitions. Terms not defined in these Rules have the meanings provided in applicable Oregon law, including ORS 279A.010, ORS 279A.025, ORS 279B.015, and ORS 279C.100, and in any applicable administrative rules. If a definition in these Rules conflicts with a mandatory definition in applicable law, the applicable statutory or regulatory definition controls. Unless a different definition is specifically provided elsewhere in these Rules or the context clearly requires otherwise, the following terms have the following specified meanings and any term defined in the singular includes the meaning of the plural, and vice versa:

1. **Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services, or public improvements.
2. **Affected person/offeror.** A person whose ability to participate in a procurement is adversely impaired by a City decision.
3. **Award.** The decision to enter into a contract or purchase order with a specific offeror.
4. **Bid.** A response to an invitation to bid.
5. **Bidder.** A person who submits a bid in response to an invitation to bid.
6. **Business with which a City employee is associated.** Any business in which a City employee is a director, officer, owner, or employee, or any corporation in which a City employee owns or has owned 10% or more of any class of stock at any point in the preceding calendar year.

7. **City.** The City of The Dalles, an Oregon municipal corporation and a contracting and purchasing agency.
8. **City Manager.** The person appointed by the City Council to the position of City Manager or their written designee.
9. **Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
10. **Contract.** See *Public Contract*.
11. **Contractor.** The person who enters into a contract with the City.
12. **Contract price.** As the context requires, either:
 - a. the maximum payment the City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives, and contingency amounts;
 - b. the maximum not-to-exceed payment specified in the contract; or
 - c. the unit prices set forth in the contract.
13. **Contracting agency.** A public body authorized by law to conduct a procurement, including any person authorized by the City to conduct a procurement on the City's behalf.
14. **Cooperative procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies.
15. **Days.** Calendar days.
16. **Emergency.** Involves circumstances that:
 - a. could not have been reasonably foreseen;
 - b. create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety; and
 - c. require prompt execution of a contract or amendment in order to remedy the condition.
17. **Emergency construction contract.** A contract for emergency work, minor alteration, ordinary repair or maintenance of public improvements, and any other construction contract not defined as a public improvement under these Rules or ORS 279A.010.
18. **Findings.** The justification for a conclusion. If the justification relates to a public improvement contract, findings may be based on information including, without limitation:
 - a. operational, budget and financial data;

- b. public benefits;
 - c. value engineering;
 - d. specialized expertise;
 - e. market conditions;
 - f. technical complexity; and
 - g. funding sources.
- 19. *Goods and/or services.*** *Goods* are supplies, equipment, materials, and personal property (including intangible and intellectual property rights and licenses). *Services* are all other services not designated as personal services or professional services under these Rules. The term *goods and/or services* includes combinations of any of the items identified in the definition for each.
- 20. *Grant.***
- a. An agreement under which, either:
 - (1) the City (as grantee) receives moneys, property, or other assistance (including but not limited to federal assistance characterized as a grant by federal law or regulation), loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets; the assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City; and no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
 - (2) the City (as grantor) provides moneys, property, or other assistance (including but not limited to federal assistance characterized as a grant by federal law or regulation), loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets; the assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and no substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
 - b. *Grant* does not include a public contract for a public improvement or public works, or for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement, when under the public contract the City pays moneys received under a grant as consideration for contract performance intended to realize or support the purposes of the grant.
- 21. *Immediate family member.*** An employee's: spouse, domestic partner, parent or in loco parentis, children, siblings, parents-in-law, siblings-in-law, grandparents, grandchildren, step-parents, and step-children.
- 22. *Offer.*** A bid, proposal, quote, or other response to a solicitation document.

- 23. Offeror.** A person who submits an offer.
- 24. Opening.** The date, time, and place announced in the solicitation document for the public opening of written sealed offers.
- 25. Original contract.** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- 26. Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.
- 27. Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation, or other legal or commercial entity, and any other person or entity with legal capacity to contract.
- 28. Price agreement.** A contract for the procurement of goods or services at a set price which has:
- a. no guarantee of a minimum or maximum purchase; or
 - b. an initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.
- 29. Procurement.** The act of purchasing, leasing, renting, or otherwise acquiring goods or services, personal services, or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract, and obtain the performance of a contract for goods or services, personal services, or professional services.
- 30. Proposal.** A response to a request for proposals.
- 31. Proposer.** A person that submits a proposal in response to a request for proposals.
- 32. Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.
- 33. Public contract.** A sale or other disposal, or a purchase, lease, rental, or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.
- 34. Public contracting.** Procurement activities relating to obtaining, modifying, or administering contracts or price agreements.
- 35. Public improvement.** A project for construction, reconstruction, or major renovation on real property, by or for the City. It neither includes projects for which no funds of the City are directly or indirectly used (except for participation incidental or related

primarily to project design or inspection) nor emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.

36. **Public improvement contract.** A contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.
37. **Qualified pool.** A pool of contractors who are prequalified to compete for the award of certain contracts or to provide certain types of goods or services.
38. **Recycled product.** All materials, goods and supplies, not less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of post-consumer waste. It includes any product potentially disposable as solid waste after completing its life cycle as a consumer item but otherwise is refurbished for reuse without substantial alteration of the product's form.
39. **Request for proposals (RFP).** A solicitation document used for soliciting proposals.
40. **Request for qualifications (RFQ).** A written document issued by the City describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.
41. **Revenue-generating agreement.** An agreement (including, by example, a concession, vending, marketing, naming-rights, advertising, sponsorship, or similar agreement) under which **(a)** the City grants a person the right to conduct commercial activity on City-controlled property or in City-controlled facilities, or to use City-owned or City-controlled personal property or intangible property (including intellectual property and naming/advertising rights) and **(b)** the City receives revenue, fees, commissions, or other consideration (cash or in-kind) rather than paying City funds as the primary consideration for the agreement. The term does not include: **(i)** acquisitions or disposals of interests in real property, including purchases, sales, leases, easements, franchises, or right-of-way occupancy agreements or **(ii)** regulatory permits or licenses issued as an exercise of the City's police power.
42. **Scope.** The range and attributes of the goods or services described in a procurement document.
43. **Services.** See *goods and/or services*. The following specific definitions apply to the following types of services:
 - a. **Personal services.** Services, other than professional services, requiring specialized skill, knowledge, and resources in the application of technical or scientific expertise or in the exercise of professional, artistic, or management discretion or judgment.
 - (1) **Character.** Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the

primary considerations when selecting a personal services contractor, with price being secondary.

- (2) **Classes.** Personal services contracts include but are not limited to the following classes of contracts:
 - (a) Contracts for services performed in a professional capacity, including but not limited to, services of an accountant, attorney, auditor, court reporter, information technology consultant, land use and planning consultant, physician, or broadcaster;
 - (b) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested;
 - (c) Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver, or sculptor;
 - (d) Contracts for services that are specialized, creative or research-oriented; and/or
 - (e) Contracts for services as a consultant.
- b. *Professional services.* Architectural, engineering, photogrammetric mapping, transportation planning, and land surveying (A&E) or related services, or any combination of these services, provided by a consultant.
 - (1) **A&E services.** Professional services performed by an architect, engineer, photogrammetrist, transportation planner, or land surveyor and includes architectural, engineering, photogrammetric, transportation planning, or land surveying services, separately or any combination thereof, as appropriate within the context of a section of these Rules.
 - (2) **Related services.** Personal services, other than A&E services, related to the administration, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to:
 - (a) landscape architectural services;
 - (b) facilities planning services;
 - (c) energy planning services;
 - (d) space planning services;
 - (e) environmental impact studies;
 - (f) hazardous substances or hazardous waste or toxic substances testing services;

- (g) wetland delineation studies;
- (h) wetland mitigation services;
- (i) Native American studies;
- (j) historical research services;
- (k) endangered species studies;
- (l) rare plant studies;
- (m) biological services;
- (n) archaeological services;
- (o) cost estimating services;
- (p) appraising services;
- (q) material testing services;
- (r) mechanical system balancing services;
- (s) commissioning services;
- (t) project management services; and
- (u) construction management services and owner's representatives' service.

44. *Signed or signature.* Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.

45. *Solicitation.* As the context requires, either:

- a. a request for the purpose of soliciting offers, including an invitation for bid, a request for proposals, a quote request, a request for qualifications, or other similar documents;
- b. the process of notifying prospective offerors of a request for offers; and/or
- c. the solicitation document.

46. *Work.* The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.

47. *Written or in writing.* Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions

or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

III. **Authority.**

A. City Council as Local Contract Review Board. The City Council is designated as the *Local Contract Review Board* of the City pursuant to ORS 279A.060 and has all the rights, powers, and authority necessary to carry out the provisions of these Rules and the Public Contracting Code.

B. Application of Attorney General's Model Rules of Procedure. The Model Rules do not apply except as stated in Subsection I.B.2. The City shall review these Rules each time the Attorney General modifies the Model Rules as required by ORS 279A.065(6)(b).

C. Inapplicability of Rules. For avoidance of doubt, nothing in this Subsection III.C

C. expands a statutory exemption. If a transaction constitutes a public contract subject to

C. the Public Contracting Code, these Rules apply unless ORS 279A.025 or another statute

C. provides an exemption. These Rules do not apply to contracts and contracting activities to the extent the Public Contracting Code does not apply under ORS 279A.025, including (without limitation):

1. contracts between the City and other contracting agencies and other governmental entities described in ORS 279A.025(2)(a);
2. agreements authorized by ORS Chapter 190 or by other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies consistent with ORS 279A.025(2)(b);
3. grants under ORS 279A.025(2)(d);
4. contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested consistent with ORS 279A.025(2)(e);
5. acquisitions or disposals of real property or interests in real property consistent with ORS 279A.025(2)(f);
6. procurements from an Oregon Corrections Enterprises program consistent with ORS 279A.025(2)(i);
7. sole-source expenditures when rates are set by law or ordinance for purposes of source selection consistent with ORS 279A.025(2)(g);
8. contracts, agreements, or other documents entered into, issued, or established in connection with the issuance of obligations of a public body, program loans and similar extensions or advances of funds, the investment of funds, and other financial transactions that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085 consistent with ORS 279A.025(2)(q);
9. contracts for employee benefit plans as described in ORS 279A.025(2)(r) and (s);
and

10. any other public contracting of a public body specifically exempted from the Public Contracting Code by another provision of law consistent with ORS 279A.025(2)(t).

D. Authority of Contract Approval and Execution. Nothing in this Subsection III.D limits the City Council's authority, acting as the Local Contract Review Board, to approve or award any public contract, or to impose additional approval requirements, consistent with law. For contracts and purchases covered by these Rules, and when sufficient budgetary resources are either available in the current fiscal year budget for the proposed expenditure or become available after specific City Council authorization:

1. *City Manager authority up to \$100,000.* The City Manager is authorized to award and execute public contracts and contract amendments without specific authorization by the City Council when the total contract price, as originally awarded or as amended, is **\$100,000 or less**.
2. *City Council approval over \$100,000.* For a public contract or contract amendment that would cause the total contract price (as originally awarded or as amended) to **exceed \$100,000**, the City Council must approve the award or amendment before the City executes the contract or amendment. After City Council approval, the City Manager may execute the contract or amendment on behalf of the City.
3. *Purchasing Authority.* As the City's purchasing agent, the City Manager may procure goods and services, personal services, professional services, and public improvements in accordance with these Rules within the dollar limits described in Subsection III.D.1 and Subsection III.D.2.
4. *Department Manager Requests.* The City Manager shall be responsible for approving in writing all purchases valued **between \$25,000 and \$100,000** requested by City Department Managers.
5. *Delegation and Subdelegation.* The City Manager may delegate and subdelegate in writing any authority granted under this Subsection III.D that is not expressly reserved to the Local Contract Review Board or otherwise required by law to be exercised by the City Council.
6. *Administrative Procedures.* The City Manager may adopt forms, procedures, computer software, and administrative rules for all City purchases regardless of the amount. The City shall use these forms, procedures, computer software, or administrative rules unless they conflict with these Rules or applicable law. When adopting the forms, procedures, computer software, or administrative rules, the City Manager shall establish practices and policies that **(a)** do not encourage favoritism or substantially diminish competition and **(b)** allow the City to take advantage of the cost-saving benefits of alternative contracting methods and practices.

E. Authority of City Department Managers. For contracts and purchases covered by these Rules, City Department Managers are authorized to procure goods and services and to award and execute public contracts and contract amendments within their assigned responsibilities to the extent the total contract price (as originally awarded or as amended) is **\$25,000 or less**, provided that the procurement complies with these Rules and the expenditure is within available budget authority.

- F. Authority of All Other City Employees.** For contracts and purchases covered by these Rules, all other City employees are authorized to make purchases to the extent the total contract price **does not exceed \$5,000**, provided that the purchase complies with these Rules, with any administrative procedures adopted by the City Manager, and with available budget authority. This authority does not include the authority to execute a City contract unless the City Manager has delegated signature authority in writing.
- G. Favorable Terms.** Contracts and purchases shall be negotiated on the most favorable terms to the City in accordance with these Rules, other adopted ordinances, and Oregon and federal laws, policies, and procedures.
- H. Unauthorized Contracts or Purchases.** A public contract entered into or purchase made without authority under these Rules is unauthorized and is subject to cancellation, ratification by the City Council, or other action as allowed by law, in the City's sole discretion. The City may take appropriate action in response to execution of unauthorized contracts or purchases. Such actions include (without limitation) providing educational guidance, imposing disciplinary measures, and, to the extent permitted by law, seeking reimbursement for unauthorized expenditures.
- I. Prohibition.** No contract shall be knowingly entered with or purchase knowingly made from any City employee or employee's immediate family member, or any business with which the employee is associated, unless:
1. the contract or purchase is expressly authorized and approved by the City Council after it receives counsel from the City Attorney; or
 2. the need for the contract or purchase occurs during a state of emergency, and the City Manager finds in writing the acquisition from the employee, employee's immediate family member, or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety, and welfare.

IV. Preferences.

- A. Discretionary Oregon Preference.** For procurements of goods, services, or personal services under ORS Chapter 279B, the City may provide in a solicitation document a specified percentage preference as authorized by ORS 279A.128. The solicitation document shall describe the preference and how it will be applied. This discretionary preference does not apply to contracts described in ORS 279C.320(1).
- B. Mandatory Tie Breaker Preference.** If offers are identical in price, fitness, availability, and quality, and the City desires to award the contract, the preferences provided in ORS 279A.120 shall be applied prior to the contract award.
- C. Reciprocal Preference.** When evaluating bids, the City shall apply the reciprocal preference required by ORS 279A.120(2)(b).
- D. Preference for Recycled Materials and Supplies.** The City shall give preference to goods manufactured from recycled materials as required by ORS 279A.125. The City shall give the preference when **(1)** the recycled product is available, **(2)** the recycled

product meets applicable standards, (3) the recycled product can be substituted for a comparable nonrecycled product, and (4) the recycled product's cost does not exceed the cost of the nonrecycled product by more than 5% (or a higher percentage if the City makes a written determination to allow a higher percentage). The City Manager may adopt written standards consistent with ORS 279A.125 for determining whether goods are certified to be made from recycled materials and for implementing the preference.

V. General Provisions.

A. Public Notice.

1. *Generally.* Unless otherwise specifically provided by these Rules or required by applicable law, any notice required by these Rules may be given by any method reasonably calculated to provide notice to prospective offerors and the public, as determined by the City Manager, including (without limitation): posting on the City's website; posting on an electronic procurement platform; sending notice by email or mail to persons that have requested notice in writing; and publishing an advertisement in statewide trade or local publications.
2. *Electronic Advertisements.* For (a) public contracts subject to ORS Chapter 279B that require public notice under ORS 279B.055(4) or ORS 279B.060(5) and (b) for public improvement contracts subject to ORS Chapter 279C that require advertisements under ORS 279C.360, the Local Contract Review Board hereby determines that electronic advertisements are likely to be cost-effective and, to the maximum extent permitted by ORS 279B.055(4)(c) and ORS 279C.360(1) and any successor provisions, authorizes the City to publish required public notices and advertisements electronically instead of in a newspaper of general circulation. This authorization does not waive any requirement to publish an advertisement in a trade newspaper of general statewide circulation when the public improvement contract has an estimated cost in excess of \$125,000.
3. *Notices of Intent to Award.* When required by ORS 279B.135, ORS 279C.375(2), ORS 279C.410(7), or other applicable law, the City shall issue to each bidder or proposer, or post electronically or otherwise, a notice of intent to award at least 7 days before awarding the contract unless the City determines that 7 days is impractical. If the City provides a notice period shorter than 7 days, the City shall document the specific reasons for finding 7 days impractical in the procurement file and shall provide notice as soon as reasonably practical.

B. Procedure for Competitive Verbal Quotes and Proposals.

Where allowed by these Rules and authorized by the City Manager, solicitations by competitive verbal quotes or proposals shall be based on a description of the scope, quantity, and any material performance requirements for the goods or services to be provided and may be solicited and received by means including phone, facsimile, or email.

1. *Attempt.* The City shall make a good faith effort to contact at least 3 potential providers. If 3 potential providers are not reasonably available, fewer will suffice, provided the City documents as part of the procurement file the reasons 3 potential providers are not reasonably available and the effort made to obtain additional quotes or proposals.

2. *Documentation.* The City shall keep a written record of the sources and amounts of the quotes or proposals received and the basis for selection.

C. Procedure for Informal Written Solicitation. Where allowed by these Rules, informal written solicitations shall be made by a solicitation document sent by means including mail, facsimile, or email to not less than 3 prospective providers.

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

D. Procurement Methods for Professional Services and Public Improvements.

1. *Professional Services.* The City shall procure professional services (including A&E services and related services as defined in these Rules) in accordance with Section IX and ORS 279C.105 through 279C.125, as amended and including successor provisions.
2. *Public Improvements.*
 - a. *Generally.* The City shall procure public improvement contracts in accordance with ORS Chapter 279C and any applicable Model Rules provisions that Oregon law requires the City to follow for a particular procurement method.
 - b. *Exceptions.* Nothing in these Rules limits the City's ability to use the exceptions to competitive bidding in ORS 279C.335(1), including, without limitation, the exceptions for public improvement contracts with a value of **less than \$25,000** and public improvement contracts **not exceeding \$100,000** awarded under competitive quote procedures described in ORS 279C.412 and ORS 279C.414.
 - c. *Public Improvement Contracts with a Value of Less Than \$25,000.* Pursuant to ORS 279C.335(1)(c), the City may award a public improvement contract with a value of **less than \$25,000** in any manner the City Manager deems practical or

convenient, including by direct selection or award. The City may not artificially divide or fragment a public improvement contract to avoid applicable procurement requirements.

d. *Competitive Quotes for Public Improvement Contracts Not Exceeding \$100,000.*

(1) **Authority and Use.** Pursuant to ORS 279C.335(1)(d), ORS 279C.412, and ORS 279C.414, the City may award a public improvement contract estimated **not exceeding \$100,000** using competitive quote procedures under this Subsection.

(2) **Solicitation and Minimum Competition.** The City shall seek at least three informally solicited competitive price quotes from prospective contractors. The City shall keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but the City shall make a written record of the effort made to obtain additional quotes. The City may not artificially divide or fragment a procurement to constitute an intermediate procurement under this Subsection or to circumvent competitive bidding requirements under ORS Chapter 279C.

(3) **Award.** If a contract is awarded, the City shall award to the contractor whose quote will best serve the interests of the City, taking into account price and any other applicable factors stated in the quote request, including contractor responsibility, availability, schedule, demonstrated ability to perform, and other relevant factors. If an award is not made to the prospective contractor offering the lowest price quote, the City shall make a written record of the basis for award.

(4) **Amendments.** A contract awarded under this Subsection may be amended to **exceed \$100,000** only as permitted by ORS 279C.412(1) and only if the amendment is within the scope of the procurement and does not constitute a material change that would require a new procurement. The procurement file shall document the basis for the scope and material-change determination.

3. *Mixed Contracts.* If a contract includes both **(a)** professional services and **(b)** other goods or services, the City may procure the contract using the procurement method applicable to the predominant purpose of the contract or may separate the work into multiple contracts and procure each portion under the appropriate method, as determined by the City Manager and as permitted by applicable law.

E. Feasibility Determinations for Service Contracts over \$250,000. This Subsection applies only to the extent ORS 279B.030 applies to the City and is not exempted under ORS 279B.030(3).

1. *Applicability.* This Subsection applies to procurements for services with an estimated contract price that **exceeds \$250,000** to the extent required by ORS 279B.030 and is not exempted under ORS 279B.030(3). This Subsection does not apply to professional services procured under ORS Chapter 279C or to personal services contracts designated under ORS 279A.055.

2. **Determination Before Procurement.** Except as provided in ORS 279B.036, before conducting a procurement for services with an estimated contract price that **exceeds \$250,000**, the City Manager shall:
 - a. demonstrate, by means of a written cost analysis in accordance with ORS 279B.033, that the City would incur less cost in conducting the procurement than in performing the services with the City's own personnel and resources; or
 - b. demonstrate, in accordance with ORS 279B.036, that performing the services with the City's own personnel and resources is not feasible.
 3. **Staffing or Resources Exception.** If the City proceeds with a procurement under ORS 279B.033(2)(b) because the City lacks personnel and resources that are necessary to perform the services within the time in which the services are required, the City Manager shall keep a record of the cost analysis and findings and the basis for the decision to proceed and shall collect and provide copies of those records each calendar quarter to the Local Contract Review Board as required by ORS 279B.033(2)(b).
 4. **Public Records and Finality.** A cost analysis, record, documentation, finding, or determination made under ORS 279B.033 and a finding or determination and supporting documentation made under ORS 279B.036 are public records. Determinations under ORS 279B.030, ORS 279B.033, and ORS 279B.036 are subject to the finality standard in ORS 279B.145.
- F. Qualified Pools.** The City may solicit a pool of contractors who are prequalified to compete for the award of certain contracts or to provide certain types of goods or services.
1. **General.** To create a qualified pool, the City Manager or City Department Manager may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects, including personal services, professional services, and public improvements. For goods and services, the City may use a qualified pool as a prequalification method consistent with ORS 279B.120. For public improvements, any prequalification, disqualification, and appeal procedures required by ORS Chapter 279C remain applicable and are not waived by the existence of a qualified pool.
 2. **Public Notice.** The invitation to participate in a qualified pool shall be publicly noticed. If qualification will be for a term exceeding 2 years or allowing open entry on a continuous basis, the invitation to participate in the pool must be noticed at least once every 2 years and shall be posted on the City's website.
 3. **Solicitation Content.** Requests for participation in a qualified pool shall describe the scope of goods, services, or projects for which the pool will be maintained and the minimum qualifications for participation in the pool, which may include qualifications relating to financial stability, contracts with manufacturers or distributors, insurance, licensure, education, training, experience and demonstrated skills of key personnel (including familiarity with the City or the proposed project), access to equipment, and other relevant qualifications important to the contracting needs of the City.

4. **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City and all pool participants are parties. The contract shall contain all terms required by the City, including terms relating to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission of evidence of continuing qualification on an annual or other periodic basis. The qualified pool contract shall describe the selection procedures 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 contract.
 5. **Use of Qualified Pools.** Subject to the provisions of these Rules concerning source selection methods, the City may award contracts for goods or services of the type for which a qualified pool is created from among the pool's participants. The City may also determine that the best interests of the City in a particular instance would be best served by an alternative procurement method. Use of a qualified pool for professional services or public improvements does not waive or reduce any solicitation, competition, notice, bonding, or other requirements imposed by ORS Chapter 279C or applicable law.
 6. **Amendment and Termination.** The City Manager or City Council may discontinue a qualified pool at any time or may change the requirements for eligibility as a pool participant at any time by delivering written notice to all pool participants.
 7. **Protest of Failure to Qualify.** The City Manager shall notify any applicant who fails to qualify for pool participation that, if the qualified pool is being used as a prequalification method, the applicant may request a hearing and appeal as provided in Subsection XI.A, consistent with ORS 279B.425 (and—for public improvement prequalification—ORS 279C.450).
- G. Retroactive Approval.** Retroactive approval under this Subsection does not waive compliance with these Rules or applicable law. Retroactive approval of a contract means award or execution of a contract where work was commenced without final award or execution. Retroactive approval is discretionary and may be denied even if the required information is submitted. The City Manager may make retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the City Manager along with a written request for contract retroactive approval containing:
1. an explanation of the reason work was commenced before the contract was finally awarded or executed;
 2. a description of steps taken to prevent similar occurrences in the future;
 3. evidence that, but for the failure to finally award or execute the contract, the employee substantially complied with all other steps required to properly select a contractor and negotiate the contract; and
 4. a proposed form of contract.

VI. Goods or Services (Not Personal or Professional Services).

A. Small Procurements. Contracts for or purchases of goods or services with a contract price that does not exceed the small procurement threshold stated in ORS 279B.065 (currently, **\$25,000**) are small procurements. The City may not artificially divide or fragment a procurement so as to constitute a small procurement.

1. **Method.** The City may award a small procurement in any manner the City Manager deems practical or convenient, including by direct selection or award, and may use competitive verbal quotes/proposals or informal written solicitations pursuant to Subsection V.B and Subsection V.C.
2. **Amendments.** A small procurement contract may be amended only when the amendment is within the scope of the original procurement and does not constitute a material change that would require a new procurement. The City may amend a small procurement contract to exceed the small procurement threshold stated in ORS 279B.065 when the City documents in the procurement file the basis for the scope and material-change determination and otherwise complies with applicable law.
3. **Public Notice.** No public notice of small procurements is required.

B. Intermediate Procurements. Contracts for goods or services that exceed the small procurement threshold stated in ORS 279B.065 (currently, **\$25,000**) but do not exceed the intermediate procurement threshold stated in ORS 279B.070 (currently, **\$250,000**) are intermediate procurements. The City may not artificially divide or fragment a procurement so as to constitute an intermediate procurement.

1. **Solicitation.** When conducting an intermediate procurement, the City shall, when reasonably available, seek at least 3 informally solicited competitive price quotes or competitive proposals (which may be verbal or written). The City shall keep a written record of the sources of the quotes or proposals received. If 3 quotes or proposals are not reasonably available, fewer will suffice, but the City shall make a written record of the effort made to obtain the quotes or proposals.
2. **Negotiations.** The City may negotiate with an offeror to clarify an intermediate procurement quote or proposal or to make modifications that will make the quote or proposal more advantageous to the City.
3. **Award.** If a contract is awarded, the award shall be made to the offeror whose quote or proposal will best serve the interests of the City, taking into account price or any other relevant considerations, including (without limitation) experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
4. **Amendments.** An intermediate procurement contract may be amended only when the amendment is within the scope of the original procurement and does not constitute a material change that would require a new procurement. The procurement file shall document the basis for the scope and material-change determination and the City's determination that the amendment is in the City's best interest.

5. **Public Notice.** No public notice of intermediate procurements is required unless otherwise required by law.

C. Large Procurements. Contracts for goods or services with a contract price exceeding the intermediate procurement threshold stated in ORS 279B.070 (currently, **\$250,000**) are large procurements.

1. Unless the City uses an alternative source selection method authorized by these Rules or applicable law (including Section VIII), large procurements shall be by competitive sealed bidding pursuant to ORS 279B.055 or competitive sealed proposals pursuant to ORS 279B.060.
2. When using either competitive sealed bidding or competitive sealed proposals, the City shall comply with the requirements of ORS 279B.055 and ORS 279B.060. The City may use the Model Rules in OAR Chapter 137, Division 47, as procedural guidance to the extent consistent with these Rules and applicable law.
3. The City shall process protests of solicitations and protests of contract award for large procurements in accordance with ORS 279B.405, ORS 279B.410, ORS 279B.415, ORS 279B.420, and Subsection XI.F.

D. Optional Use of Competitive Sealed Bidding or Competitive Sealed Proposals. Notwithstanding the applicability of ORS 279B.065 or ORS 279B.070 to a procurement, the City may award a public contract for goods or services by competitive sealed bidding under ORS 279B.055 or by competitive sealed proposals under ORS 279B.060 as authorized by ORS 279B.050(3).

VII. Personal Services.

A. Classification of Services as Personal Services. This Section VII governs personal services contracts and does not apply to professional services (A&E services and related services), which are governed by the City's professional services procurement provisions. Pursuant to ORS 279A.055(2), the Local Contract Review Board, by adoption of these Rules, designates as personal services contracts those service contracts and classes of service contracts that meet the definition of personal services in these Rules, as determined and documented by the City Manager in the procurement file. In determining whether a service is a personal service, the City Manager shall consider:

1. whether the work requires specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment;
2. whether the City intends to rely on the contractor's specialized skills, knowledge, and expertise to accomplish the work; and
3. whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the City's needs and result in obtaining satisfactory contract performance and optimal value.

4. **Exception:** A service shall not be classified as personal services for the purposes of these Rules if:
 - a. the work has traditionally been performed by contractors selected primarily on the basis of price; or
 - b. the services do not require specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment.

B. Requests for Qualifications. At the City Manager's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified contractors for use in subsequent procurements under this Section, including informal written solicitations or requests for proposals and for negotiations conducted as part of an authorized source selection method. Use of an RFQ under this Subsection does not, by itself, authorize award—award must occur through one of the methods in Subsection VII.C, Subsection VII.D, or Subsection VII.E.

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

- b. notice all respondents who meet the qualifications set forth in the request for qualifications of their relative ranking after the City evaluates their qualifications, in which case the City will select at least the 2 top-scoring respondents as exclusively eligible to receive and submit responses to the request for proposals.

C. Direct Negotiations.

1. *Authority.* The City may procure a personal services contract by direct negotiations
1. (without competitive written solicitation) if the City determines that one or more of the following apply:
 - a. the City Manager determines in writing that procuring the personal services by direct negotiation will best serve the interests of the City, taking into account the nature of the services, the importance of qualifications and performance history, the need for continuity or confidentiality, time constraints, and other factors the City Manager deems relevant;
 - b. the confidential personal services (including special counsel) or professional or expert witnesses or consultants are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
 - c. the nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
2. *Amendments.* Personal services contracts procured under this Section VII may be amended only when the amendment is within the scope of the original procurement and is advantageous to the City, and only as otherwise permitted by applicable law.
3. *Public Notice.* No public notice of personal services contracts procured by direct negotiations is required.

D. Informal Written Solicitations. An informal written solicitation process may be used for personal services when the contract price is less than or equal to the intermediate procurement threshold stated in ORS 279B.070 (currently, **\$250,000**).

1. *Attempt.* An informal written solicitation shall, when reasonably available, solicit proposals from at least 3 qualified providers. If the City Manager determines 3 qualified providers are not reasonably available, fewer shall suffice if the reasons 3 providers are not reasonably available are documented in the procurement file.
2. *Content.* The solicitation document shall include:
 - a. the date, time and place proposals are due;
 - b. a description of personal services sought or the project to be undertaken;
 - c. any statement of the time period for which proposals must remain firm, irrevocable, valid, and binding on the offeror. If no time is stated in the solicitation document, the period shall be 30 days;

- d. any required contract terms or conditions; and
 - e. any required bid form or proposal format.
3. **Evaluation.** Selection and ranking of proposals may be based on the following criteria:
- a. Particular capability to perform the personal services required;
 - b. Experienced staff available to perform the personal services required, including the proposer's recent, current, or projected workloads;
 - c. Performance history;
 - d. Approach and philosophy used in providing personal services;
 - e. Fees or costs;
 - f. Geographic proximity to the project or the area where the services are to be performed; or
 - g. Such other factors deemed appropriate by the City Manager that are reasonably related to the procurement.
4. **Documentation.** The City Manager shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.
5. **Amendments.** Personal services contracts procured under this Section VII may be amended only when the amendment is within the scope of the original procurement and is advantageous to the City and only as otherwise permitted by applicable law.
6. **Public Notice.** No public notice of personal services contracts procured by informal written solicitations pursuant to this Subsection is required.
- E. Requests for Proposals.** A request for proposals shall be used to procure personal services when the contract price exceeds the intermediate procurement threshold stated in ORS 279B.070 (currently, **\$250,000**) or the City Manager determines the complexity of the project requires a formal competitive process to determine whether a particular proposal is most advantageous to the City.
1. **Request for Proposal.** The request for proposal shall include:
- a. notice of any pre-offer conference, including:
 - (1) the time, date and location;
 - (2) whether attendance at the pre-offer conference is mandatory or voluntary; and

- (3) a provision stating statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
- b. the form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received, and any other special information (e.g., whether proposals may be submitted by electronic means);
 - c. the name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
 - d. a date, time, and place pre-qualification applications (if any) must be filed and the classes of work (if any) for which proposers must be pre-qualified;
 - e. a statement the City may cancel the procurement or reject any or all proposals;
 - f. the date, time, and place of opening;
 - g. the office where the request for proposals may be reviewed;
 - h. a description of the personal services to be procured;
 - i. the evaluation criteria;
 - j. the anticipated schedule, deadlines, evaluation process, and protest process;
 - k. the form and amount of any proposal security deemed reasonable and prudent by the City Manager to protect the City's interests;
 - l. a description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
 - m. if more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
 - n. if contracts will be awarded to more than one personal services contractor, an identification of the manner in which the City will determine the number of contracts to be awarded or a statement indicating the manner will be left to the City's discretion at time of award;
 - o. if contracts will be awarded to more than one personal services contractor, an identification of the criteria to be used to choose from the multiple contracts when acquiring personal services;
 - p. all required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230, and 279B.235; and
 - q. any terms and conditions authorized for negotiation.
2. **Public Notice.** The City Manager shall provide public notice of a request for proposals for personal services. Public notice should be given not less than 7 days prior to closing for the request for proposals. The City may provide a shorter public

notice period when the City Manager determines that a shorter period is in the public interest or will not substantially affect competition. The City Manager shall document the specific reasons for any shorter public notice period in the procurement file.

3. **Amendments.** Personal services contracts procured under this Section VII may be amended only when the amendment is within the scope of the original procurement and is advantageous to the City, and only as otherwise permitted by applicable law.

F. Personal Services and Public Improvement Contracts. Nothing in this Section VII authorizes the City to procure personal services in a manner prohibited by ORS 279C.307. If ORS 279C.307(1) would prohibit the City from procuring personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a public contract subject to ORS Chapter 279C, and the City intends to accept a bid or proposal from a contractor that would be subject to the prohibition, the City shall apply to the Local Contract Review Board for an exception before awarding a public contract for the personal services or amending an existing public contract to include the personal services. The City shall consult with the City Attorney as required by ORS 279C.307(3)(c). The application shall include the findings and justifications and supporting facts required by ORS 279C.307(3)(d). If the Local Contract Review Board approves the exception, it shall prepare written findings and justifications for the approval as required by ORS 279C.307(3)(e)(A).

VIII. Alternatives for Goods, Services, and Personal Services.

A. Sole-Source Procurements. Except as otherwise provided in these Rules or required by law, this Subsection VIII.A governs sole-source procurements for public contracts for goods or services subject to ORS Chapter 279B. This Subsection VIII.A does not apply to professional services (A&E services and related services) procured under Section IX. This Subsection VIII.A does not apply to public improvement contracts subject to ORS Chapter 279C except to the extent ORS 279C.320 directs the City to use ORS Chapter 279B procedures for construction contracts other than public improvements.

1. **Determination of Sole-Source.** Before a sole-source contract may be awarded, the City Manager, who is designated in writing by adoption of these Rules as the City's authorized designee for purposes of ORS 279B.075(1), shall make written findings that the goods or services (or a class of goods or services) are available from only one source. The written findings must be based on one or more of the following criteria:
 - a. the efficient utilization of existing goods requires acquiring compatible goods or services available from only one source;
 - b. the goods or services required to exchange software or data with other public or private agencies are available from only one source;
 - c. the goods or services are needed for use in a pilot or an experimental project; or
 - d. other findings support the conclusion that the goods or services are available from only one source.

2. *Negotiations.* To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole-source provider.
3. *Notice.* If, but for the City's sole-source determination, the City would be required to select a contractor using competitive sealed bidding or competitive sealed proposals, the City shall give public notice of the sole-source determination. The public notice shall describe the goods or services to be acquired, identify the prospective contractor, and include the date, time, and manner by which protests are due. The City shall give affected persons at least 7 days from the first date of the public notice to protest the sole-source determination. No separate public notice under this Subsection is required for a sole-source procurement that would otherwise be a small or intermediate procurement or when another provision of law authorizes award without the notice described in this Subsection.

B. Special Procurements. In its capacity as the Local Contract Review Board, the City Council, upon its own initiative or upon request of the City Manager, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this Subsection.

1. *Basis for Approval.* The approval of a special solicitation method or exemption from competition must be based upon a written request and a record before the City Council containing:
 - a. the nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - b. the estimated contract price or cost of the project (if relevant);
 - c. findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - d. findings to support that the special procurement is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and is reasonably expected to result in substantial cost savings to the City or to the public, or otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with otherwise-applicable procurement requirements;
 - e. a description of the proposed alternative contracting methods to be employed; and
 - f. the estimated date when it would be necessary to let the contract(s).
2. *Determination.* In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
3. *Public Meeting and Opportunity for Comment.* The City shall approve a special procurement at a City Council meeting open to the public. At the meeting, the City

shall offer an opportunity for any interested party to appear and present comment. The City Council shall consider the record and findings and may approve the special procurement as proposed or as modified by the City Council after providing an opportunity for public comment.

4. *Public Notice of Approval and Protests.* Public notice of the approval of a special procurement shall be given in the same manner as provided in ORS 279B.055(4). Protests of the approval of a special procurement and judicial review (if any) shall be as provided in Subsection XI.B and ORS 279B.400.
5. *Award Standard when Special Procurement Calls for Competition.* If the special procurement calls for competition among prospective contractors, the City shall award the contract to the offeror the City determines to be the most advantageous to the City.

C. Class Special Procurements. The City Council, acting as the Local Contract Review Board, hereby approves the following as class special procurements under ORS 279B.085.

The City Council finds that use of these class special procurements is unlikely to encourage favoritism or substantially diminish competition and is reasonably expected to result in substantial cost savings or otherwise substantially promotes the public interest in a manner not practicably realized by complying with otherwise-applicable procurement requirements.

These class special procurements apply only to contracts subject to ORS Chapter 279B and do not apply to public improvement contracts except to the extent ORS 279C.320 directs the City to use ORS Chapter 279B procedures. If a transaction is exempt from the Public Contracting Code under ORS 279A.025 or is otherwise not subject to ORS Chapter 279B, this Subsection VIII.C does not apply to the transaction and is not intended to expand or limit the City's statutory authority.

The following classes of contracts may be awarded in any manner the City deems appropriate to the City's needs, including by direct appointment or purchase. Except where otherwise provided, the City shall make a record of the method of award and the procurement file shall also document the basis for determining that the contract falls within the applicable class special procurement.

1. *Amendments.* Contract amendments shall not be considered to be separate contracts if made in accordance with these Rules. Any amendment must comply with applicable requirements of the Public Contracting Code, including limitations on material changes and amendment authority under ORS Chapters 279B and 279C (as applicable).
2. *Copyrighted Materials and 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 if purchased for use as library lending materials.
3. *Personal Property Repair.* Contracts for personal property repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

4. *Government-Regulated Items*. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
5. *Non-Owned Property*. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
6. *Specialty Goods for Resale*. Contracts for the purchase of specialty goods by the City for resale to consumers.
7. *Sponsorship Agreements*. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
8. *Structures*. Contracts for the disposal of City-owned structures.
9. *Renewals*. A contract renewal that is **(a)** expressly authorized by the contract's terms and **(b)** within the scope of the original solicitation and contract is not considered a newly issued contract and is not subject to a new competitive procurement. A renewal that **(i)** includes a material change or **(ii)** is not within the scope of the original solicitation and contract must be treated as a new procurement unless otherwise authorized by these Rules or applicable law.
10. *Temporary Extensions or Renewals*. Contracts for a single period of 1 year or less for the temporary extension of an expiring and non-renewable (or recently expired) contract—other than a contract for public improvements—when the City Manager determines in writing that the temporary extension is necessary to avoid an interruption of services and the City is actively pursuing a competitive procurement or other lawful replacement contracting method.
11. *Used Property*. The City Manager may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similar new property. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City. The City Manager shall record the findings supporting the purchase.
12. *Utilities*. Contracts for the purchase of steam, power, heat, water, telecom services, and other utilities. This class special procurement does not waive any requirements that apply to cooperative procurements under ORS 279A.205 to 279A.225.
13. *Conference/Meeting Room Contracts*. Contracts entered into for meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and City-sponsored workshops and trainings.
14. *Notices*. Contracts with newspapers and other publications for the placement of advertisements or public notices.
15. *Revenue-generation*. Revenue-generating agreements, as defined in Subsection II.A, and excluding any agreement that constitutes an acquisition or disposal of an interest in real property (including leases, easements, franchises, or right-of-way occupancy agreements).

16. *Insurance*. Insurance contracts.

17. *Timber Removal*. Contracts for the management of timber removal pursuant to a management program within the City of The Dalles Watershed.

D. Emergency Procurements. When the City Manager determines that prompt execution of a public contract is necessary in response to an emergency, the City Manager may make or authorize others to make emergency procurements in accordance with ORS 279B.080 and this Subsection VIII.D.

1. *Emergency Determination*. The City shall document the determination that an emergency exists in writing prior to award of an emergency contract, unless the nature of the emergency does not reasonably permit advance written documentation, in which case the City shall document the determination as soon as practicable.
2. *Emergency Competition*. Where time permits, the City Manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor; otherwise, the City Manager may proceed with a direct appointment without competition. This Subsection is intended to be applied consistent with ORS 279B.080(2).
3. *Emergency Reporting*. As soon as possible in light of the emergency circumstances, the City Manager shall notify the City Council and City Attorney in writing of the nature of and facts and circumstances surrounding the emergency, the method used for the selection of the particular contractor, and the reasons why the selection method was deemed in the best interest of the City and public.
4. *Emergency Construction Contracts Regulated under ORS Chapter 279B*. When the City Manager has made the emergency determination required by this Subsection VIII.D and the emergency procurement involves construction services that are not public improvements (including emergency work subject to ORS 279C.320), the City Manager:
 - a. shall ensure competition that is reasonable and appropriate under the emergency circumstances and set a solicitation time period that is reasonable under the emergency circumstances; and
 - b. if the emergency construction services are a matter of extreme necessity, may:
 - (1) proceed with a written or verbal request for quotes or make a direct appointment without competition; and
 - (2) waive the requirement for all or a portion of any payment or performance security required by City rule or contract terms if the time delay needed to obtain the security could result in injury or substantial property damage. The City Manager may not waive any public works bond requirement that applies under ORS 279C.830 and ORS 279C.836, except as those statutes provide.
5. *Emergency Signature Authority and Purchasing Power*. Notwithstanding Subsection III.D.1 and Subsection III.D.2, and to the maximum extent permitted by applicable

law, for emergency procurements the City Manager is authorized to award and execute contracts and amendments without specific authorization by the City Council whenever the contract price is less than \$500,000. If the emergency procurement is a matter of extreme necessity and time does not reasonably permit convening the City Council, the City Manager is authorized to award and execute contracts and amendments having any contract price without specific authorization by the City Council.

E. Cooperative Procurements. The City may participate in, sponsor, conduct, or administer cooperative procurements as authorized by ORS 279A.200 to 279A.225.

1. **Goods and Services.** For goods and services, the City may use joint cooperative procurements, permissive cooperative procurements, and interstate cooperative procurements as authorized by ORS 279A.205(1)–(2) and ORS 279A.210 to 279A.220, subject to any applicable notice and written determination requirements, including ORS 279A.215 and ORS 279A.220.
2. **Public Improvements.** For public improvements, the City may participate in or administer a joint cooperative procurement as authorized by ORS 279A.205(1) and ORS 279A.210. The City may not use permissive or interstate cooperative procurement authority for public improvements.
3. **Cooperative Procurement File.** The procurement file shall document the cooperative procurement authority relied upon, the basis for selecting the cooperative contract, and the City's compliance with any conditions required by ORS 279A.210, ORS 279A.215, or ORS 279A.220, as applicable.

IX. Professional (A&E and Related Services).

A. Purpose and Scope. This Section IX governs the City's screening, selection, negotiation, and award of professional services contracts, including A&E services and related services, as those terms are defined in these Rules.

1. **Purpose.** This Section IX is adopted to maximize the City's flexibility consistent with ORS 279C.110, ORS 279C.115, and ORS 279C.120 and is intended to serve as the City's rules of procedure for professional services procurements.
2. **Scope.** Notwithstanding any other provision of these Rules, if a conflict exists between this Section IX and any general procurement procedure stated elsewhere in these Rules, this Section IX controls for professional services procurements. Professional services procurements under this Section IX are not required to be processed under Section VIII (ORS Chapter 279B alternative source selection methods).
3. **Value Defined.** For purposes of this Section IX, "value of the project," as used in ORS 279C.120(2), means the estimated compensation payable under the applicable professional services contract (including any continuation contract) for the A&E services or related services being procured. If applicable law is construed to require a different measure of project value for ORS 279C.120(2), the City shall apply the measure required by law.

- B. Classification.** The City Manager shall classify each professional services procurement as **(1)** A&E services, **(2)** related services, or **(3)** a mixed contract that includes A&E services and also includes related services, other services, or goods.
1. **Predominant Purpose.** For a mixed contract, the City Manager shall determine the predominant purpose by identifying which category of services comprises the majority of the estimated fee for the contract. Notwithstanding the predominant purpose determination, if a mixed contract includes any A&E services, the City shall conduct the screening and selection in a manner that complies with ORS 279C.110 for the A&E services component, including the restrictions on using pricing information in selection except as authorized by ORS 279C.110(5).
 2. **Procurement Path.** If the predominant purpose is A&E services, the City shall comply with Subsection IX.C. If the predominant purpose is related services, the City shall comply with Subsection IX.D, provided that any A&E services included in the mixed contract are screened and selected in a manner that complies with ORS 279C.110 as stated in Subsection IX.B.1.
- C. A&E Services.** The City shall select a consultant to provide A&E services primarily on the basis of the consultant's qualifications for the type of professional services required, consistent with ORS 279C.110. When the City determines two or more consultants are equally qualified, the City may use any selection process that is not based on pricing proposals or other pricing information, consistent with ORS 279C.110(4).
1. **Direct Appointment.** The City Manager may directly appoint a consultant when **(a)** the estimated cost of A&E services for the project **does not exceed \$100,000**, as authorized by ORS 279C.110(10) or **(b)** in response to an emergency as authorized by ORS 279C.110(11).
 2. **Continuation Contracts.** In addition to Subsection C.1, the City may enter into a contract for A&E services or related services directly with a consultant (as that term is defined in ORS 279C.115(1)) when the requirements of ORS 279C.115(2) are met (continuation of a project previously substantially described, planned, studied, or rendered in an earlier contract with the same consultant awarded under rules adopted under ORS 279A.065). The procurement file shall include a written determination identifying the earlier contract and describing why the new contract is a continuation of the project. A continuation under this Subsection may be accomplished by amendment to an existing contract or by a separate continuation contract.
 3. **Tailoring Authorized.** For A&E services with an estimated cost **not exceeding \$250,000**, the City Manager may tailor the screening and selection procedures to the characteristics of the project and services required, consistent with ORS 279C.110(2). Tailoring may include (without limitation) abbreviated solicitation documents, reduced formalities, and streamlined evaluation.
 4. **Use of Pricing Information.** The City may request and consider pricing policies, pricing proposals, or other pricing information as part of screening and selection only when the solicitation document includes the disclosures and procedures required by ORS 279C.110(5).

D. Related Services.

1. *Selection Methods.* The City may select consultants to perform related services using any method authorized by ORS 279C.120(1), including, without limitation:
 - a. procedures adopted by the City for screening and selection;
 - b. selection based on qualifications under ORS 279C.110 procedures; or
 - c. selection based on price competition, price and performance evaluation, capability evaluation, or capability evaluation followed by price negotiation.
2. *Direct Appointment.* Consistent with ORS 279C.120, the City may directly appoint a consultant for related services only when the value of the project (as defined in Subsection IX.A.3) does not exceed a threshold amount established by resolution of the City Council acting as the Local Contract Review Board. The City Council may establish different threshold amounts for different classes of related services and may amend the thresholds by resolution from time to time. Unless and until the City Council establishes a threshold amount by resolution, the City will use the informal or formal selection procedures in this Section IX for related services procurements.
3. *Price-Based Related Services Procurement.* When selecting related services primarily by price competition or capability/price methods under Subsection D.1.c, the City may use the City's small, intermediate, or large procurement procedures set out in Section VI to the extent practical and consistent with ORS 279C.120.

E. Selection Procedures.

The City Manager may use any of the following procedures for professional services procurements and may combine procedures as appropriate to the procurement:

1. *Direct Appointment Procedure.* The City may award by direct appointment as authorized in Subsections C.1 and D.2. The procurement file shall document **(a)** the basis for selecting the consultant, **(b)** the basis for determining compensation is fair and reasonable, and **(c)** the authority for direct appointment.
2. *Informal Selection Procedure.*
 - a. *Generally.* The City may use an informal selection procedure when the City Manager determines that an abbreviated solicitation and evaluation process will best serve the City's objectives, including for procurements **at or below \$250,000.**
 - b. *Attempt.* The City may solicit qualifications and/or proposals from 1 or more consultants. When feasible and practicable, the City should solicit from at least 3 qualified consultants; when fewer are solicited, the procurement file shall document the reason.
 - c. *Streamline.* The City may use a streamlined request for qualifications, a streamlined request for proposals, or a combined RFQ/RFP. Interviews are optional.

- d. *Negotiations*. The City may negotiate with the highest-ranked consultant to finalize scope, schedule, and compensation, and may discontinue negotiations and proceed to the next-ranked consultant.
3. *Formal Selection Procedure*.
- a. *Generally*. The City may use a formal selection procedure for complex projects, higher risk procurements, or when the City Manager determines a more formal competitive process is in the City's best interest.
 - b. *Types*. The City may use a two-step process (RFQ shortlisting followed by RFP) or a single-step RFP process.
 - c. *Flexibility*. The City may establish a competitive range, request best-and-final proposals, and conduct negotiations in accordance with the solicitation document.

F. Solicitation.

- 1. *Content*. The solicitation document shall describe the services sought, the evaluation criteria and relative importance, and any required licensure, insurance, or other minimum qualifications.
- 2. *Evaluation*. The City may evaluate consultants using any criteria reasonably related to the procurement, including, without limitation: relevant experience, demonstrated technical competence, project approach, capacity/availability, schedule performance history, quality control approach, and past performance with the City or other agencies.
- 3. *Negotiations*. The City may reserve contractual terms for negotiation and may request consultants to propose or suggest contract terms and conditions as part of their submissions.
- 4. *Discretion*. The City may cancel a solicitation, reject any or all submissions, or re-solicit in the City's best interest.

G. Consultant Continuity.

- 1. *Determination*. When the City determines continuity is in the City's best interest (including efficiency, coordination, cost control, regulatory compliance, or schedule), the City may procure additional professional services for an existing project from the consultant currently under contract for that project, by amendment or by a supplemental contract, provided:
 - a. for A&E services, the additional services must be within the scope of the original contract as procured under ORS 279C.110. If the additional A&E services are not within the scope of the original contract, the City shall procure the additional A&E services using procedures that comply with ORS 279C.110 unless the City makes the written determination required for a continuation contract under ORS 279C.115(2); and

insurance industry, schedule and publicly notice a sale date, and sell to the first buyer meeting the sales terms.

6. *Trade-In*. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
7. *Donation*. By donation to any organization operating within or providing a service to Oregon residents, 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.
8. *Cooperative Arrangement*. By separate City Council action, the City may negotiate with one or more private or public entities to establish contracts, agreements, or other cooperative arrangements for the use, operation, maintenance, or ultimate lawful disposition of City personal property as authorized by ORS 279A.185(2), provided the City Council makes the finding required by ORS 279A.185(2).

B. Disposal of Property with Minimal Value. Surplus personal property which has a value of **less than \$500**, 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. The employee making the disposal shall make a record of the value of the item and the manner of disposal.

C. Personal-Use Items. An item (or indivisible set) of specialized and personal use with a current value of **less than \$100** may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the City Manager.

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

XI. Protest and Appeal Procedures.

A. Appeal of Debarment or Prequalification Decision.

1. *Debarment, Disqualification, and Prequalification*. The City Manager or City Department Manager responsible for a solicitation may debar prospective bidders or proposers in accordance with ORS 279B.130 and may disqualify a person from consideration for award of public improvement contracts in accordance with ORS 279C.440. The City may determine bidder or proposer responsibility in accordance with applicable law, independent of any debarment or disqualification determination.
2. *Right to Hearing*. Any person who has been debarred from competing for the City's contracts, disqualified from consideration for award of the City's public improvement contracts, or for whom prequalification has been denied, revoked, or revised may appeal the City's decision to the City Council as provided in this Subsection.
3. *Filing of Appeal*. The person shall file a written notice of appeal with the City Manager within 3 business days after the person's receipt of notice of the

determination of debarment, disqualification, or denial, revocation, or revision of prequalification.

4. **Notification of City Council.** The City Manager shall notify the City Council of the notice of appeal immediately upon the City's receipt.
5. **Hearing.** The procedure for appeal from a debarment or denial, revocation, or revision of prequalification shall be as follows:
 - a. **Notice.** Promptly upon receipt of notice of appeal, the City shall notify the appellant of the date, time, and place of the hearing. The City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the City Manager.
 - b. **Opportunity.** The appellant will have an opportunity to be heard and present evidence supporting the basis for their appeal. At the hearing, the City Council shall reconsider (without regard to the underlying decision giving rise to the appeal) the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
6. **Decision.** The City Council shall set forth in writing the reasons for the decision.
7. **Costs.** If the decision to deny, revoke, or revise a prequalification or the decision to debar or disqualify a person is upheld, the costs shall be paid by the person appealing the decision. If the decision is reversed, the costs shall be paid by the City.
8. **Judicial Review.** The decision of the City Council may be reviewed only upon a petition filed within 15 days after the date of the City Council's decision in the Wasco County Circuit Court and only on the limited grounds authorized by applicable law.

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

1. **Delivery and Late Protests.** An affected person shall deliver a written protest to the City Manager within 7 days after the first date of public notice of the approval of a special procurement, unless a different period is provided in the public notice.
 - a. **Fee.** The written protest shall include a fee in an amount established in a schedule adopted by the City Council to cover the costs of processing the protest. The City shall refund the fee if the City upholds the protest in whole or in part. The City Manager may waive the fee requirement for good cause shown.
 - b. **Timeliness.** A protest submitted after the timeframe established under this Subsection is untimely and shall not be considered.
2. **Content of Protest.** The written protest shall include:
 - a. identification of the requested special procurement;

- b. a detailed statement of the legal and factual grounds for the protest;
 - c. evidence or documentation supporting the grounds on which the protest is based;
 - d. a description of the resulting harm to the affected person; and
 - e. the relief requested.
3. **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such persons written notice of the time and manner whereby any response shall be delivered.
 4. **City Response.** The City Manager shall issue a written disposition of the protest in a timely manner.
 - a. **Outcome.** If the City Manager upholds the protest in whole or in part, the City Manager may, in the City Manager's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
 - b. **Refund.** If the City Manager upholds the protest in whole or in part, the City shall refund the fee required to be delivered with the protest.
 5. **Judicial Review.** An affected person may not seek judicial review of a denial of a request for a special procurement. Judicial review of the approval of a special procurement by the City Council, acting as the Local Contract Review Board, may be sought only by writ of review under ORS Chapter 34 and is not subject to a writ of review proceeding more than 10 days after the City Council approves the special procurement, provided that all available nonjudicial remedies have been exhausted.
- C. Protests and Judicial Review of Sole-Source Procurements.** An affected person may protest the determination goods or services or a class of goods or services are available from only one source as provided in this Subsection.
1. **Delivery and Late Protests.** An affected person shall deliver a written protest to the City Manager within 7 days after the first date of public notice of a proposed sole-source procurement unless a different period is provided in the public notice.
 - a. **Fee.** The written protest shall include a fee in an amount established in a schedule adopted by the City Council to cover the costs of processing the protest.
 - b. **Timeliness.** A protest submitted after the timeframe established under this Subsection is untimely and shall not be considered.
 2. **Content of Protest.** The written protest shall include:
 - a. a detailed statement of the legal and factual grounds for the protest;

- b. evidence or documentation supporting the grounds on which the protest is based;
 - c. a description of the resulting harm to the affected person; and
 - d. the relief requested.
3. **Additional Information.** The City Manager may allow any person to respond to the protest in any manner the City Manager deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
 4. **City Manager Response.** The City Manager shall issue a written disposition of the protest in a timely manner.
 - a. **Outcome.** If the City Manager upholds the protest in whole or in part, the proposed sole-source contract shall not be awarded.
 - b. **Refund.** If the City Manager upholds the protest in whole or in part, the City shall refund the fee required to be delivered with the protest.
 5. **Judicial Review.** Judicial review shall be in accordance with ORS 279B.420. Before seeking judicial review under ORS 279B.420, an affected person shall exhaust all administrative remedies the City provides, including the protest procedure in this section.

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

1. **Delivery.** Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City Manager.
 - a. **Fee.** The written protest shall include a fee in an amount established in a schedule adopted by the City Council to cover the costs of processing the protest.
 - b. **Timeliness.** Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing. Protests to the award or an intent to award a personal services contract shall be made within 7 days after issuance of the intent to award, or if no notice of intent to award is given, within 48 hours after award. Protests submitted after the timeframe established under this Subsection are untimely and shall not be considered.
2. **Contents of Protest.** The written protest shall specify all legal or factual grounds for the protest as follows:
 - a. **Eligibility.** A person may protest:
 - (1) the solicitation itself on the grounds the contract is not a personal services contract or was otherwise in violation of these Rules or applicable law; or

(2) the award or intent to award on the grounds:

- (a) all proposals ranked higher than the affected persons are nonresponsive;
- (b) the City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
- (c) the City abused its discretion in rejecting the affected person's proposal as nonresponsive; or
- (d) the evaluation of proposals or the subsequent determination of award is otherwise in violation of these Rules or applicable law.

b. *Content*. The protest shall identify and include:

- (1) the specific provision of these Rules or applicable law alleged to have been violated;
- (2) all evidence or supporting documentation supporting its grounds;
- (3) a description of the resulting harm to the affected person; and
- (4) the relief requested.

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

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

a. *Outcome*. If the City Manager upholds the protest in whole or in part, the proposed personal services contract procurement shall be cancelled or the contract shall not be awarded, as the case may be.

b. *Refund*. If the City Manager upholds the protest in whole or in part, the City shall refund the fee required to be delivered with the protest.

5. *Judicial Review*. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420 to the extent ORS Chapter 279B applies to the procurement; otherwise, judicial review (if any) is by writ of review under ORS Chapter 34 or as otherwise provided by law.

E. Protests of Cooperative Procurements.

1. *Administering Agency Protests*. If the City is the administering contracting agency for a cooperative procurement, a protest regarding the procurement process, the contents of solicitation documents, or the award or proposed award of an original contract may be directed only to the City as administering contracting agency and shall be in accordance with ORS 279A.225(1) and ORS 279B.400 to ORS 279B.425, as applicable.

2. ***Purchasing Agency Protests After Execution.*** If the City is a purchasing contracting agency and a protest concerns the City's use of a cooperative procurement after the execution of an original contract, the protest may be directed only to the City as purchasing contracting agency, shall be in accordance with ORS 279A.225(2) and ORS 279B.400 to ORS 279B.425, as applicable, and is limited in scope to the City's authority to enter into a cooperative procurement contract.
 - a. ***Delivery and Deadline.*** Unless a different period is stated in the City's notice of intent to use the cooperative procurement, the protest must be delivered in writing to the City Manager within 7 days after the City's first public notice of its intent to use the cooperative procurement, or if no notice is provided, within 7 days after the City's purchase order or contract award.
 - b. ***City Decision.*** The City Manager shall issue a written disposition of a timely protest in a timely manner. The City may not consider late protests.
3. ***No City Forum When City is Not Administering Agency.*** If the City is not the administering contracting agency for the original contract and the protest concerns the procurement process, solicitation documents, or award of the original contract, the protest must be directed to the administering contracting agency. The City will not consider such a protest.

F. Protests of ORS 279B.055 and ORS 279B.060 Solicitations and Awards.

1. ***Solicitation Protests.*** A prospective bidder, proposer, or offeror for a public contract solicited under ORS 279B.055, ORS 279B.060, or ORS 279B.085 may protest a solicitation if the prospective bidder, proposer, or offeror believes the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, legally flawed, or improperly specifies a brand name.
 - a. ***Delivery and Deadline.*** The protest must be in writing and delivered to the City Manager by the deadline stated in the solicitation document. The solicitation document shall state the deadline, which must allow the City to issue a written decision no fewer than 3 business days before bids, proposals, or offers are due unless the City makes a written determination that circumstances exist that justify a shorter time period.
 - b. ***Content.*** The protest must include sufficient information to identify the solicitation, the legal and factual grounds for the protest, supporting evidence, and the relief sought.
 - c. ***City Decision.*** If the protest is timely and meets the content requirements, the City shall consider the protest and issue a written decision. Otherwise, the City shall promptly notify the protester that the protest is untimely or deficient and state the reasons.
2. ***Contract Award Protests.*** A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, only on the grounds authorized by ORS 279B.410(1).

- a. *Delivery and Deadline.* The protest must be in writing and delivered to the City Manager within 7 days after issuance of the notice of intent to award unless the notice of intent to award provides a shorter period under Subsection V.A.3, in which case the protest must be delivered within the shorter period stated in the notice.
 - b. *Content.* The protest must specify the legal and factual grounds for the protest, include supporting evidence, describe the resulting harm, and state the relief requested.
 - c. *Decision.* The City shall consider and respond in writing to a timely protest in a timely manner. The City may not consider late protests.
3. *Fee.* The City Council may establish by resolution a protest fee schedule to cover the City's reasonable costs of processing protests under this Subsection. The City shall refund the protest fee if the City upholds the protest in whole or in part. The City Manager may waive the protest fee requirement for good cause shown.
4. *Judicial Review.* Judicial review is as provided in ORS 279B.405, ORS 279B.415, and ORS 279B.420, as applicable. Before seeking judicial review, a protester shall exhaust the administrative remedies provided in this Subsection.

**Local Contract Review Board Rules Update
2023 to Proposed 2026 Comparison (High-Level)**

Topic	2023 Rules	Proposed 2026 Rules
Spending Authority	Council approval required over \$100,000	No change
Goods/Services <i>Not Personal/Professional Services</i>	<p>Small (≤\$25,000) If ≤ \$5,000: Direct selection allowed by City rule If \$5,000–\$25,000: Competitive verbal quotes and/or informal written solicitations</p> <p>Intermediate (>\$25,000 but ≤\$100,000): Informal written solicitation</p> <p>Large (>\$100,000): Competitive sealed ITB/RFP; Model Rules procedures.</p> <p>Amendments: 25% cumulative cap for small and intermediate</p>	<p>Small (≤\$25,000): Any practical method (including direct selection); anti-fragmentation applies</p> <p>Intermediate (>\$25,000 and ≤\$250,000): Good-faith effort for competition; written record; negotiations allowed.</p> <p>Large (>\$250,000): Competitive sealed ITB/RFP; Model Rules may be used as procedural guidance.</p> <p>Amendments: Statewide "within scope / no material change" standard with procurement-file documentation (replaces % caps)</p>
Personal Services	<p>Classification: City Manager classifies personal services</p> <p>Direct negotiations allowed: (i) if budgeted and contract price ≤\$200,000 (excluding amendments); (ii) for litigation/confidential matters; or (iii) when work is trust based/long-range (not project-driven)</p> <p>Informal written solicitation if <\$200,000</p> <p>RFP if ≥\$200,000</p> <p>Amendments: generally 25% cap (or impracticable to re-solicit)</p>	<p>Classification: City Council designates classes by adoption of the Rules; City Manager documents classification in the file</p> <p>Direct negotiation allowed: (i) with a written City Manager determination that direct negotiation best serves City interests (no fixed \$200,000 cap); (ii) for litigation/confidential matters; or (iii) when work is trust based/long-range (not project-driven)</p> <p>Informal written solicitation if ≤\$250,000 (to match intermediate procurement structure used elsewhere in the Rules)</p> <p>RFP if >\$250,000 or when complexity warrants</p> <p>Amendments: within-scope/advantageous-to-City standard; adds express statutory conflict-of-interest safeguard when personal services oversee public improvement contracts</p>
A&E <i>Professional Services</i>	<p>No standalone City Rules: Public Contracting Code and the Model Rules (no standalone City procedural framework)</p>	<p>New standalone City Rules: (i) qualifications-based selection; (ii) direct appointment permitted when ≤\$100,000, emergency, or continuation of same project; and (iii) spelled-out documentation requirements.</p>
Related Services <i>Professional Services</i>	<p>No standalone City Rules: Public Contracting Code and the Model Rules (no standalone City procedural framework)</p>	<p>New standalone City Rules: Expressly authorizes the ORS 279C.120 menu of selection methods (qualifications/capability evaluation followed by price negotiation, price competition, etc.), plus enhanced documentation and procurement-file requirements</p>
Public Improvements	<p>No standalone City Rules: Public Contracting Code and the Model Rules (no standalone City procedural framework) except electronic advertisement authorization is limited to public improvement contracts estimated ≤\$125,000</p>	<p>New standalone City Rules: (i) direct award allowed if <\$25,000; (ii) competitive quotes if estimated ≤\$100,000 (ORS 279C.412/.414 pathway); and (iii) still requiring statutory compliance and Model Rules where legally required.</p>