

EXHIBIT A
Chapter 5.33

GOODS AND SERVICES

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5.33.010 Definitions.

- A. The following definitions apply to the City of Portland's Purchasing Authority, Policies and Rules as contained in this Chapter.
1. **Addendum or Addenda:** Additions or deletions to, material changes in, or general interest explanations of the City's Solicitation Documents.
 2. **Advantageous:** In the City's best interests, as assessed according to the judgment of the City.
 3. **Affected Person/Offeree:** A Person or Offeror whose ability to participate in a Procurement or Public Improvement Contract is adversely affected by the City.
 4. **Authorized Representative:** The owner of a sole proprietorship, a partner in a firm or partnership, or, a person authorized to bind a corporation's board of directors.
 5. **Award:** The decision of the City to enter into a Contract with an Offeror.
 6. **Bid:** A response to an Invitation to Bid.
 7. **Bid or Proposal Bond/Bid or Proposal Security/Offer Security:** A means of securing execution of an Awarded Contract.
 8. **Bidder:** An Offeror who submits a Bid in response to the City's Invitation to Bid.
 9. **Chief Procurement Officer:** The individual in charge of the Procurement Services Division of the Office of Management and Finance.
 10. **City:** The City of Portland, Oregon or designee.
 - ~~10~~ 11. **Closing:** The date and time announced in the City's Solicitation Document as the deadline for submitting Offers.

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- 11 12. Co mpetitive Bidding:** A selection process that involves an advertised public notice, issuance of a Written Solicitation Document inviting Persons to submit Written, signed, and sealed Bids that are received in the Bureau of Purchases Procurement Services and publicly opened at a designated time and place.
- 12 13. Co mpetitive Negotiation:** A method of Contracting in which Proposal evaluation and Contract Award result from an open and competitive procedure, typically through the Request for Proposal process, in which evaluation criteria in addition to price are considered in Contractor selection.
- 13 14. Co mpetitive Range:** The number of Proposers the City will conduct discussions or negotiate if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
- 14 15. Construction Manager/General Contractor (CM/GC):** An alternative contracting method, or a Person selected pursuant to that method, to perform a Public Improvement project. The method typically requires a Contractor to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating and acquiring subcontracting services, establishing a GMP to complete the Contract Work, acting as General Contractor, coordinating and managing the building process, and providing General Contractor expertise.
- 15 16. Contract :** See definition for “Public Contract.”
- 16 17. Contract Amount:** The total of the Awarded Bid or Proposal amount, including any approved alternates. The “original” Contract Amount is, depending on the context, the maximum amount that the City will pay for work performed pursuant to the Contract or an estimated amount when the amount is based on unit prices. The “final” Contract Amount is the amount that the City actually pays the Contractor after execution of change orders, Contract amendments, or variations in unit prices, which cause the original Contract price to increase or decrease.
- 17 18. Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, by an Authorized Representative of an Offeror and the City.
- 18 19. Contract or:** The Person with whom the City executes a Contract.
- 19 20. Cost Estimate:** The City’s most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect,

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engineer or other qualified professional, or confidential cost calculation worksheets, where available, or formal planning or budgetary documents.

20 21. Days : Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later, unless otherwise specified by these rules or the Solicitation Document.

21 22. Descriptive Literature: Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.

22 23. Electronic : Any means of transmission of information by Electronic device, including but not limited to Electronic mail or Facsimile. A Facsimile or fax is a document that has been transmitted to the City over telephone lines and received by the City in a hard copy form by a device commonly known as a Facsimile machine.

23 24. Electronic Advertisement: A notice of the City's Solicitation Document or Request for Qualifications or information, or a request for price quotations, available over the Internet by:

- a. the World Wide Web or some other Internet protocol; or
- b. the City's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.

24 25. Electronic Offer: A response to the City's Solicitation Document or request for price quotations submitted to the City via ~~(a)~~

- a. the World Wide Web or some other Internet Protocol; or ~~(b)~~
- b. the City's Electronic Procurement System.

25 26. Electronic Procurement System: An information system that Persons may access through the Internet or that Persons may otherwise remotely access through a computer, that enables Persons to send Electronic Offers and the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to the City's procurement of goods and services or construction services.

26 27. Emergency: Circumstances that:

- a. could not have been reasonably foreseen;

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- 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 to remedy the condition.
- 27 28. Equal Employment Opportunity (EEO):** A certification program administered by the City, Certification by Contractors is required for in order to obtain most City Contracts as required by PCC Chapter 3.100.
- 28 29. Facsi mile:** A document that has been transmitted to and received by the City in a format that is capable of being received by a device commonly known as a facsimile machine. A facsimile machine allows hard copy documents to be sent over telephone lines and be printed in another location.
- 29 30. Goods :** Supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this definition.
- 30 31. Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of “goods” and “services”.
- 31 32 Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 32 33. Life Cycle Costing :** A determination of the cost of a product for its estimated useful life, including without limitation acquisition costs, operation and maintenance costs, and disposal.
- 33 34. Local Contract R eview Board:** The Portland City Council, or designee.
- 34 35. Nonresident Bidder :** A Bidder who is not a Resident Bidder.
- 35 36. Of fer:** A Written response to a Solicitation Document.
- 36 37. Of feror:** A Person that submits an Offer.
- 37 38. Opening :** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.
- 38 39. PC C:** The Code of the City of Portland, Oregon.

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- 39 40. Person:** An individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity who has the legal capacity to enter into a Contract.
- 40 41. Personal Services:** as used in these rules, means services performed under a Professional, Technical or Expert Services contract governed by PCC 5.68 or pursuant to ORS 279A.055.
- 41 42. Pr equalification:** Depending on the context, either the process followed by the City to determine the qualifications of an Offeror or the process to determine the suitability of particular goods.
- 42 43. Pri ce Agreement:** A Contract for the Procurement of Goods or Services at a set price with:
- a. No guarantee of a minimum or maximum purchase; or
 - b. An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services, in which the City or other contracting agency does not guarantee a minimum or maximum additional purchase.
- 43 44. Procurement:** The act of purchasing, leasing, renting or otherwise acquiring Goods or Services. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into a Contract, administer a Contract and obtain the performance of a Contract under the State Public Contracting Code.
- 45. Procurement Services:** A division of the Bureau of Internal Business Services in the City of Portland.
- 44 46. Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
- 45 47. Proposal :** A Written response to a Request for Proposals.
- 46 48. Propose r:** A Person who submits a Proposal in response to the City's Request for Proposals.
- 47 49. Public Contract:** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, services, including personal services, Public Improvements, public works, minor alterations,

or ordinary repair or maintenance necessary to preserve a Public Improvement, but does not include "grants."

48 50. Public Improvement: A project for construction, reconstruction or major renovation on real property by or for the City. Public Improvements do not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

~~49. **Purchasing Agent:** The individual designated by the Portland City Council to act as the City's Purchasing Agent or the individual to whom the Purchasing Agent has delegated the powers of the Purchasing Agent.~~

50 51. Quali fied Rehabilitation Facility (QRF): A nonprofit community rehabilitation program or a vocational service provider whose purpose is to assist and encourage disabled individuals and which:

- a. During the fiscal year employs disabled individuals for not less than 75 percent of the hours of direct labor required for the manufacture or provision of its products or services.
- b. Shall be either a community rehabilitation program certified through the Oregon Vocational Rehabilitation Division or a vocational service provider certified through the Oregon Mental Health Division of the Department of Human Resources;
- c. Meets the definition given in ORS 279.835(4); and
- d. Shall be currently certified by the Oregon Department of Administrative Services (ODAS) as a QRF; i.e., is listed as a current certificate holder in the annual QRF Directory, published by ODAS.

52. Repair and Maintenance: Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.

51 53. Request for Proposals (RFP): All documents used for soliciting Proposals. In accordance with these rules, or when permitted by PCC Chapter 5.34.

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- 52 54. Request for Qualifications (RFQ):** A Written document, issued by the City to prospective Contractors, that seeks a description of their experience and qualifications to perform certain identified Work that may or may not lead to the issuance of an RFP.
- 53 55. Resident Bidder:** A Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state and has stated in the Bid whether the Bidder is a "Resident Bidder" as this is defined.
- 54 56. Responsible Offeror, Bidder or Proposer:** A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in PCC Section 5.33.500 or 5.34.600, as applicable, and who has not been debarred, disqualified, or who has not failed to prequalify when Prequalification is required by the Solicitation Document.
- 55 57. Responsive Offer, Bid or Proposal:** An Offer, Bid or Proposal that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document.
- 56 58. Scope :** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 57 59. Services:** Services other than "personal" or "PTE" services covered by PCC 5.68.
- 58 60. Signature:** Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 59 61. Signed:** As the context requires, the term "signed" means either that a Written document contains a Signature or that the act of making a Signature has occurred.
- 60 62. Solicitation :** A request by the City for prospective Contractors to submit Offers.
- 61 63. Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. All documents referenced by the Solicitation Document are included in, and part of, the Solicitation Document.
- 62 64. Specification:** A description of the physical or functional characteristics, or of the nature of a supply, Services or construction item, including any

requirement for inspecting, testing or preparing a supply, Services or construction item for delivery and quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

63 65. Subcontractor: A Person, other than the Contractor's employee, hired by the Contractor to perform a portion of the Work required by the Contract.

64 66. Work : The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item in a Contract or, in context, the entire Contract and the timely successful completion of all duties and obligations imposed by the Contract.

65 67. Writing: Letters, characters and symbols inscribed on paper by hand, print type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

66 68. Written: Existing in Writing.

5.33.020 City Council as Local Contract Review Board.

- A.** Pursuant to ORS 279A.055, the City Council is designated as the Local Contract Review Board for the City. The City Council shall exercise all the powers and duties conferred upon it by State law, except to the extent that such powers and duties have been delegated by these rules, or by a separate ordinance, to others. In order to carry out its powers and duties, the City of Portland's Purchasing Authority, Policies and Rules, PCC Chapter 5.33, and PCC Chapter 5.34 are hereby adopted by City Council.
- B.** The procedural rules of the City Council sitting as the Local Contract Review Board are the same as those regulating City Council as provided by PCC Chapter 3.02.
- C.** The Attorney General Model Public Contracting Rules do not apply to the City's Procurement of goods, services, and certain construction services. Instead, the rules contained in PCC Chapter 5.33 apply to those Procurements. Similarly, the Attorney General Model Public Contracting rules for Construction do not apply. Instead the Rules contained in PCC Chapter 5.34 apply to those Public Improvements and construction services. It is the intent of these rules to permit the City to act to the full extent permitted by State law. To the extent that the

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rules adopted in PCC Chapters 5.33 and 5.34 appear to give the City less authority than State law, then State law shall prevail and the City may act to the full extent permitted by State law.

- D. The City Council reserves to itself the authority to authorize Contract amendments in excess of 25% for Contracts whose original Contract Amount was \$500,000 or more or whose total Contract price after an amendment would exceed \$500,000.
- E. The City Council shall authorize all intergovernmental agreements by ordinance pursuant to ORS Chapter 190.

5.33.030 Application of Purchasing Code.

- A. The procurement methods stated in PCC Chapter 5.33 ~~is~~are applicable to the purchase of Goods or Services, or both, but ~~is~~are not applicable to the following:
 - 1. Contracts or agreements to which the State Purchasing Code, ORS Chapters 279A, 279B and 279C, does not apply;
 - 2. Contracts between the City and:
 - a. Another "contracting agency" as defined by ORS 279A.010;
 - b. The Oregon Health and Science University;
 - c. The Oregon State Bar;
 - d. A governmental body of another state;
 - e. The federal government;
 - f. An American Indian tribe or an agency of an American Indian tribe;
 - g. A nation, or a governmental body in a nation, other than the United States; or
 - h. An intergovernmental entity formed between or among governmental bodies of this or another state, the federal government, an American Indian tribe or an agency of an American Indian tribe, a nation other than the United States or a governmental body in a nation other than the United States.

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3. Contracts pursuant to 10 U.S.C. § 381 (relating to law enforcement equipment suitable for counter-drug activities through the Department of Defense), the Electronic Government Act of 2002 (relating to automated data processing equipment, including firmware, software, supplies, support equipment, and services from federal supply schedules), or other federal law that the City Council determines are similar to those Acts in effectuating or promoting transfers of property to the City;
4. Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special or limited;
 - b. The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - c. The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive Contractor selection procedures of PCC Sections 5.33.100 through 5.33.225;
5. Professional, technical and expert Contracts governed by PCC Chapter 5.68, and any other Contract specifically designated as a Personal Service Contract by the City Council;
6. Grants, defined as follows:
 - a. An agreement under which:
 - (1) the City receives moneys, property or other assistance, including, but not limited to, federal assistance that is characterized by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets;

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- (2) 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
 - (3) No substantial involvement by the grantor is anticipated in the program or activity other than involvements associated with monitoring compliance with grant conditions; or
- b. An agreement under which:
 - (1) The City provides moneys, property or other assistance, including by not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - (2) The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - (3) No substantial involvement by the City is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
- 7. Acquisitions or disposals of real property or interests in real property;
- 8. Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
- 9. Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Purchasing Agent's Chief Procurement Officer's authority as stated in PCC Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
- 10. Contracts for Sale of Advertising in City Publications. The right to advertise in City publications may be sold without Competitive Bidding. The City may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied to the cost of the publication;

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11. Contracts for Public Improvements, which are governed by PCC Chapter 5.34.

5.33.040 Authority of ~~Purchasing Agent~~ Chief Procurement Officer.

- A. For Contracts covered by PCC Chapters 5.33 and 5.34, and for revenue producing Contracts, the ~~Purchasing Agent~~ Chief Procurement Officer is authorized to:

1. Advertise for Bids or Proposals for Goods and Services without specific authorization from City Council, when the proposed purchase is included within the current fiscal year budget.
2. Award and execute Contracts for the purchase or lease of Goods and Services, and revenue producing services, without specific authorization by ordinance of City Council whenever the Contract Amount is \$500,000 or less.
3. Award and execute Price Agreements for the purchase or lease of Goods and Services, including revenue producing services, if the yearly estimated cost to the City, or the yearly estimated revenue or value is \$500,000 or less.
4. Recommend the Award of a Contract for Goods and Services, including revenue producing services by a report to City Council for Contracts in excess of \$500,000. If the City Council adopts the recommendation, it shall approve the Award by ordinance.
5. Advertise for Bids or Proposals for Goods and Services when the proposed purchase is not included within the current fiscal year budget when City Council approves of the purchase by Ordinance. Thereafter, the Chief Procurement Officer may award and execute a Contract if the Contract Amount is \$500,000 or less. If the Contract Amount exceeds \$500,000 the Chief Procurement Officer shall recommend the Award of a Contract by report to City Council, who shall approve the Award by Ordinance.
6. Authorize and execute amendments for Contracts, Price Agreements and Intergovernmental Agreements involving the procurement of Goods and Services that were originally executed in accordance with PCC Chapters 5.33 and 5.34 as follows:
 - a. Amendments not exceeding 25% of the original Contract Amount.

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- b. Amendments exceeding 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.
 - c. Amendments whenever an ordinance approved by the City Council grants additional authority to the Purchasing Agent Chief Procurement Officer beyond that stated in these rules.
- ~~6~~ **7.** Authorize final payment for a Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:
 - a. Whenever the final Contract Amount does not exceed 25% of the original Contract Amount; or
 - b. Whenever the final Contract Amount exceeds 25% of the original Contract Amount, provided that the final Contract Amount is less than \$500,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.
- ~~7~~ **8.** Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
- ~~8~~ **9.** Establish a procedure providing appropriate financial control over the authorization provided by PCC Sections 5.33.055 and 5.33.060.
- ~~9~~ **10.** Revoke or place conditions on the authority of appropriation unit managers, directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$5,000, in the event of violations of these rules.
- ~~10~~ **11.** Perform such other duties as directed by the Portland City Code, City Council or the Commissioner-in-Charge of the Bureau of Purchases Procurement Services.
- ~~11~~ **12.** Delegate the Purchasing Agent's Chief Procurement Officer's authority under this Chapter in accordance with City practices.
- ~~12~~ **13.** Resolve protests of Contract Award decisions and other matters as required by City Code.

~~13~~ **14.** Award and execute Intergovernmental Agreements (IGAs) without specific authorization by ordinance of City Council provided the cost to the City does not exceed \$5,000.

- B. The ~~Purchasing Agent~~ Chief Procurement Officer is responsible for and shall make all purchases in accordance with State law, City Charter, and the City of Portland's Purchasing Authority, Policies and Rules, PCC Chapter 5.33 and PCC Chapter 5.34.
- C. The ~~Purchasing Agent~~ Chief Procurement Officer may execute Intergovernmental Agreements as described above, or only with specific authorization by City Council.
- D. Notwithstanding the grant of authority above, if the ~~Purchasing Agent~~ Chief Procurement Officer believes that a procurement should be considered by the City Council, the ~~Purchasing Agent~~ Chief Procurement Officer may forward the proposed procurement to the City Council for approval.

5.33.050 Authority for Golf Concession Contracts.

- A. The Director of Portland Parks and Recreation is authorized to execute a Contract for concessions in the parks of the City for the sale of refreshments and notions and for the performance of public service, upon such terms and conditions, and using evaluation criteria as the Director of Portland Parks and Recreation may deem to be in the public interest.
- B. When the ~~Purchasing Agent~~ Chief Procurement Officer advertises for Bids or Proposals, and the Parks Director believes there is no acceptable Bid or Proposal received for a concession, a concession Contract may be granted to any entity upon such terms and conditions, including terms and conditions that are different from those advertised, as the Director of Portland Parks and Recreation deems to be in the best interest of the City. The Director of Portland Parks and Recreation may renew any concession Contract or concession permit upon request of the concessionaire without calling for Bids for a total term not to exceed the five (5) year limitation imposed by City Charter Section 2-105(a)(3).
- C. Concessions at the City's golf courses may be Awarded in the following manner: The ~~Purchasing Agent~~ Chief Procurement Officer shall advertise for Bids or Proposals for golf concessions Contracts based on evaluation criteria authorized by the Director of Portland Parks and Recreation. A selection advisory committee appointed by the Director of Portland Parks and Recreation shall review all Offers. The selection advisory committee shall screen qualifications and Proposals, and shall recommend the most Advantageous Bid or Proposal to the

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Director of Portland Parks and Recreation. The advisory committee may reserve the right to interview prospective concessionaires after submission of Offers.

- D. The Director of Portland Parks and Recreation is authorized to execute Contracts for golf concessions for food service operation, merchandise sales, cart rentals, golf instruction and other functions normal to clubhouse operations and for performance of public services, for a period not to exceed five (5) years, at the golf courses owned by the City, upon such terms and conditions as the Director of Portland Parks and Recreation deems to be in the best interest of the City, subject to approval by the City Council.
- E. Renewal of any golf concession Contract upon request of the concessionaire and upon the recommendation of the Director of Portland Parks and Recreation may be authorized by the City Council without calling for new Bids or Proposals, for a term not to exceed the five year limitation imposed by City Charter Section 2-105(a)(3).

5.33.055 Authority of Appropriation Unit Managers.

- A. Appropriation unit managers are authorized to obligate the City for purchases of Goods and Services for use by those managers in an amount not to exceed \$5,000 for a single transaction as specified in PCC Section 5.33.180. Amendments to those Contracts shall be authorized only by the Purchasing Agent Chief Procurement Officer in advance of any additional Procurement of Goods and Services.
- B. Purchases under \$5,000 shall be made by using a credit card authorized by the Bureau of Purchases Procurement Services known as the "Procurement" ("P") card, or by way of a document known as a Limited Distributed Purchase Order.
- C. State law prohibits Procurements from being artificially divided or fragmented so as to constitute Procurements under \$5,000.

5.33.060 Authority of Directors.

Directors of Bureaus or Offices are authorized to:

- A. Execute Contracts to the same extent as appropriation unit managers as provided in PCC Section 5.33.055;
- B. Execute Contract amendments for Goods and Services Contracts covered by this Chapter:
 - 1. Up to 25% of the original Contract Amount, regardless of the original Contract Amount;

2. More than 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the Purchasing Agent Chief Procurement Officer concurs.
- C. Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- D. The authority granted by this section regarding amendments is conditioned on the existence of an original valid Contract between the parties that was executed in conformance with City Code and State law.
- E. Authorize the awarding of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget. Amendments to grants that increase the grant amount may occur only when the additional amount is included within the current fiscal year budget or as otherwise adopted by the City Council by ordinance

5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.

- A. Purchasing From City Employees. The Purchasing Agent Chief Procurement Officer shall not make any purchase of Goods and Services from any City employee, or any business with which a City employee is associated, except as follows:
 1. When the purchase is expressly authorized by ordinance; or
 2. During a state of Emergency as provided by PCC Chapters 15.04 and 15.08; and when approved in Writing by the Mayor, or the person performing the Mayor's duties, under those Chapters.
- B. "Business with which a City employee is associated" means any business in which the City employee is a director, officer, owner or employee, or any corporation in which the City employee owns or has owned 10 percent or more of any class of stock at any point in the preceding calendar year.

5.33.075 Affirmative Action.

- A. Pursuant to ORS 279A.100, the City may limit competition on Contracts for Goods and Services, or on other Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.

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- B.** Pursuant to ORS 279A.105, the City may require a Contractor to Subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
1. A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 2. A business enterprise that is:
 - a. Certified under ORS 200.055 as an emerging small business; and
 - b. Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECDD).
- C.** A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
1. Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 2. The Contractor certifies in Writing to the City that a substantial number of the Subcontractor's employees or Subcontractors that will manufacture the goods or complete the services under the Contract reside in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.
 3. The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- D.** The City may disqualify a Person from consideration of Award of the City's Contracts under ORS 200.065(5) or suspend a Person's right to be on or participate in any Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with these rules.

5.33.080 Environmentally Preferable Procurement.

A. Definitions:

1. "Alternative Environmentally Preferable Paper" is paper with environmental attributes beyond those of the U.S. Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines (CPG). These attributes include paper that is unbleached or is bleached without the use of chlorine compounds, goes beyond the EPA CPG post-consumer recycled content standard, is not derived from genetically modified organisms, or is made with fibers that come from certified, well managed forests, agricultural residues, sustainably-produced tree-free crops, or recycled non-tree fibers.
2. "Biodegradable" means capable of being broken down, especially into innocuous products, by the action of living things such as microorganisms.
3. "Energy Star[®] compliant" products mean products that meet or exceed the U.S. Environmental Protection Agency's (EPA) Energy Star[®] criteria for energy efficiency.
4. "Environmentally Preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
5. "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
6. "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.
7. "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
8. "Post-Consumer Waste," means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a

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consumer item. "Post-consumer waste" does not include manufacturing waste.

9. "Price Premium Payback Period" means the number of years it takes for the savings in operating costs to offset any additional upfront price of the product versus a lower price, less-energy efficient model. It is calculated by dividing the price premium by the annual savings in operating costs.
10. "Readily Biodegradable" shall be defined according to the ~~Organisation~~ Organization for Economic Cooperation and Development's (OECD) measurement guidelines.
11. "Reblended Latex Paint" or consolidated latex paint, contains 100 percent post-consumer content from good-quality surplus with no virgin materials such as resins and colorants added.
12. "Recyclable Product" means a product that, after its intended end use, can demonstrably be diverted from the solid waste stream for use as a raw material in the manufacture of another product, preferably higher value uses.
13. "Recycled Latex Paint," or reprocessed latex paint, means latex paint with a post-consumer recycled content level that at a minimum meets the requirements specified by the Environmental Protection Agency's (EPA) Recovered Materials Advisory Notice (RMAN) for reprocessed latex paint.
14. "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
15. "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.
16. "Recycled Paper" means a paper product with not less than:
 - a. Fifty percent of its fiber weight consisting of secondary waste materials; or
 - b. Twenty-five percent of its fiber weight consisting of post-consumer waste.

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17. "Recycled PETE" means post-consumer polyethylene terephthalate material.
 18. "Recycled Product" means all materials, goods and supplies, not less than fifty percent of the total weight of which consists of secondary and post-consumer waste with not less than ten percent of its total weight consisting of post-consumer waste. "Recycled product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
 19. "Retreaded Tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.
 20. "Reusable Product" means a product, such as a washable food or beverage container or a refillable ballpoint pen that can be used several times for an intended use before being discarded.
 21. "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.
 22. "Used Oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.
 23. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
 24. "VOC" (Volatile Organic Compound) means an organic compound characterized by a tendency to readily evaporate into the air, contributing to indoor air pollution and photochemical smog.
- B. Environmentally Preferable Procurement General Policy.** In developing plans, drawings, work statements, specifications, or other product descriptions, the City

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shall insure, to the maximum extent economically feasible, the purchase of environmentally preferable products or services that comply with the City's Sustainable City Principles. This includes, but is not limited to, products that are durable, recyclable, reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. Furthermore, the City shall purchase products and services based on long-term environmental and operating costs, and find ways to include environmental and social costs in short-term prices.

C. Recycled Materials and Products Price Preference.

1. In accordance with ORS 279A.125, notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, and subject to PCC Section 5.33.080 C.2., the City shall give preference to the procurement of goods manufactured from recycled materials.
2. In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following conditions exists:
 - a. The recycled product is available;
 - b. The recycled product meets applicable standards;
 - c. The recycled product can be substituted for a comparable non-recycled product;
 - d. The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or higher if a written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to PCC Section 5.33.610; and
 - e. Offerors, when required in the Solicitation Document, certify in their submitted Offers the minimum, if not exact, percentage of post-consumer waste and total recovered materials content in the products offered.

D. Purchasing Environmentally Preferable Paper & Related Equipment.

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1. The City shall procure recycled content paper and other alternative environmentally preferable paper according to the City's Sustainable Paper Use policy (Resolution No. 36146).
2. In accordance with the City's Sustainable Paper Use Policy, the City shall procure printers, copiers, and fax machines that, at a minimum, have duplex capability.

E. Purchasing Recycled Oils.

1. Preference for Oil Products with Greater Recycled Content: The City shall require that purchases of lubricating oil and industrial oil be made from the vendor whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:
 - a. Not available within a reasonable period of time or in quantities necessary to meet the City's needs;
 - b. Not able to meet the performance requirements or standard recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
 - c. Available only at a cost that exceeds the price preference established in PCC Section 5.33.080 C.
2. In accordance with ORS 279B.240 the City shall ensure that its procedures and specifications for the procurement of lubricating oil and industrial oil do not exclude recycled oils and do not require oils to be manufactured from virgin materials.

F. Purchasing Retreaded Tires.

1. All tires for use on the non-steering wheels of City vehicles shall be equipped with retreaded tires unless one of the following exceptions applies:
 - a. The vehicles are emergency vehicles as defined in ORS 801.260;
 - b. The vehicles are other fire suppression or emergency assistance vehicles;
 - c. The vehicles are passenger-carrying vehicles with a gross weight rating of one ton or more; or

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- d. The cost per mile differential of the retreaded tires exceeds the five percent preference set forth in PCC Section 5.33.080 C.

G. Purchasing Energy Efficient Products.

- 1. As available, the City shall procure products that meet or exceed Energy Star[®] criteria for energy efficiency. This applies to:
 - a. any equipment that uses electricity, natural gas, or fuel oil; and
 - b. products that indirectly impact energy use, such as, but not limited to, windows, doors and skylights.
- 2. City procurement language for such products described in 5.33.080 G.1 shall request from vendors:
 - a. Evidence that the equipment meets or exceeds the Energy Star[®] criteria for energy efficiency; and
 - b. Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.), operating costs (\$/yr), and the price premium payback (years).
- 3. Price Differential and Payback Period: While many Energy Star[®] compliant products are currently available for no price premium, should a price differential exist, the City will apply a simple life cycle cost analysis. Purchases where the price premium payback period is within five years or less shall be encouraged. Where the price premium payback period is longer than five years, Energy Star[®] compliant products may still be used; however, the City shall not be obligated to purchase and use Energy Star[®] compliant products in those circumstances.

H. Purchasing Interior/Exterior Architectural Paint Products.

- 1. All paint must be low-VOC by complying with the current standards set forth by the California South Coast Air Quality Management District Rule 1113 for Architectural Coatings or the VOC and chemical component limits of Green Seal's Standard GS-11, section 4.1.
- 2. Recycled or rebled latex paint with low-VOC properties, as demonstrated by periodic tests conducted by the manufacturer, shall be given preference and used whenever feasible to the extent that the price differential between the recycled or rebled and virgin latex paint does

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not exceed the five percent price preference set forth in PCC Section 5.33.080 C.

3. To reduce waste and support the recycled latex paint market, all surplus latex paint shall be recycled using a local latex paint recycling program. Surplus paint includes all latex paint in excess of quantities stored for touch-up purposes. Latex paint stored for touch-up purposes may not exceed 5 percent or 5 gallons, whichever is smaller, by volume, to the nearest gallon.

5.33.090 Use of Price Agreements.

If the City Awards a Price Agreement or executes a requirements contract that will allow the City to purchase whatever quantity it needs from a Contractor, then City Bureaus shall make their purchases from that Contract unless the Purchasing Agent Chief Procurement Officer grants an exemption to that requirement.

5.33.100 Overview of Source Selection and Contractor Selection.

- A. The City shall Award a Contract for Goods and Services covered by this Code using any method authorized by State law or City Code. Such different methods are called methods of "source selection." Source selection methods include Cooperative Procurements, Competitive Sealed Bidding, Competitive Sealed Proposals and small, intermediate, sole source, Emergency and Special Procurements.
- B. State law requires the City to use the services of Qualified Rehabilitation Facilities (QRF's) in certain instances. When required, the City shall use a QRF pursuant to PCC Section 5.33.110 before proceeding with a purchase through other methods of source selection.
- C. Once the appropriate source selection method has been chosen, the City may consider the best process of selecting a Contractor within the source selection method it has chosen.
- D. The City may employ methods of Contractor selection for the Procurement of Goods and Services by using any process authorized by State law, including multi-tiered processes as set forth in PCC Section 5.33.210 B.6.d., including, but not limited to:
 1. An Award or Awards based solely on the ranking of Proposals;
 2. Discussions leading to best and final Offers in which the City may not disclose private discussions leading to best and final Offers;

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3. Discussions leading to best and final Offers, in which the City may not disclose information derived from Proposals submitted by competing Proposers;
 4. Serial negotiations, beginning with the highest ranked Proposer;
 5. Competitive simultaneous negotiations;
 6. Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers;
 7. A multi-step Request for Proposals requesting the submission of un-priced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
 8. Any combination of methods described in PCC Sections 5.33.100 D.1 - 7. or as otherwise adopted by the City Council by ordinance.
- E. The methods of Contractor selection identified in PCC Section 5.33.100 D. shall conform to the procedures identified in these rules.
- F. The ~~Purchasing Agent~~ Chief Procurement Officer is authorized, but not required, to waive any nonconformity with the rules of Contractor selection if the ~~Purchasing Agent~~ Chief Procurement Officer determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

5.33.105 Feasibility and Cost Analysis.

- A. For purposes of this rule, the term "bureau" means a department, bureau, office or other subdivision of the City of Portland.
- B. Before conducting a procurement that pertains exclusively for services other than professional services, and which is estimated to exceed \$250,000, the bureau shall conduct an analysis to determine if it is feasible to use the City's own personnel or resources to perform the same services. The City may determine that it is not feasible if:
1. The bureau needing the services lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making this finding, the City shall compare the bureau's

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capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field; or

2. Special circumstances require the bureau to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:

a. The terms under which the bureau receives a grant or other funds for use in a procurement require the bureau to obtain services through an independent contractor;

b. Other state or federal law requires the bureau to procure services through an independent contractor;

c. The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

d. The bureau cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the bureau's existing personnel or persons the bureau could hire through a regular or ordinary process would not be suitable;

e. The procurement is for services to which the provisions of ORS 279B.080 (emergency procurements) apply;

f. The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with the bureau's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services; or

g. The services the bureau intends to procure will be completed within six months after the date on which the contract for the services is executed.

C. If it is determined it is not feasible to acquire the services with the bureau's own personnel or resources, a written determination shall be made and kept in the City's procurement file. If it is determined it is feasible to acquire the services with the bureau's own personnel or resources, the bureau shall conduct a cost analysis as set forth in Subsections 5.33.105 D. – X. below.

D. The bureau shall first estimate the bureau's cost of performing the services,

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including:

1. Salary or wage and benefit costs for contracting agency employees who are directly involved in performing the services, including employees who inspect, supervise or monitor the performance of the services.
2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies.
3. Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the services and costs related to stopping and dismantling a project or operation because the contracting agency intends to procure a limited quantity of services or procure the services within a defined or limited period of time.
4. Miscellaneous costs related to performing the services. The contracting agency may not include in the cost analysis the contracting agency's indirect overhead costs for existing salaries or wages and benefits for administrators or for rent, equipment, utilities and materials except to the extent that the costs are attributable solely to performing the services and would not exist unless the contracting agency performs the services.

E. After estimating the bureau's costs, the bureau shall estimate the cost a potential contractor would incur in performing the services. The bureau may estimate a contractor's potential costs by any reasonable means, including, but not limited to, past bids or current information provided by contractors performing the same or similar services. In the absence of information that can be reasonably and simply obtained without the expenditure of undue time and expense, a bureau may employ employing percentage markups for overhead and profit. No matter the method, the bureau's estimate should ensure it captures the following costs:

1. Average or actual salary or wage and benefit costs for contractors and employees who:
 - a. Work in the industry or business most closely involved in performing the services that the contracting agency intends to procure; and
 - b. Would be necessary and directly involved in performing the services or who would inspect, supervise or monitor the performance of the services;
2. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and

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3. Miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the procurement.

F. After comparing the estimate of the bureau's costs with a potential contractor's costs, a bureau may proceed with the procurement only if the contracting agency would incur more cost in performing the services with the contracting agency's own personnel and resources than the contracting agency would incur in procuring the services from a contractor.

1. Notwithstanding the fact that a potential contractors' cost may be less, the state legislature has decided that a bureau cannot proceed with the procurement if the sole reason the bureau's estimated costs are lower than a potential contractor's estimated costs is because the bureau's costs for salary or wage and benefit costs for the bureau's employees, as calculated in Subsection 5.33.105 D.1. above is greater than the average or actual salary or wage and benefits costs for contractors and employees, as calculated in Subsection 5.33.105 E.1. above.

2. A bureau may proceed with a procurement even if the bureau determines that the bureau would incur less cost in providing the services with the contracting agency's own personnel and resources if at the time the bureau intends to conduct a procurement, the bureau lacks personnel and resources that are necessary to perform the services within the time in which the services are required. If the contracting agency conducts a procurement under the conditions described in this paragraph, the contracting agency shall:

a. Keep a record of the cost analysis and findings that the contracting agency makes for each procurement the contracting agency conducts under this section, along with the basis for the contracting agency's decision to proceed with the procurement; and

b. Collect and provide copies of the records described in Subsection 5.33.105 F.2.a. each calendar quarter to the City Council.

5.33.110 Qualified Rehabilitation Facilities.

A. As used in PCC Section 5.33.110:

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1. "Price" means the cost to the City of the products and services under Contracts procured under the program created by ORS 279.835 to 279.850 as determined by this rule.
 2. "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified to participate in the program created by ORS 279.835 to 279.850 and includes a list of the products and services offered by QRFs and determined by the State Procurement Office to be suitable for purchase by the City.
 3. "Qualified Rehabilitation Facility" ("QRF") means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified to participate in the program created by ORS 279.835 to 279.850.
 4. "QRF Contract" means a Contract entered into under the program created by ORS 279.835 to 279.850.
- B.** Policy: It is the policy of the City to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed Goods and services available from QRFs. The City shall identify contracting opportunities within the organization and Award appropriate Contracts to QRFs in accordance with this rule.
- C.** Procurements from QRFs
1. When the City intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of Specifications appropriate to the City's Procurement needs and is available within the time required by the City.
 2. The City shall enter into and renew QRF Contracts only for the specific products or services that are on the Procurement List.

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3. If a QRF is removed from the Procurement List, the City shall not Award or renew a QRF Contract, and the removal from the Procurement List shall constitute sufficient grounds for the City to terminate any outstanding QRF Contract.
4. No placement of a product or service on the Procurement List shall act to displace a Contractor under an existing Contract with the City for the same product or service prior to the expiration or other termination of the Contractor's Contract with the City. However, where a product or service is on the Procurement List, no existing Contract shall be renewed for such a product or service.
5. If a QRF submits a Competitive Bid, Proposal, price quotation or other Offer in a competitive Procurement for a Contract, then regardless of whether the Offer was accepted, that QRF may not, at any time during the initial term of the Contract for which the QRF submitted a Bid, Proposal or Offer, make any claim to the City that the product or service that was the subject of the Offer is on the Procurement List. If, during the Solicitation process, a QRF claims the product or service that is the subject of the Procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the Solicitation Document was issued, the Solicitation process shall be terminated so long as a Contract has not been fully executed at the time the claim is made.

D. Determination of Price/Changes to QRF Contracts

1. When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
2. The City may use the formal selection procedure similar to that described in PCC Section 5.33.050 to select a QRF to provide a service on the Procurement list, provided that:
 - a. The Solicitation shall not request any information concerning price and price shall not be a consideration in making the Award.
 - b. The Solicitation shall not be advertised.
 - c. Notice of the Solicitation may be given to those QRFs offering the service on the Procurement List.

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- d. After selection of a QRF the price will be determined in accordance with PCC Section 5.33.110 D.3.

3. Price.

- a. Price for products or services where the Price is listed. For products or services on the Procurement List where the Price is listed, the Contract shall provide that the City will pay the Price that is listed.

- b. Price for services where the Price is not listed. For services for which no Price is listed on Procurement List, the City shall proceed as follows:

- (1) The City shall request that the QRF submit its proposed Price to the City based on the volume or Scope of the Work and Specifications provided by the City as prescribed in the proposed Contract between the QRF and the City. For janitorial and security services where a Fair Wage is required to be paid, the Specifications shall state the wage required to be paid.
- (2) In submitting its proposed Price to the City, the City shall require the QRF to make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a). The City shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).
- (3) If the QRF and the City agree on the terms and conditions of a proposed Contract and the price for the services to be provided under the proposed Contract, the Department shall present the proposed Contract (including the agreed Price) to the State Procurement Office for review and approval of the Price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.

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(4) The City shall not execute or implement any Contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the City and the QRF.

c. Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or City, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the Scope of Work that was the basis for establishing the existing Price.

d. The City shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.

E. The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of a QRF Contract under ORS 279.835 to 279.850 unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the City wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the City shall notify the QRF in Writing of the specific changes in the Scope of Work or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

5.33.120 Sole-Source Procurements.

A. Generally. The City may Award a Contract without competition as a Sole Source Procurement if the ~~Purchasing Agent~~ Chief Procurement Officer or Council, depending on the amount of the Contract, makes a Written finding that:

1. Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
2. The Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;

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3. The Goods or Services are for use in a pilot or an experimental project; or
 4. Any other findings that support the conclusion that the Goods or Services are available from only one source.
- B. Negotiation with a sole source Contractor is desirable. The City is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms or conditions.
- C. Public Notice. The City shall give notice of the determination that the Goods or Services or class of Goods or Services are available from only one source when the Contract is estimated to be greater than \$50,000 by publishing a notice on the Bureau of Purchases Procurement Services' website at least seven (7) Days before the Contract is Awarded.

5.33.130 Emergency Procurements.

- A. The City may Award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.
- B. The Council, or person authorizing the Emergency Procurement, shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.
- C. The authority to declare an Emergency and authorize an Emergency Procurement shall be as follows:
1. The ~~Purchasing Agent~~ Chief Procurement Officer or designee may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Procurement Contract under \$150,000.
 2. The director of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract under \$150,000 only if the ~~Purchasing Agent~~ Chief Procurement Officer or person to whom the powers of the ~~Purchasing Agent~~ Chief Procurement Officer have been delegated, is not available when the Procurement needs to be made.
 3. A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau

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or Department to enter into an Emergency Procurement Contract not exceeding \$500,000.

4. A Commissioner-in-Charge of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract exceeding \$500,000 subject to the following procedures:

a. Following the declaration of Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.

b. If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.

- D. All documentation of Emergency Procurements shall be sent to the Purchasing Agent Chief Procurement Officer for record keeping purposes.
- E. All Emergency Procurement Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City Code.
- F. After the Award of an Emergency Procurement Contract, the City shall execute a Written Contract with the Contractor as soon as possible, and in no event later than 60 Days after the Award.
- G. All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
- H. For an emergency procurement of construction services that are not public

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improvements, the City shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in case of extreme necessity.

5.33.135 Declaration of State of Emergency or Disaster.

- A. When the Mayor or person designated to perform the duties of office of the Mayor ("Equivalent"), proclaims a State of Emergency or Disaster the Mayor or Equivalent may award emergency contracts for the acquisition of goods, services, construction services and public improvements for the purpose of responding to the State of Emergency or Disaster. This section does not eliminate the power of any individual otherwise authorized to award or execute contracts under other portions of the City Code.
- B. The Proclamation of a Disaster or State of Emergency are instances of "extreme necessity" so that the Mayor or Equivalent is permitted to award contracts by direct appointment and without the necessity for competition. However, competition is permitted to the extent reasonable and appropriate under the circumstances. When a Proclamation of a State of Emergency or Disaster is issued, the City hereby waives the requirement of furnishing sufficient performance and payment bonds for any public improvement contracts or construction services contracts awarded pursuant to this Section when such bonds otherwise would be legally required. Nonetheless, any person authorized to award a contract may make a request for such bonds whenever it appears to be appropriate.
- C. The Mayor or Equivalent may delegate the authority to award contracts, in whole or in part, to any appropriate person, to responds to the State of Emergency or Disaster .
- D. A written contract is not required, but documentation of contracts awarded pursuant to this section shall be kept to the extent practicable under the circumstances.
- E. All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was illegal or void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.

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- F.** All documentation of Emergency Contracts shall be sent to the Purchasing Agent Chief Procurement Officer for record keeping purposes.
- G.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
- H.** If an Emergency Contract is not in writing, the City shall execute a Written Contract with the Contractor as soon as possible thereafter as circumstances permit.

5.33.140 Cooperative Purchasing.

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Sections 5.33.200, 5.33.210 or 5.33.220.
- B.** The City may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Sections 5.33.200 or 5.33.210.
- C.** The City may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Section 5.33.200 or 5.33.210.
- D.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in PCC Section 5.33.200, 5.33.210 or 5.33.220 if the Solicitation and Award process:
 - 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of competitive Proposals;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and

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3. Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- E. The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in PCC Section 5.33.200, 5.33.210 or 5.33.220 in accordance with PCC Section 5.33.140.
- F. Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of PCC Section 5.33.700 *et seq.*
- G. For purposes of PCC Section 5.33.140 through 5.33.170 the following definitions are applicable:
 1. "Administering Contracting Agency" means a governmental body in this state or in another jurisdiction that solicits and establishes the original Contract for Procurement of goods, services or Public Improvements in a Cooperative Procurement.
 2. "Cooperative Procurement" means a Procurement conducted on behalf of more than one governmental body. "Cooperative Procurement" does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
 3. "Cooperative Procurement Group" means a group of governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
 4. "Interstate Cooperative Procurement" means a permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into Contracts and in which one or more of the participating governmental bodies are located outside this state.
 5. "Joint Cooperative Procurement" means a Cooperative Procurement in which the participating governmental bodies or the Cooperative Procurement group and the bodies' or group's Contract requirements or estimated Contract requirements for Price Agreements are identified.

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6. "Original Contract" means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
7. "Permissive Cooperative Procurement" means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
8. "Purchasing Contracting Agency" means a governmental body that procures goods, services or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

5.33.145 Rules on all types of Cooperative Procurements.

- A. If the City is the Administering Contracting Agency, then:
 1. It may charge a fair and reasonable fee to purchasing Contract agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the purchasing Contract agency must enter into a Written agreement with it.
- B. If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the ~~Purchasing Agent~~ Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a Cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.
- C. Cooperative procurements are subject to the requirements of PCC Section 5.33.105 in regard to service contracts in excess of \$250,000.00.

5.33.150 Joint Cooperative Procurements.

- A. A Joint Cooperative Procurement is a Cooperative Procurement in which the governmental bodies or the Cooperative Procurement Group and the bodies' or Group's Contract requirements or estimated Contract requirements for Price Agreements are identified in the Solicitation Document.
- B. A Joint Cooperative Procurement is valid only if:

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1. The conditions of PCC Section 5.33.140 B. are met;
 2. The Administering Contracting Agency's Solicitation and the Original Contract or Price Agreement identifies the Cooperative Procurement group or each participating Purchasing Contracting Agency and specifies the estimated Contract requirements; and
 3. No material change is made in the terms, conditions or prices of the Contract between the Contractor and the Purchasing Contracting Agency from the terms, conditions and prices of the Original Contract between the Contractor and the Administering Contracting Agency.
- C. A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

5.33.160 Permissive Cooperative Procurements.

- A. A Permissive Cooperative Procurement is a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified in the Solicitation Document.
- B. The City may enter into a Permissive Cooperative Procurement if:
1. The conditions of PCC Section 5.33.140 B. are met;
 2. The Administering Contracting Agency's Solicitation and Award process for the original Contract is allow the City to establish contracts or price agreements under the terms, conditions and prices of the original contract;
 3. The Contractor agrees to extend the terms, conditions and prices of the original contract to the Purchasing Contractor Agency; and
 4. No material change is made in the terms, conditions or prices of the contract or price agreement between the Contractor the Purchasing Contracting Agency from the terms, conditions and prices of the original contract between the Contractor and the Administering Contracting Agency.
- C. If the City wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement it must publish notice of its intent to do so if it is estimated that the City will spend in excess of \$250,000, on Goods and Services acquired under the Contract or Price Agreement.

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- D.** For purposes of determining whether the City must give notice of intent to establish a Contract through a Permissive Cooperative Procurement, as required by ORS 279A.215(2)(a), the estimated amount of procurement will exceed \$250,000 if:
1. The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the City will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
 2. The City's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds \$250,000; or
 3. The City reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.
- E.** The notice of intent required by this rule shall contain the following information:
1. A description of the Procurement;
 2. An estimated amount of the Procurement;
 3. The name of the Administering Contracting Agency; and
 4. A time, place and date by which comments must be submitted to the City regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement;
- F.** Time: The City shall advertise the notice in the same manner as provided in PCC Section 5.33.300 A. The City shall give the notice required by this rule no fewer than seven (7) Days before the deadline for submitting comments regarding its intention to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- G.** An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by PCC Section 5.33.160 D., in the

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Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

- H.** If the City receives comments on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement, the City shall make a Written determination that establishing a Contract or Price Agreement is in the best interest of the City before executing the Contract or using the Price Agreement.

5.33.170 Interstate Cooperative Procurements.

- A.** An Interstate Cooperative Procurement is a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rule or regulations to enter into Contracts and in which one or more of the participating governmental bodies are located outside the State of Oregon.
- B.** The City may procure Goods and Services through an Interstate Cooperative Procurement if:
1. The Conditions of PCC Section 5.33.140 B. are met;
 2. The Administering Contracting Agency's Solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract; and
 3. The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions and prices of the Original Contract to the Purchasing Contracting Agency; and
 4. The City:
 - a. was listed in the Solicitation of the Administering Contract Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or

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- b. is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or
 - c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by 5.33.170 C below.
- C. Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:
 - 1. A description of the proposed Procurement;
 - 2. An estimated amount of the proposed Procurement;
 - 3. The name of the Administering Contracting Agency; and
 - 4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- D. The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- E. If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

- A. For Procurements of Goods and Services not exceeding \$5,000 the City may Award a Contract as a Small Procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such Contractors, including, but not limited to, offering the Contract to only one firm or conducting a competition for the Contract.
- B. State law prohibits a Procurement from being artificially divided or fragmented so as to constitute a small Procurement under this section.

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- C. Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$5,000 without prior approval of the Purchasing Agent Chief Procurement Officer before the additional Goods or Services are provided.

5.33.190 Intermediate Procurements.

- A. Generally. For Procurements of Goods and Services not exceeding \$150,000, the City may Award a Contract as an Intermediate Procurement pursuant to ORS 279B.070. A Procurement shall not be artificially divided or fragmented so as to constitute an intermediate Procurement under this section.
1. Oral Price Quotations: For Procurement of Goods and Services not exceeding \$50,000, the City may Award a Contract after seeking three oral price quotations.
 2. Written Price Quotations: For Procurements of Goods or Services anticipated to exceed \$50,000 but not exceeding \$150,000, the City may Award a Contract after seeking three Written price quotations.
- B. For all intermediate Procurements, the City shall seek at least three informally solicited competitive price quotations or competitive Proposals from prospective Contractors, and shall keep Written records of the sources of the quotations or Proposals received. If three quotations or Proposals are not reasonably available, the City may proceed with the Procurement but only after making a Written record of the effort made to obtain the quotations or Proposals.
- C. Negotiations: The City may negotiate with an Offeror to clarify its price quotation or Proposal or to effect modifications that will make the price quotation or Proposal acceptable or more Advantageous to the City, provided that all Offerors contacted are offered the same opportunity in order to compete on the same basis.

5.33.200 Competitive Sealed Bidding.

- A. The City may procure Goods and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid (ITB) is used to initiate a competitive sealed Bid Solicitation and shall contain the information required by PCC Section 5.33.200 B. Public Notice of the Competitive Sealed Bidding Solicitation shall be provided as required by PCC Section 5.33.300.
- B. Invitation to Bid. The ITB shall include the following:
1. General Information.

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- a. A time and date by which the Bids must be received and a place at which the Bids must be submitted;
- b. The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
- c. A Procurement description;
- d. A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and PCC Section 5.33.510;
- e. A statement that the City may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100 and PCC Section 5.33.645;
- f. A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g. All Contractual terms and conditions applicable to the Procurement;
- h. Notice of any pre-Offer conference as follows:
 - (1) The time, date and location of any pre-Offer conference; and
 - (2) Whether attendance at the conference will be mandatory or voluntary; and
 - (3) That statements made by the City's representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
- i. The form and submission of Offers and any other special information, e.g., whether Offers may be submitted by Electronic means;
- j. The scheduled Closing;

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- k. The office where the Specifications for the Goods or Services may be reviewed;
 - l. A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in PCC Section 5.33.010 A.51.;
 - m. Contractor's Bidder's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See PCC Section 5.33.075); and
 - n. How the City will notify Offerors of Addenda and how the City will make Addenda available. See PCC Section 5.33.430; and
 - o. That Bidders may be required to obtain a Business License and may be required to be EEO certified.
2. City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements; The City's description of its need to purchase must:
- a. Identify the scope of the work to be performed under the resulting contract, if the City awards one;
 - b. Outline the anticipated duties of the Contractor under any resulting contract;
 - c. Establish the expectations for the contractor's performance of any resulting contract; and
 - d. Unless the City, for Good Cause specifies otherwise, the scope of work must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.
3. Evaluation process.
- a. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - b. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid and the evaluation criteria the City will use to determine acceptability of any Goods or Services to be purchased;

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c. If the City intends to Award Contracts to more than one Bidder, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The criteria shall require the City to purchase the lowest priced goods, services or personal service available from the multiple Contracts; and

d. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information the City has available concerning future use.

4. Preference for Goods manufactured from Recycled Materials under PCC Section 5.33.080 and ORS 279A.125;

5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

6. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by state law, the contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

a. The City's reduction or withholding of payment under the Contract;

b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards

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established by the resulting Contract; and

- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.

C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
2. Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated.
3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.
4. Any other circumstances in which City's interest in achieving economy, efficiency, compatibility or availability in the procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard if the applicable or closed industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

5.33.205 Multi-Step Sealed Bidding.

- A. General. The City may use multi-step Competitive Sealed Bidding pursuant to ORS 279B.055(12).

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- B.** Phased Process. Multi-step Bidding is a phased Procurement process which seeks necessary information or un-priced technical Offers in phase one and regular competitive sealed Bidding, inviting Offerors who submitted technically acceptable Offers in phase one, to submit competitive sealed price Bids on the technical Offers in the phase two. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the City may require Offerors to submit a separate sealed price Bid during phase one to be opened after the technical evaluation.
- C.** Public Notice. Whenever the City uses multi-step sealed Bids for Contracts over \$150,000, Public Notice for phase one shall be given in accordance with PCC Section 5.33.300. Public Notice is not required for phase two. However, the City shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to PCC Section 5.33.430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to PCC Section 5.33.720.
- D.** Procedures Generally. In addition to the procedures set forth in PCC Sections 5.33.300 through 5.33.340, the City shall use the procedures set forth in this rule for multi-step Bidding:
- 1.** Solicitation protest. Prior to the Closing of phase one, the City shall provide an opportunity to protest the Solicitation pursuant to ORS 279B.405 and PCC Section 5.33.730.
 - 2.** Addenda Protest. The City may provide an opportunity to protest any Addenda issued after Closing of phase one pursuant to PCC Section 5.33.430.
 - 3.** Exclusion Protest. The City may, but is not required to, provide an opportunity for a Bidder to protest exclusion from phase two of multi-step sealed Bidding as set forth in PCC Section 5.33.720.
 - 4.** Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Bidder from phase two of multi-step Bidding to the extent such protests are provided for in the Solicitation Document required by this section. Failure to protest shall be considered the failure to pursue an administrative remedy made available to the Bidder by the City.
 - 5.** Award Protest. An Affected Person may protest the Notice of Intent to Award issued by the City pursuant to these rules. If the City did not provide an opportunity to protest a Bidder's exclusion from phase two or later phases of multi-step sealed Bidding or an Addendum issued

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following initial Closing, the Bidder may do so following the issuance of the Notice of Intent to Award within the same time frame as an Affected Person.

E. Procedure for Phase One of Multi-Step Sealed Bidding.

- 1.** Form. The City shall initiate multi-step sealed Bidding by the issuance of an Invitation to Bid in the form required for competitive sealed Bids except as hereinafter provided. In addition to the requirements of PCC Section 5.33.200 B., the multi-step Invitation to Bid shall state:
 - a.** that un-priced technical Offers are requested;
 - b.** whether priced Bids are to be submitted at the same time as un-priced technical Offers; if they are, such priced Bids shall be submitted in a separate sealed envelope;
 - c.** that it is a multi-step sealed Bid Procurement, and priced Bids will be considered only in a subsequent phase and only from those Bidders whose un-priced technical Offers are found acceptable in phase one;
 - d.** the criteria to be used in the evaluation of un-priced technical Offers;
 - e.** that the City, to the extent it finds necessary, may conduct oral or Written discussions of the un-priced technical Offers;
 - f.** that Bidders may designate those portions of the un-priced technical Offers which contain trade secrets or other proprietary data which are to remain confidential; and
 - g.** that the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Offer as found to be finally acceptable and shall meet the requirements of the Invitation to Bid; and
 - h.** Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of Intent to Award. Such information can be given or changed by Addenda.
- 2.** Addenda to the Invitation to Bid. After receipt of un-priced technical Offers, Addenda to the Invitation to Bid shall be distributed only to Offerors who submitted un-priced technical Offers.

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3. Receipt of Handling of Un-priced Technical Offers. Un-priced technical Offers need not be opened publicly.
4. Evaluation of Un-Priced Technical Offers. The un-priced technical Offers submitted by Offerors shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. The un-priced technical Offers shall be categorized as:
 - a. Eligible;
 - b. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - c. Ineligible. The City shall record in Writing the basis for finding a Bid ineligible and make it part of the Procurement file. The City may initiate Phase Two of the procedure if, in the City's opinion, there are sufficient eligible un-priced technical Offers to assure effective price competition in phase two without technical discussions. If the City finds that such is not the case, the City shall issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in PCC Section 5.33.205 E.5.
5. Discussion of Un-priced Technical Offers. Clarification of its technical Bid may be conducted by the City with any Bidder who submits an eligible, or potentially eligible technical Bid. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Offer to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Offer has been finally found ineligible, may submit supplemental information amending its technical Offer at any time until the Closing of phase two.. Such submission may be made at the request of the City or upon the Bidder's own initiative.
6. Notice of Ineligible Un-priced Technical Offer. When the City determines a Bidder's un-priced technical Offer to be eligible, such Bidder shall not be afforded an additional opportunity to supplement technical Offers.
7. Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during Phase One:
 - a. before un-priced technical Offers are considered;
 - b. after any discussions have commenced under 5.33.205 E.5; or

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- c. when responding to any amendment of the Invitation to Bid by Addendum. Otherwise mistakes may be corrected or withdrawal permitted in accordance with PCC Section 5.33.490.
- F. Revisions to Solicitation Specifications. After Closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.
- G. Procedure for Phase Two.
 - 1. Initiation. Upon the completion of Phase One, the City shall either:
 - a. open priced Bids submitted in Phase One (if priced Bids were required to be submitted) from Bidders whose un-priced technical Offers were found to be eligible; or
 - b. if priced Bids have not been submitted, technical discussions have been held, or amendments to the Invitation to Bid have been issued by Addendum, invite each eligible Bidder to submit a priced Bid.
 - 2. Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a. as specifically set forth in this rule; and
 - b. no public notice need be given of this invitation to submit priced Bids because such notice was previously given.

5.33.210 Competitive Sealed Proposals.

- A. The City may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060 and this rule. A Request for Proposal is used to initiate a competitive sealed Proposal Solicitation and shall contain the information required by PCC Section 5.33.210 B. The City shall provide Public Notice of the Competitive Sealed Proposal Solicitation as provided in PCC Section 5.33.300.
- B. Mandatory provisions in RFP Solicitation Documents. The RFP shall include the following:
 - 1. General Information.

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- a. A time, date and location when the sealed Proposals must be submitted and received;
- b. The name and title of the person designated for the receipt of Proposals and the person designated by the City as the contact person for the Procurement, if different;
- c. A Procurement description;
- d. A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and PCC Section 5.33.510;
- e. A statement that the City may cancel the Procurement or reject any or all Proposals in accordance with ORS 279B.100 and PCC Section 5.33.645;
- f. A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- g. All Contractual terms and conditions applicable to the Procurement, including warranties and bonding requirements, if necessary. If the City intends to allow discussions or negotiations regarding terms and conditions it must either specify the terms and conditions subject to negotiation or the subject matter reasonably related to the terms and conditions that it will negotiate;
- h. Notice of any pre-Offer conference as follows:
 - (1) The time, date and location of any pre-Offer conference; and
 - (2) Whether attendance at the conference will be mandatory or voluntary; and
 - (3) That statements made by the City's representatives at the conference or elsewhere are not binding upon the City unless confirmed by Written Addendum;
- i. The form and submission of Offers and any other special information, e.g., whether Offers may be submitted by Electronic means;

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- j. The scheduled Closing;
 - k. The location where the Specifications for the Goods or Services may be reviewed;
 - l. Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with PCC Section 5.33.075; and
 - m. How the City will notify Offerors of Addenda and how the City will make Addenda available.
- 2. City Need to Purchase. The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements; The City's description of its need to purchase must:
 - a. Identify the scope of the work to be performed under the resulting Contract, if the city awards one;
 - b. Outline the anticipated duties of the Contractor under any resulting Contract;
 - c. Establish the expectations for the Contractor's performance of any resulting contract; and
 - d. Unless the City for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.
- 3. Proposal and Evaluation process.
 - a. The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - b. Evaluation criteria, including the relative value applicable to each criterion;
 - c. The City shall set forth selection criteria in the Solicitation Document in accordance with the requirements of PCC Section 5.33.210. Evaluation factors need not be precise predictors of

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actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City;

- d. If the City's solicitation process calls for the City to establish a Competitive Range, the City shall state the size of the Competitive Range in the Solicitation Document. However, the City may increase or decrease the number of Proposers in the Competitive Range in accordance with PCC 5.33.215A.1.b
 - e. If the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Goods or Services from those Contractors Awarded Contracts; and
- 4. Preference for Goods manufactured from Recycled Materials under PCC Section 5.33.080 and ORS 279A.125;
 - 5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.
 - 6. All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by state law, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
 - a. The City's reduction or withholding of payment under the Contract;

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b. The City's right to require the contractor to perform, at the contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contractor or applicable law.

7. Optional RFP provisions: The RFP may contain the following provisions:

a. That certain identified Contractual terms or conditions that the City is reserving for negotiation with Proposers;

b. That Proposers propose Contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;

c. The form of Contract that the City will accept, or suggested Contract terms and conditions that nevertheless may be the subject of negotiations with Proposers;

d. That the method of Contractor selection may include negotiations with the highest ranked Proposers, Competitive Negotiations, multiple-tiered competition designed to identify a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

e. That the City may conduct site tours, demonstrations, individual or group discussions and other informational activities with Proposers before or after the Opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation's requirements or to consider and respond to requests for modifications of the Proposal requirements.

f. If the optional provision in PCC Section 5.33.210 B.6.e. is used, the City shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.

C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may

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include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

1. The purpose to which the Goods or Services will be used does not justify a requirement that the Contractor meet the highest prevalent standards in performing the contract;
2. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evaluation of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.
4. Any other circumstances in which City's interest in achieving economy, efficiency, compatibility or availability in the procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard if the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals

- A.** Generally. The City may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in PCC 5.33.210 through PCC 5.33.217 for methods of Contractor selection, the City may provide for a multi-tiered, or multi-step selection process that permits award to the highest ranked Proposer at any time or step, calls for that call for the establishment of a Competitive Range or include discussions or negotiations, the City shall permits either serial or competitive simultaneous discussions with one or more Proposers. The City may employ one or more or any combination of the procedures set forth in this rule for Competitive Range, multi-tiered and multi-step Proposals.
- B.** Solicitation Protest. Prior to the initial Closing, a City shall provide an opportunity to protest the solicitation under ORS 279B.405 and PCC 5.33.730.

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- C.** Addenda Protest. The City may provide an opportunity to protest, pursuant PCC 5.33.430, any Addenda issued pursuant to ORS 279B.060(6)(d).
- D.** Exclusion Protest. The City may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multi-step sealed Proposals as set forth in PCC 5.33.720.
- E.** Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multi-step Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.
- F.** Award Protest. A City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and PCC 5.33.740. An Affected Proposer may protest, for any of the bases set forth in PCC 5.33.720, its exclusion from the Competitive Range or any phase of a multi-tiered or multi-step sealed Proposal, or an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

5.33.215 Negotiations, Discussions within the Competitive Range for RFPs Multi-Tiered or Multi-step Proposals.

- A.** Competitive Range. When the City's Solicitation process conducted pursuant to PCC Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:
 - 1.** Determining Competitive Range.
 - a.** The City shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City shall determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, the City may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under Subsection B. of this Rule.
 - b.** The City may increase or decrease the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes

a natural break in the scores of Proposers indicating a number of Proposers greater or lesser than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. ~~The City may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.~~

2. **Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City evaluation and determination of the Competitive Range in accordance with PCC Section 5.33.720.

3. **Intent to Award; Discuss or Negotiate.** After determination of the Competitive Range and after any protest period provided in accordance with PCC Section 5.33.215 A.2., or after the City has provided a final response to any protest, whichever date is later, the City may either:

a. Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(1) An unsuccessful Proposer may protest the City's intent to Award in accordance with PCC Section 5.33.740.

(2) After the protest period provided in accordance with PCC Section 5.33.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence negotiations in accordance with PCC Section 5.33.215 A.3. with Proposers in the Competitive Range; or

b. Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in PCC Section 5.33.215 B.2. and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in PCC Section 5.33.215 C. of this rule with the Proposers in the Competitive Range.

B. **Discussions; Revised Proposals.** If the City chooses to enter into discussions with and receive best and final Offers (See PCC Section 5.33.215 D.) from all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible proposers") the City shall proceed as follows:

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1. **Initiating Discussions.** The City shall initiate oral or Written discussions with all eligible Proposers ~~submitting Responsive Proposals or all Proposers in the Competitive Range~~ (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the Request for Proposal ("RFP") that the City identified in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:

- a. Informing eligible Proposers of deficiencies in their initial Proposals;
- b. Notifying eligible Proposers of parts of their Proposals for which the City would like additional information; or
- c. Otherwise allowing eligible Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

2. **Conducting Discussions.** The City may conduct discussions with each eligible Proposer necessary to fulfill the purposes of PCC Section 5.33.215 B., but need not conduct the same amount of discussions with each eligible Proposer. The City may terminate discussions with any eligible Proposer at any time. However, the City shall Offer all eligible Proposers the same opportunity to discuss their Proposals with the City before the City notifies eligible Proposers of the date and time pursuant to PCC Section 5.33.215 D. that best and final Proposals will be due.

- a. In conducting discussions, the City:
 - (1) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - (2) Shall disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(6)(a)(B) or (C);
 - (3) May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the Scope of the Request for Proposals.

- b. At any time during the time allowed for discussions, the City may:

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- (1) Continue discussions with a particular eligible Proposer;
- (2) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
- (3) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to PCC Section 5.33.215 D. to the eligible Proposers requesting best and final Offers.

C. Negotiations.

1. Initiating Negotiations. The City may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers as follows:

- a. After initial determination of which Proposals are Responsive; or
- b. After initial determination of the Competitive Range in accordance with PCC Section 5.33.215 A.; or
- c. After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See PCC Section 5.33.215 B.).

2. Conducting Negotiations.

- a. Scope. The City may negotiate:
 - (1) The statement of work;
 - (2) The Contract Price as it is affected by negotiating the statement of work; and
 - (3) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and the City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.
- b. Terminating Negotiations. At any time during discussions or negotiations that the City conducts in accordance with PCC Sections 5.33.215 B. and C., the City may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible

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Proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:

- (1) The eligible Proposer is not discussing or negotiating in good faith; or
- (2) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

3. Continuing Serial Negotiations. If the City is conducting serial negotiations and the City terminates negotiations with a eligible Proposer in accordance with PCC Section 5.33.215 C.2.b., the City may then commence negotiations with the next highest scoring eligible Proposer in the Competitive Range, and continue the process described in PCC Section 5.33.215 C. until the City has either:

- a. Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
- b. Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the City has completed all rounds of discussions or negotiations.

4. Competitive Simultaneous Negotiations. If the City chooses to conduct Competitive Negotiations, the City may negotiate simultaneously with competing Proposers. The City:

- a. Shall treat all Proposers fairly and shall not favor any Proposer over another;
- b. May disclose other Proposers' Proposals or the substance of negotiations with other Proposers only if the City notifies all of the Proposers with whom the City will engage in negotiations of the City's intent to disclose before engaging in negotiations with any Proposer.

5. Any oral modification of a Proposal resulting from negotiations under this section shall be reduced to Writing by the Proposer.

D. Best and Final Offers. If best and final Offers are required, the City shall establish a common date and time by which eligible Proposers must submit best and final

Offers. Best and final Offers shall be submitted only once; provided, however, the City may make a Written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. All eligible Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct evaluations conducted as described in PCC Section 5.33.610. The City shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

5.33.217 Multi-Step Sealed Proposals.

- A.** General. The City may procure Goods and Services by using multi-step Competitive Sealed Proposals pursuant to ORS 279B.060 (6)(b)(G).
- B.** Phased Process. The use of multi-step Proposals is a phased process that seeks necessary information, or un-priced technical Proposals, in phase one and regular competitive sealed Proposals, inviting Offerors who submitted technically acceptable Proposals in phase one, to submit competitive sealed price Bids on the technical Proposals in phase two. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the City may require Proposers to submit a separate sealed price Proposal during phase one to be opened after the technical evaluation.
- C.** Public Notice. Whenever the City uses multi-step sealed Proposals, the City shall give public notice for phase one in accordance with PCC Section 5.33.300. Public notice is not required for phase two. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to PCC Section 5.33.720.
- D.** Procedure for Phase One of Multi-Step Sealed Proposals.

 - 1.** Form. Multi-step sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided by this rule. In addition to the requirements set forth in PCC Section 5.33.215, the multi-step Request for Proposal shall state:

 - a.** that un-priced technical Proposals are requested;

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- b. whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;
 - c. that the Solicitation is a multi-step sealed Proposal Procurement, and priced Proposals will be considered only in phase two from those Proposers whose un-priced technical Proposals are found qualified in phase one;
 - d. the criteria to be used in the evaluation of un-priced technical Proposals;
 - e. that the City, to the extent it finds necessary, may conduct oral or Written discussions of the un-priced technical Proposals;
 - f. that the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals; and
 - g. whether Proposers excluded from phase two have a right to protest the exclusion. Such information can be given and changed through Addenda.
2. Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
3. Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
4. Evaluation of Un-Priced Technical Proposals. The un-priced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. The un-priced technical Proposals shall be categorized as:
 - a. Qualified;
 - b. Potentially qualified; that is, reasonably susceptible of being made qualified; or
 - c. Unqualified. The City shall record in Writing the basis for finding a Proposal unqualified and make it part of the Procurement file.

The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the phase two without technical discussions. If the City finds that such is not the case, the City may issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in Phase One above, or take any other action permitted by these rules.

5. Discussion of Un-priced Technical Proposals. The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of phase two. . Such submission may be made at the request of the City or upon the Proposer's own initiative.
6. Notice of Unqualified Un-priced Technical Proposal. When the City determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.
7. Mistakes During Multi-Step Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:
 - a. before un-priced technical Proposals are considered;
 - b. after any discussions have commenced under PCC Section 5.33.217 D.;
 - c. when responding to any Addendum issued in regard to the Request for Proposals; or
 - d. in accordance with PCC Section 5.33.490.
- E. Methods of Contractor Selection for Phase One. In conducting phase one, the City may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations or best and final Offers as set forth in PCC 5.33.211.
- F. Procedure for Phase Two:

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1. Initiation. Upon the completion of phase one, the City may:
 - a. open the price Proposals submitted in Phase One (if prices were required to be submitted) from Proposers Offeror whose un-priced technical Proposals were found to be qualified; or
 - b. if price Proposals have not been submitted, technical discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.
2. Conduct. Phase two shall be conducted as any other competitive sealed Procurement except:
 - a. as specifically set forth in this rule (Multi-Step Sealed Proposals); and
 - b. No public notice need be given of the request to submit price Proposals because such notice was previously given.

5.33.220 Special Procurements.

- A. The City may Award a Contract as a Special Procurement pursuant to the requirements of this section, which permits class Special Procurements. Such Procurements allow the City to enter into a series of Contracts over time pursuant to the authorization provided in regard to the Special Procurement and without necessarily following the requirements of Competitive Sealed Bidding, Competitive Sealed Proposals or Intermediate Procurements.
- B. For purposes of PCC Section 5.33.220 the following definitions are applicable:
 1. "Class Special Procurement" means a contracting procedure that differs from the procedures described in PCC Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a series of contracts over time or for multiple projects.
 2. "Contract-Specific Special Procurement" means a contracting procedure that differs from the procedures described in PCC Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.
 3. "Special Procurement" means, unless the context requires otherwise, a class special Procurement, a contract-specific special Procurement or both.

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C. The City Council, acting as the Local Contract Review Board may approve a special procurement if it finds that the use of a special procurement or an alternative procedure prescribed by the Council:

1. Is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts; and
2. Is reasonably expected to result in substantial cost savings to the City or to the public; or
3. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, 279B.060, 279B.070 or under the City Rule found in PCC Chapter 5.33.

D. The City Council declares the following as classes of Special Procurements:

1. **Manufacturer Direct Supplies:** The City may purchase goods directly from a manufacturer if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.
2. **Advertisements:** Except as provided by City Charter Section 8-101, the City may purchase advertising in newspapers and Written publications, web-based Internet sites and other electronic formats.
3. **Copyrighted Materials:** The City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
4. **Financial Products:** The City may directly purchase financial products such as bond insurance, surety bonds for City bond reserves and liquidity facilities such as letters of lines of credit.
5. **Employee Benefit Contracts:** Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to PCC Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms

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available to provide the Work and the consultant is authorized to solicit firms pursuant to a Request for Proposal process as well as assist the City in placing advertisements in specific publications likely to reach the attention of such contractors. The City may then negotiate or enter into the Contract that appears most Advantageous to the City without further advertisement or issuance of its own Request for Proposals.

6. Insurance Contracts: Contracts for insurance, including Employee Benefit insurance, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to PCC Chapter 5.68. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to the City about the costs and benefits of the various Proposals. The City may then negotiate or enter into the insurance Contract that appears most Advantageous to the City without advertisement or issuance of its own Request for Proposals.
7. Purchase of Used Personal Property or Equipment: The City may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as "used". Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.
8. Hazardous Material Removal and Oil Clean-up. The City may directly purchase services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:
 - a. To the extent reasonable under the circumstances, encourage competition by attempting to obtain informal price quotations or Proposals from potential suppliers of Goods and Services;
 - b. The Bureau responsible for managing or coordinating the clean-up shall submit a Written description of the circumstances that require it and a copy of the DEQ order for the cleanup to ~~the Bureau of Purchases~~ Procurement Services together with a requisition authorizing the Contract.

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- c. ~~The Bureau of Purchases~~ Procurement Services shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the Contractor to whom Award is made; and
 - d. The timeline for cleanup does not permit the use of intermediate Procurement procedures.
- 9. Amendments to Contracts and Price Agreements: The City may execute Contract amendments, as follows:
 - a. An original valid Contract exists between the parties;
 - b. Unit prices or "add alternates" were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
 - c. The Solicitation Document provided for such amendments; or
 - d. Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with PCC Section 5.33.130; or
 - e. Unplanned Environmental Cleanup: The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal.
- 10. Renegotiations of Existing Contracts with Incumbent Contractors.
 - a. Authorization. The City may renegotiate and amend existing Contracts with incumbent Contractors only if it is in the best interest of the City.
 - b. Process and Criteria. The City may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitutions, warranties, discounts, on-

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line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The City must meet the following conditions in its Renegotiations with incumbent Contractors:

- (1) **Favorable Result.** The City must determine that, with all things considered, the renegotiated Contract is at least as favorable to the City as the Original Contract and document this in the Procurement File. For example, the City and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;
- (2) **Within the Scope.** The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.
- (3) **Optional Term or Condition.** If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially rejected a Contractor's proposed condition that the price required a minimum order, any renegotiated Contract may not mandate this condition; but the City may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and
- (4) **Market.** In order to avoid encouraging favoritism or diminishing competition, the City may research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). If the City researches the Market Norm, then the City must document its results in the Procurement File. Based upon this information, the City shall confirm that, if the City follows the Market Norm, favoritism is not likely to be encouraged,

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competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the City accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

11. Reverse Auctions, pursuant to the process established in PCC Section 5.33.350.
 12. Software and Hardware Maintenance and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance and upgrades without Competitive Solicitation where the maintenance and upgrades are either available from only one source or, if available from more than one provider, are obtained from the City's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's hardware or software system. The City shall document in the Procurement File the facts that justify either that maintenance and upgrades were available from only one source or, if from more than one source, from the current vendor.
 13. Equipment Maintenance, Repair and Overhaul. The City may enter into a Contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
- E.** Notice. The City shall give public notice of the City Council's approval of an Individual or Class Special Procurement on its website as provided in PCC Section 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to PCC Section 5.33.650.
- F.** If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be the most advantageous to the City and thereafter give notice of intent to Award to all prequalified Offerors who sought the Award of a Contract in the manner provided for competitive sealed Bids.

5.33.300 Public Notice of Solicitation for Contracts over \$150,000.

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A. Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with PCC Section 5.33.300 B. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:

1. Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in the City's Solicitations; or
2. Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN" (Oregon Procurement Information Network) or a successor Electronic system; or
3. Place Notice on the City's Internet Web site.

B. Advertising. The City shall advertise every notice of a Solicitation Document as follows:

1. The City shall publish the advertisement for Offers in accordance with the requirements of ORS 297.055(4)(a) and (b); or
2. Because the City finds that it would be cost effective to Electronically post notice of Bids and Proposals, the City may publish the advertisement for Offers by Electronic Advertisement in accordance with the requirements established by PCC Section 5.33.340.

3. Content. All advertisements for Offers shall set forth:

- a. Where, when how and for how long the Solicitation Document may be obtained.
- b. A general description of the Goods or Services to be acquired;
- c. The interval between the first date of notice of the Solicitation Document given in accordance with PCC Section 5.33.300 B. and Closing which shall not be less than fourteen (14) Days for an Invitation to Bid and 21 Days for a Request for Proposals, unless the City determines that shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with PCC Section 5.33.300 B. and Closing be less than seven (7) Days as set forth in PCC Section 5.33.200. The City shall document the specific reasons for the shorter public notice period in the Procurement file;

- d. The date that Persons must file applications for Prequalification if Prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
 - e. The office where Contract terms, conditions and Specifications may be reviewed;
 - f. The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - g. The scheduled Opening; and
 - h. Any other information the City deems appropriate.
- C.** Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at ~~the Bureau of Purchases~~ Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request.
- D.** The City may charge a fee or require a deposit for the Solicitation Document.
- E.** The City shall provide potential Offerors notice of any Addendum to a Solicitation Document in accordance with PCC Section 5.33.430.

5.33.310 Specifications and Brand Names.

- A.** Specification content is in the sole discretion of the City of Portland.
- B.** The City may consult with technical experts, suppliers, prospective Contractors and representative of the industries with which the City will Contract. The City shall take reasonable measure to ensure that no person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scopes of Work (collectively, "documents"), and that no business with which the person is associated realizes a material competitive advantage in a Procurement that arises from the City's use of those documents.
- C.** A "brand name or equal" Specification may be used when it is Advantageous to the City. The brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City's determination of what constitutes a product that is equal or superior to the product specified is final. Unless otherwise specified, the use of a brand name shall mean "brand name or equal."

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D. A "brand name" Specification may be used requiring a Contractor to provide a specific brand only if the ~~Purchasing Agent~~ Chief Procurement Officer, or designee, makes a Written determination finding that the brand name will meet one or more of the following needs:

1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Contract or substantially diminish competition for Contracts; or
2. The use of a brand name Specification would result in a substantial cost savings to the City; or
3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.

E. The City's use of a brand name specification is subject to protest and review only as provided in PCC Section 5.33.730.

5.33.320 Bids or Proposals are Offers.

- A.** Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for the period specified in PCC Section 5.33.495. The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- B.** Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- C.** Contingent Offers. Except to the extent an Offeror is authorized to propose certain terms and conditions pursuant to PCC Section 5.33.215 a Proposer shall not make its Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- D.** Offeror's Acknowledgment. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits alternative terms under PCC Section 5.33.215, the Proposal includes the

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nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.

5.33.330 Facsimile Bids and Proposals.

A. City Authorization. The ~~Purchasing Agent~~ Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the City determines that a Bid or Proposal Security is or will be required, the City should not authorize Facsimile Offers unless the City has another method for receipt of such security. Prior to authorization, the City must determine whether the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

1. For receiving, identifying, recording, and safeguarding Facsimile Offers, and
2. To ensure timely delivery of Offers to the location of Opening; and
3. To preserve the "sealed" requirement of competitive Procurement.

B. Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a Facsimile Offer, the City will include in the Solicitation Document provisions substantially similar to the following:

1. A "Facsimile Offer," as used in this Solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a Facsimile machine.
2. Offerors may submit Facsimile Offers in response to the Solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
3. That Offerors must Sign their Facsimile Offers.
4. The City reserves the right to Award the Contract solely on the Facsimile Offer. However, upon the City's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.
5. The data and compatibility characteristics of the City's receiving Facsimile machine as follows:
 - a. Telephone number;

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- b. Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.
6. The City is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:
- a. Receipt of garbled or incomplete documents.
 - b. Availability or condition of the receiving Facsimile machine.
 - c. Incompatibility between the sending and receiving Facsimile machine.
 - d. Delay in transmission or receipt of documents.
 - e. Failure of the Offeror to properly identify the Offer documents.
 - f. Illegibility of Offer documents.
 - g. Security and confidentiality of data.

5.33.340 Electronic Procurement.

- A. The City may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by Electronic methods if and to the extent the City specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.
- B. The City shall open an Electronic Offer in accordance with Electronic security measures in effect at the City at the time of its receipt of the Electronic Offer. Unless the City provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- C. The City's use of Electronic Signatures shall be consistent with applicable statutes and rules. The ~~Purchasing Agent~~ Chief Procurement Officer may limit the use of Electronic methods of conducting a Procurement as Advantageous to the City.
- D. If the City determines that Bid or Proposal Security is or will be required, the ~~Purchasing Agent~~ Chief Procurement Officer will not authorize Electronic Offers unless the City has another method for receipt of such security.

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- E.** Rules Governing Electronic Procurements. The City shall conduct all portions of an Electronic Procurement in accordance with these rules, unless otherwise set forth in this rule.
- F.** Preliminary Matters. As a condition of participation in an Electronic Procurement the ~~Purchasing Agent~~ Chief Procurement Officer may require potential Contractors to register with the City before the date and time on which the City will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the City may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an Electronic Signature.
- G.** Offer Process. The ~~Purchasing Agent~~ Chief Procurement Officer may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the ~~Purchasing Agent~~ Chief Procurement Officer specifies that Persons may submit multiple Electronic Offers during a specified period of time, the City must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the City will accept Electronic Offers for a period of time, then at the designated date and time that the City will first receive Electronic Offers, the City must begin to accept "real time" Electronic Offers on the City's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with 5.33.340 H.2 until the date and time specified by the City, after which the City will no longer accept Electronic Offers.
- H.** Receipt of Electronic Offers.
- 1.** When the City conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the City shall receive the Electronic Offers in accordance with these rules.
 - 2.** When the City specifies that Persons may submit multiple Offers during a period of time, the City shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:
 - a.** Following receipt of the first Electronic Offer after the Day and time the City first receives Electronic Offers the City shall post on the City's Electronic Procurement System, and updated on a real

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time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the City will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

b. A Person may not increase the price set forth in an Electronic Offer after the Day and time that the City first accepts Electronic Offers.

c. A Person may withdraw an Electronic Offer only in compliance with these rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

I. Failure of the E-Procurement System. In the event of a failure of the City's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the City may cancel the Procurement in accordance with PCC Section 5.33.660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

5.33.350 Reverse Auctions.

A. Conditions for use. When the City determines that online Solicitation is an Advantageous Procurement method, a Contract may be entered into by competitive online Bidding, subject to the provisions of Competitive Sealed Bidding or Competitive Sealed Proposals.

B. Offer process. The Solicitation must designate both an Opening date and time and a Closing date and time. The Closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the Solicitation. At the Opening date and time, the City must begin accepting real time Electronic Offers. The Solicitation must remain open until the Closing date and time. The City may require Offerors to register before the Opening date and time and, as a part of that registration, to agree to the terms, conditions, or other requirements of the Solicitation. Following receipt of the first Offer after the Opening date and time, the lowest Offer price or, if Proposals are accepted, the ranking of each Proposer, must be posted Electronically to the Internet and updated on a real time basis. At any time before the Closing date and time, an Offeror may lower the price of its Offer or revise its Proposal except that after Opening date and time, an Offeror may not lower its price unless that price is below the then lowest Offer. Offer prices may not be increased after Opening. Except for Offer prices, Offers may be modified only as otherwise allowed by these rules or the Solicitation Document.

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An Offer may be withdrawn only in compliance with these rules. If an Offer is withdrawn, no later Offer submitted by the same Offeror may be for a higher price. If the lowest Responsive Offer is withdrawn after the Closing date and time, the City may cancel the Solicitation or reopen the Solicitation to all pre-existing Offerors by giving notice to all pre-existing Offerors of both the new Opening date and time and the new Closing date and time. Notice that Electronic Solicitation will be reopened must be given as specified in the Solicitation Document.

- C.** Failure of the Electronic Procurement System. In the event of a failure of the Electronic Procurement System that interferes with the ability of Offerors to submit Offers, protest, or to otherwise meet the requirements of the Procurement, the City may cancel the Solicitation or may extend the Solicitation by providing notice of the extension immediately after the System becomes available.

5.33.360 Contract Conditions

Every Contract shall contain the conditions required by ORS 279B.220, 225, 230 and 235.

5.33.400 Offer Preparation.

- A.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Unless otherwise instructed, or unless Electronic Offers are permitted, signatures shall be in ink. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- B.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- C.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document. If the Solicitation Document instructs Offerors not to include documents or literature, such as warranty provisions, the City is entitled to disregard those documents in determining whether the Offer is responsive to the City's request.
- D.** Electronic Submissions. If the Solicitation Document permitted Electronic Offers under PCC Section 5.33.340 an Offeror may submit its Offer Electronically. The City shall not consider Electronic Offers unless authorized by the Solicitation Document.

5.33.410 Bid or Proposal Security.

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- A. Offer Security, not to exceed 10 percent of the Offer, is not required for Contracts other than Public Improvement Contracts unless the ~~Purchasing Agent~~ Chief Procurement Officer determines otherwise. If required, the purpose of Offer Security is to guarantee acceptance of the Award of the Contract. This requirement shall be stated in the Solicitation Document.
- B. The ~~Purchasing Agent~~ Chief Procurement Officer may require Offer Security from any Offeror, even if the City has exempted a class of Solicitations from Offer Security.
- C. The Offer Security shall be forfeited if the Offeror fails to execute the Contract promptly and properly after the City has Awarded the Contract, unless the ~~Purchasing Agent~~ Chief Procurement Officer determines forfeiture is not in the City's best interest.
- D. The City shall not use Offer Security to discourage competition.
- E. Return of Offer Security. The Offer Security of all unsuccessful Offerors shall be returned or released after a Contract has been executed and evidence of insurance and a performance bond provided (if insurance or performance bond is required by the Solicitation Document), or after all Offers have been rejected. The City may return the Offer Security of unsuccessful Offerors after Opening, but prior to Award, if the return does not prejudice Contract Award and provided that the security of at least the two lowest Bidders, or the two highest scoring Proposers, is retained pending the Award and execution of a Contract.
- F. Form of Bid or Proposal security. The City may accept only the following forms of Bid or Proposal security:
 - 1. A surety bond, signed by the surety's authorized Attorney in Fact, that is authorized to do business in the State of Oregon and is duly listed in the United States Treasury list as published in the Federal Register, or is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of corporate seal; or
 - 2. A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
 - 3. Cashier's check or Offeror's certified check; or

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4. An annual surety bond filed with the City (except for Public Improvement Contracts) that meets all the requirements of PCC Section 5.33.410 F.1. above.

5.33.420 Pre-Offer Conferences.

- A. Purpose. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Solicitation requirements, obtain information, or to conduct site inspections.
- B. Required Attendance. The City may require attendance at the pre-Offer conference as a condition for making an Offer. A prospective Offeror who fails to attend a mandatory conference is not eligible to make an Offer. If an Offer is made it will be rejected as nonresponsive.
- C. Scheduled Time. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- D. Statements Not Binding. Statements made by a City representative at the pre-Offer conference or elsewhere about the proposed Contract or Solicitation Document do not change the Solicitation Document unless the ~~Bureau of Purchases~~ Procurement Services confirms such statements with a Written Addendum to the Solicitation Document.
- E. City Announcement. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PCC Section 5.33.300.

5.33.430 Addenda to Solicitation Document

- A. Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound to the terms contained in all Addenda so issued.
- B. Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in PCC Section 5.33.300. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available. For example, the City may state: "City will not mail notice of Addenda, but will publish notice of any

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Addenda on City's Web site. Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily during the week of the Closing."

C. Timelines; Extensions.

1. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the information contained in the Addenda in preparing their Offers. The City should extend the Closing if the ~~Purchasing Agent~~ Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the ~~Purchasing Agent~~ Chief Procurement Officer determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. For purposes of computing this time, the Addendum shall be deemed issued to occur when it is first posted on the City's web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
2. Notwithstanding PCC Section 5.33.430 C.1., an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multi-step sealed Bid or a multi-tiered or multi-step sealed Proposal issued in accordance with PCC Sections 5.33.205 and 5.33.210 through 5.33.217 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

- D. Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in PCC Section 5.33.730, by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tier or

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multi-step Procurement process conducted pursuant to PCC Section 5.33.200 or 5.33.210.

5.33.440 Request for Clarification or Change.

- A. Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change of the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by PCC Section 5.33.430 D.
- B. Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and, a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.
- C. Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Purchasing Agent Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D. Identification of request for change. Envelopes containing requests for change or protests of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
 - 1. Solicitation Specification or Contract Provision Request for Change; and
 - 2. Solicitation Document Number or Other Identification.
- E. A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, the request for change procedure shall be governed by the Solicitation Document and PCC Section 5.33.215 C.
- F. Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does

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not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addendum.

5.33.450 Offeror Submission.

A. Product Samples and Descriptive Literature. Product Samples or Descriptive Literature may be required if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, return, or make available for return, Product Samples to the Offeror in accordance with the Solicitation Document.

B. Identification of Offers.

1. To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits Electronic Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers in accordance with the Solicitation Document.
2. The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
3. Receipt of Offers. The Offeror is responsible for ensuring the City receives its Offer at the ~~Bureau of Purchases~~ Procurement Services prior to the stated Closing time for Offers, regardless of the method used to submit or transmit the Offer. Offers not so received are late as provided in PCC Section 5.33.480 and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided by PCC Section 5.33.480 shall apply except the submission shall be returned to the Offeror.

5.33.460 Pre-Closing Modification or Withdrawal of Offers.

A. Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:

1. Offer Modification; and

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2. Solicitation Number or other identification as specified in the Solicitation Document.

B. Withdrawals:

1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to ~~the Bureau of Purchases~~ Procurement Services if no location is specified, and received by the specific location or to ~~the Bureau of Purchases~~ Procurement Services, as appropriate, prior to the time and date set for Closing.
2. The Offeror or Authorized Representative of the Offeror may withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority. Because of the chance for error or misidentification, the City reserves the right to reject a purported withdrawal if in the judgment of the City, sufficient identification is not provided.
3. The City may release an unopened Offer withdrawn under PCC Section 5.33.460 B.1. to the Offeror or its Authorized Representative, after voiding any date and time stamp mark or otherwise by appropriately marking the envelope in which the Offer was received.
4. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Offer Withdrawal; and
 - b. Solicitation Number or other identification as specified in the Solicitation Document.
 - c. Documentation. The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

5.33.470 Receipt, Opening, and Recording of Offers.

- A. Receipt. ~~The Bureau of Purchases~~ Procurement Services shall Electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Offer or modification shall not be opened, but shall be stored in a secure place until Opening. If an Offer or modification is inadvertently opened prior to the Opening, the City shall reseal and store the opened Offer or

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modification for Opening. That action shall be documented and placed in the appropriate Solicitation file. (E.g. "City inadvertently opened the Offer due to improper identification of the Offer.")

B. Opening and recording. Offers shall be opened publicly, including any modifications made to the Offer pursuant to PCC Section 5.33.460.

1. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder shall be read aloud as well as the Bid price(s), and such other information as the City considers appropriate.

2. In the case of Requests for Proposals, the City will not read Proposals aloud, but will only disclose the name of each Proposer.

C. Availability. After Opening, Offers will be available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475.

1. To the extent such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer.

2. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary. The ~~Purchasing Agent~~ Chief Procurement Officer may determine the appropriate charge to be paid for copies made pursuant to public records requests and may request payment for such copies before they are released.

3. Notwithstanding anything contrary above, the City is not required to disclose the contents of Proposals until after the City posts a Notice of Intend to Award pursuant to PCC Section 5.33.650.

5.33.480 Late Offers, Late Withdrawals and Late Modifications.

A. Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications

B. For manual submissions of Offers, the ~~Bureau of Purchases~~ Procurement Services' time clock shall be the clock of record and the date and time imprint of

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that clock on an Offer shall determine the timeliness of the submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing the Bureau's time stamp on the Offer retained for the Solicitation file

- C.** For Electronic submissions, when permitted, the time shown by the City as to the date of arrival of the Electronic submission shall determine the timeliness of the submission. Late Electronic submissions shall be deleted from the City's files, returned Electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file.
- D.** For Facsimile submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.
- E.** Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

5.33.490 Mistakes.

- A.** General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.
- B.** Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in the City's discretion pursuant to this rule.
- C.** City notification. If the City believes the Offer contains a mistake the City shall notify the Offeror, note the apparent mistake and request that the Offeror verify the Offer in writing, or by electronic transmission within one business day after notification.
- D.** Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, the City shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by the City, or there are other indications of error so clear, as to reasonably justify the conclusion or that acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case the City shall be entitled to reject the Offer. The City may extend the time for response for good cause shown.

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E. Verification. If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.

F. Minor Informality. If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:

1. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
2. Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
3. Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.

G. Clerical Mistakes. If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.

1. Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
2. If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
3. If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides the City with clear and convincing

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supporting evidence of the mistake and intended Offer within two business days after the City's initial notification of the mistake. The City may extend the time for response for good cause shown.

- a. Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred and the Offer actually intended.
- b. The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.33.495 Time for City Acceptance.

- A. An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.
- B. An Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.

5.33.500 Responsibility of Offerors.

- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, the City shall consider whether the Offeror has:
 1. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all Contractual responsibilities;
 2. Has completed previous contracts of a similar nature with a satisfactory record of performance. A "satisfactory record of performance" means that to the extent the costs associated with and time available to perform a previous contract were within the Offer's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's records of contract performance if the Offeror is or

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recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror nonresponsible non-Responsible under this paragraph;

3. A satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on lack of integrity of any Person having influence or control over the Offeror (such as key employees of the Offeror has the authority to significantly influence the Offeror's performance of the Contractor or a parent company, predecessor or successor Person.) The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontractor or in connection with the Offeror's performance of a contract or subcontract. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror nonresponsible non-Responsible under this paragraph;
4. Qualified legally to Contract with the City. The Bureau of Purchases Procurement Services may determine that such an Offeror is not legally qualified if:
 - a. The Offeror does not have a business license with the City; or
 - b. The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available

information or may find the prospective Offeror ~~nonresponsible~~ non-Responsible;

6. Not been debarred by the City under ORS 279B.130, PCC Section 5.33.530 or 5.33.540.

B. In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279B.110.

C. Form of Business Entity. For purposes of this rule, the city may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

5.33.505 Qualified Products Lists.

A. City Bureaus may develop and maintain a qualified products list when it is necessary or desirable to test or examine goods before initiating a Procurement. "Goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

B. When any Bureau begins the initial development of a qualified products list, the ~~Purchasing Agent~~ Chief Procurement Officer shall give public notice in accordance with PCC Section 5.33.300 of the opportunity for potential Contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list.

1. The ~~Purchasing Agent~~ Chief Procurement Officer may also solicit in Writing representative groups of potential Contractors, sellers or suppliers to submit goods for the testing and examination.

2. Any potential Contractor, seller, or supplier, even though not solicited, may offer its goods for consideration.

C. The determination of whether a particular good satisfies the Bureau's needs is entirely within the Bureau's sole discretion.

5.33.510 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.

A. The City may Prequalify prospective Offerors as follows:

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1. The ~~Purchasing Agent~~ Chief Procurement Officer shall determine the types of forms, the method of submitting applications and the information required to be a prequalified Offeror for Goods or Services.
 2. Prospective Offerors shall submit the application on the form required by the ~~Purchasing Agent~~ Chief Procurement Officer.
 3. Upon receipt of the application, the City shall investigate the prospective Offeror as necessary to determine whether the Prequalification should be granted.
 4. If an early Prequalification decision is requested, the City shall make that decision in less than 30 Days, if practicable.
 5. The ~~Purchasing Agent~~ Chief Procurement Officer shall notify prospective Offerors whether or not they have been prequalified. If a prospective Offeror is not prequalified, the ~~Purchasing Agent~~ Chief Procurement Officer shall specify which of the standards of responsibility listed in PCC Section 5.33.500 the prospective Offeror failed to meet.
- B.** If the City determines that a prequalified Offeror is no longer qualified the ~~Purchasing Agent~~ Chief Procurement Officer may revoke or revise the Prequalification upon reasonable notice, except that a revocation or revision is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued.
- C.** Notwithstanding the prohibition against revocation of Prequalification generally in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible for any given Contract prior to Contract Award.
- D.** The City may pre-negotiate some of all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section A or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the City and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. The City may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the City has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, the City may consider the terms and conditions in the Proposal evaluation process.

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5.33.530 Debarment of Prospective Offerors.

A. The City may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.

B. The City may debar a prospective Offeror from consideration for City Contracts for a period up to three (3) years if:

1. The Offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or Subcontract or in the performance of such Contractor or Subcontract;

2. The Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Offeror's responsibility as a Contractor;

3. The Offeror has been convicted under state or federal antitrust statutes;

4. The Offeror has committed a violation of a Contract provision that is regarded by the City or the Construction Contractors Board to be so serious to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment; or

5. The Offeror does not carry workers' compensation or unemployment insurance as required by Oregon Law.

C. The City may debar a prospective Offeror as follows:

1. Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.435 and PCC Section 5.33.760; and

2. Mail or immediately furnish a copy of the decision to the debarred Offeror.

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- D.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, the City may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- E.** Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- F.** Limited participation. The City may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

5.33.540 DBE Disqualification.

- A.** The City may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a Subcontractor) as follows:
 - 1.** For a DBE disqualification pursuant to ORS 200.065 the City may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065, or if the Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.
 - 2.** For a DBE disqualification pursuant to ORS 200.075, the City may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075 (a) through (c).
- B.** The City may disqualify or suspend a Person's right to submit Offers or participate in a Contract only for the length of time permitted by ORS 200.065 or ORS 200.075 as applicable.
- C.** The City shall provide Written notice to the Person in Writing of a proposed DBE Disqualification pursuant to this section, served personally or by registered or certified mail, return receipt requested. This notice shall:
 - 1.** State that the City intends to disqualify or suspend the Person;
 - 2.** Set forth the reasons for the DBE Disqualification;
 - 3.** Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the City does not

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- receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 5. Include a reference to the particular sections of the statutes and rules involved;
 6. State the proposed DBE Disqualification period; and
 7. State the Person may be represented by legal counsel.
- D.** The City shall schedule a hearing upon the City's receipt of the Person's timely request. The City shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.
- E.** The ~~Purchasing Agent~~ Chief Procurement Officer may conduct the hearing or refer the hearing to the Board of Appeals or the Portland City Council for decision. The decision of the Board of Appeals or Council shall be final, with no further appeal.
- F.** The City shall provide Written notice of the DBE Disqualification to the Person. The City shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. Notification is effective, even if not served personally, if the City uses what its records show to be the last known address of the Person. The notice shall contain:
1. The effective date and period of the DBE disqualification
 2. The grounds for DBE disqualification and
 3. A statement of the Person's appeal rights and applicable appeal deadlines.

5.33.610 Offer Evaluation and Award.

- A.** General. If a Contract is Awarded, the City shall Award the Contract to the Responsible Offeror submitting the lowest, Responsive Bid. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B.** Multiple Items. An Invitation to Bid or Request for Proposal may call for pricing of multiple items of similar or related type with Award based on individual line

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item, group total of certain items, a "market basket" of items representative of the total requirement, or grand total of all items.

- C. All or none Offers. All or none Bids or Proposals may be accepted if the evaluation shows an all or none Award to be the lowest cost of those submitted.
- D. Clarification of Offers. After Opening, discussions may be conducted with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the City's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any Offer must be documented in Writing by City and shall be included in the file.
- E. Multiple Awards - Bids. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to purchase the lowest priced goods or services available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City's needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar products is necessary for adequate availability, delivery, and service or product compatibility. Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to utility or economy. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- F. Multiple Awards – Proposals. If a Solicitation permits the Award of multiple Contracts, the City shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require the City to procure the goods or services that are most Advantageous to the City available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet the City's needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar Goods or Services is necessary for adequate availability, delivery, and service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- G. Partial Awards. If after evaluation of competitive Offers, the City finds that a qualified Offer has been received for only parts of the requirements of the Solicitation:

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1. A Contract may be Awarded for the parts of the Solicitation for which qualified Offers have been received.
 2. All Offers may be rejected and a new Invitation to Bid or Request for Proposals on the same or revised terms, conditions and Specifications may be issued.
- H.** City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- I.** Evaluation of Bids. The City shall evaluate Bids as set forth in ORS 279B.055(6)(a).
1. In evaluating Bids, the City shall apply the Contract preferences set forth in PCC Sections 5.33.625 through 5.33.635.
 2. Low, Tied Offers. Low, tied Offers shall be resolved pursuant to PCC Section 5.33.625.
- J.** Evaluation of Proposals. The City shall evaluate Proposals as set forth in 279B.060(6) and PCC Section 5.33.210 and in the event of low, tied Proposals, in accordance with PCC Section 5.33.625.
- K.** Recycled Materials. In determining the most Advantageous Responsive Proposal the City shall give preference for recycled materials as set forth in ORS 279A.125 and PCC Section 5.33.635.

5.33.620 Negotiation With Offerors Prohibited.

The City shall not negotiate with any Offeror in regard to the acquisition of Goods and Services if the Procurement was pursuant to an Invitation to Bid. This rule does not prevent the City from seeking a clarification of an Offer, provided the clarification does not change the Offer. This rule does not prohibit negotiation with a Proposer in response to a Request for Proposals provided the requirements of these rules have been met.

5.33.625 Contract Preferences.

- A.** Award When Offers Identical. When the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:
1. The City shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, that have been manufactured or produced in Oregon.

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2. If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The City shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for those Offerors to be present when the lots are drawn.
 3. If the City receives identical Offers, and none of the identical Offers offer Goods or Services, or both, that have been manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offerors. The City shall provide to the Offerors that submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity to be present when the lots are drawn.
- B. Determining if Offers are Identical.** The City shall consider Offers identical in price, fitness, availability and quality as follows:
1. Bids received in response to an Invitation to Bid issued under PCC Section 5.33.200 or ORS 279C.335 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.
 2. Proposals received in response to a Request for Proposals issued under PCC Section 5.33.210, are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
 3. Proposals received in response to a Special Procurement conducted pursuant to PCC Section 5.33.220 are identical in price, fitness, availability and quality if, after completing the Contracting procedure approved by the City if the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.
 4. Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).
- C. Determining if Goods or Services are Manufactured or Produced in Oregon.** For the purposes of complying with PCC Section 5.33.625 A., the City shall determine whether a Contract is predominantly for Goods or Services and then use the predominant purpose to determine if the Goods or Services are

manufactured or produced in Oregon. The City may request in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information the City may need to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Offeror.

- D.** Procedure for Drawing Lots. When this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

5.33.630 Reciprocal Preferences.

- A.** When evaluating Bids pursuant to PCC Section 5.33.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.
- B.** The City shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both:
1. whether the Nonresident Bidder's state gives preference to in-state Bidders, and
 2. the amount of such preference.

5.33.635 Contract Preferences: Recycled Materials.

- A.** Notwithstanding provisions of law requiring the City to Award a Contract to the lowest Responsible Bidder or best Proposer or provider of a quotation, and subject to PCC Section 5.33.635 B., the City shall give preference to the Procurement of goods manufactured from recycled materials.
- B.** In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four (4) conditions exists:
1. The recycled product is available;

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2. The recycled product meets applicable standards;
 3. The recycled product can be substituted for a comparable non-recycled product; and
 4. The recycled product's costs do not exceed the costs of non-recycled products by more than five (5) percent, or a higher percentage if a Written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to PCC Section 5.33.610.
- C. For the purposes of this section, the City shall determine if goods are manufactured from recycled materials in accordance with standards established by the City.

5.33.640 Rejection of all or part of an Offer.

- A. Investigation. The City may, but is not required to, seek clarification of an Offer to determine whether it is responsive and make such investigation as necessary to determine whether an Offeror is responsible. The investigation may include:
1. An inquiry into the responsibility of the Offeror's proposed Subcontractor and suppliers;
 2. Requiring an Offeror to demonstrate its financial ability to perform the Contract. In exercising this right, the City shall notify the apparent successful Offeror in Writing to submit such documentation as the City deems necessary to complete a thorough evaluation of the Offeror's financial ability;
 3. Obtaining any credit report information that the City deems necessary to investigate and evaluate whether the Offeror is financially responsible. By submitting an Offer, the Offeror authorizes the City to investigate its credit, to obtain credit reports and to cooperate in the event that credit information is requested by the City.
 4. Any action necessary to ascertain whether the Offeror is responsible.
- B. Grounds for Rejection.

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1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest.
2. The City may reject any Offer, in whole or in part, when rejection is in the best interest of the City as determined by the City. If so, the reasons for rejection shall be made part of the Solicitation file.
3. The City shall reject an Offer as nonresponsive upon the City's finding that the Offer:
 - a. is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. takes exception to terms and conditions (including Specifications);
 - c. attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d. offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
 - e. is late;
 - f. is not in substantial compliance with the Solicitation Documents;
 - g. is not in substantial compliance with all prescribed public Solicitation procedures;
 - h. contains a deviation that, if the Offer was accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
 - i. has failed to comply with the programs adopted pursuant to PCC Section 5.33.900.
4. The City shall reject an Offer upon the City's finding that the Offeror:
 - a. Has not been prequalified under ORS 279B.120 and the City required mandatory Prequalification;
 - b. Has been debarred as set forth in ORS 279B.130;

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- c. Has not met the requirements of ORS 279A.105 regarding subcontracting to emerging small businesses when required to do so by the City;
- d. Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
- e. Has failed to provide the certification of nondiscrimination required by PCC Section 5.33.640 D.; or
- f. Is not a otherwise nonr Responsible contractor pursuant to 5.33.500 and state law. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the City must determine that the Offeror:
 - (1) ~~Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all Contractual responsibilities;~~
 - (2) ~~Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for determining an Offeror nonresponsible under this section part of the Solicitation file;~~
 - (3) ~~Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control~~

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~~over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is nonresponsible under this section part of the Solicitation file;~~

~~(4) — Is qualified legally to Contract with the City. The City may find the Offeror is not legally qualified to contract with the City if:~~

~~(a) — The Offeror does not have a business license with the City; or~~

~~(b) — The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of an Offer, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.~~

~~(5) — Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.~~

C. Form of Business. For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring an ownership interest of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

D. Certification of Non-Discrimination. The Offeror shall certify and deliver to the City the Written certification required by PCC Section 5.33.075 B.3.

5.33.645 Rejection of All Offers.

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- A. Rejection. The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.
- B. Criteria. The City may reject all Offers upon a Written finding that:
 - 1. The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
 - 2. The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
 - 3. Misconduct, error, or ambiguous, conflicting or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
 - 4. Causes other than legitimate market forces threaten the integrity of the competitive Solicitation process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
 - 5. The City cancels the Solicitation in accordance with PCC Section 5.33.660; or
 - 6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.33.650 Notice of Intent to Award.

- A. Applicability: This section applies to Awards of a Contract, except for small Procurements pursuant to PCC Section 5.33.180, intermediate Procurements pursuant to PCC Section 5.33.190, sole source Procurements pursuant to PCC. 5.33.120, Emergency Procurements pursuant to PCC Section 5.33.130 or a Special Procurement pursuant to PCC Section 5.33.220.
- B. Notice: The City shall provide Written notice of Intent to Award a Contract to all Offerors. If the Solicitation was posted by Electronic means, however, the City may post the Intent to Award Electronically in the same manner as the Solicitation. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the City determines that circumstances require prompt execution of the Contract. The City shall document the specific reasons for the shorter notice period in the Solicitation file.

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C. The City's Award shall not be final until the latest of the following three (3) dates:

1. Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award. For purposes of this section, the Day on which the Notice is posted from which the seven Days shall begin to run shall not be included, but the last Day of the period shall be included;
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
3. Upon the conclusion of any appeal pursuant to PCC Section 5.33.740.

5.33.660 Cancellation, delay or suspension of Solicitation.

- A.** Cancellation in the Public Interest. Prior to Opening, the City may cancel a Solicitation or Procurement described in a Solicitation may be canceled in whole or in part prior to Contract Execution when cancellation is in the best interest of the City as determined by the City.
- B.** Delay or Suspension. Any Solicitation or Procurement desired in a Solicitation may be delayed or suspended when the delay or suspension is in the best interest of the City as determined by the City.
- C.** Costs. The City is not liable to any Offeror for costs, expenses or losses caused by the cancellation, delay or suspension.
- D.** Notice. If the City cancels, delays or suspends a Solicitation prior to Opening, the City shall provide notice of cancellation in the same manner that the City initially provided notice of the Solicitation. Such notice of cancellation shall:
 1. Identify the Solicitation;
 2. Briefly explain the reason for cancellation; and
 3. If appropriate, explain that an opportunity will be given to compete on any Re-Solicitation.
- E.** Notice of Cancellation After Opening. If the City cancels a Procurement or Solicitation after Opening, the City shall provide Written notice of Cancellation to all Offerors who submitted Offers.

5.33.670 Disposition of Offers if Solicitation Canceled.

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- A.** Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City will open the Offer to determine the source and then return it to the Offeror.
- B.** After Offer Opening. If the City rejects all Offers, the City will retain all such Offers as part of the City's Solicitation file. If a Request for Proposals is cancelled after Proposals are received, the City may return a Proposal to the Proposer that made the Proposal provided the protest period for challenging the cancellation of the Solicitation has expired. The City shall keep a list of returned Proposals in the Solicitation file.

5.33.675 Documentation of Award.

- A.** Basis of Award. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.
- B.** Contents of Award Record. The City's record shall include
 - 1.** Bids.
 - a.** Completed Bid tabulation sheet; and
 - b.** Written justification for any rejection of lower Bids.
 - 2.** Proposals.
 - a.** The completed evaluation of the Proposals;
 - b.** Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - c.** If the City permitted negotiations in accordance with PCC Section 5.33.215, the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

5.33.685 Availability of Award Decisions.

- A.** Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.

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- B. Notification to Unsuccessful Offerors.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the City a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- C. Availability of Solicitation Files.** Subject to PCC Section 5.33.200 and ORS 279B.060 the City shall make completed Solicitation files available for public review at the City.
- D.** The City may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or ORS 192.502 including trade secrets, as defined in ORS 192.501 and information submitted to a public body in confidence, as described in ORS 192.502.
- E.** Copies from Solicitation Files. Subject to PCC Section 5.33.200 and ORS 279B.060 any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

5.33.690 Performance and Payment Security; Waiver.

- A. Public Contracts.** The ~~Purchasing Agent~~ Chief Procurement Officer has discretion to require the submission of a performance bond, a payment bond, or both in regard to any contracts subject to this Chapter in any amount not to exceed the Contract Price. If so, the requirement shall be expressly set forth in the Solicitation Document.
- B. Requirement for Surety Bond.** If required, the City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's sealed affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.
- C. Time for Submission.** The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by the City. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next

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lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal Security.

5.33.695 Notification to State of Nonresident Contractor.

If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

5.33.700 Protests and Judicial Review of Special Procurements

A. An Affected Person may protest the City's approval of a Special Procurement or a class Special Procurement.

B. Method of Protest

1. Time: A Written protest of the City's approval shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer not later than seven (7) Days after the approval of the Special Procurement or class Special Procurement unless a different time period is provided in the Notice. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.

2. Contents. The Written protest must include:

- a.** Sufficient information to identify the Request that is the subject of the protest;
- b.** A detailed statement of all the legal and factual grounds for the protest;
- c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
- d.** A description of the resulting harm to the Affected Person; and
- e.** The relief requested.

C. Required City Response. The City shall take the following actions, as appropriate:

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1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.700 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of 5.33.700 C, the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:

1. Agree with the protest and take any corrective action necessary;
2. Issue a Written response to the protest and provide that decision to the Affected Person;
3. Refer the protest and any response to the Board of Appeals for decision;
4. Refer the protest and any response to the City Council for decision; or
5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

E. Judicial Review.

1. An Affected Person may not seek judicial review of the City Council's approval of a Special Procurement or Class Special Procurement unless it has complied fully with the Protest requirements of this section and exercised all administrative appeal rights.
2. Judicial review is not available if the Request is denied by the City Council, Board of Appeals or is withdrawn by the ~~Purchasing Agent~~ Chief Procurement Officer.

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5.33.710 Protests and Judicial Review of Sole-Source Procurements.

A. An Affected Person may protest the determination that the Goods or Services or class of Goods or Services should be procured from only one source.

B. Method of Protest

1. Time: A Written protest of the ~~Purchasing Agent's~~ Chief Procurement Officer's Determination shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer within seven (7) Days whenever the City posts a notice that it will make a sole source purchase. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Notice of Intent to make a Sole Source purchase.

2. Contents:

- a.** Sufficient information to identify the Solicitation that is the subject of the protest;
- b.** A detailed statement of all the legal and factual grounds for the protest;
- c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
- d.** A description of the resulting harm to the Affected Person; and
- e.** The relief requested.

C. Required City Response. The City shall take the following actions, as appropriate:

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.710 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by PCC Section 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

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4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of 5.33.710 C., the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:

1. Agree with the protest and take any corrective action necessary;
2. Issue a Written response to the protest and provide that decision to the Affected Person;
3. Refer the protest and any response to the Board of Appeals for decision;
4. Refer the protest and any response to the City Council for decision; or
5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

E. Judicial Review. An Affected Person may not seek judicial review of the City Council's approval of a Sole Source Procurement unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Sole Source Procurement.

5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

A. Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to PCC Section 5.33.730.

B. Affected Persons may protest in one of two ways:

1. If no other protest remedies are provided in the Solicitation Document, Affected Persons can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award pursuant to PCC Section 5.33.740 if the meet the requirements of PCC Section 5.33.720 C. below.
2. If expressly required or permitted by the Solicitation Document, Affected Persons must file a Written protest after being excluded from the Competitive Range or after being excluded from any subsequent stages of a Procurement.

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C. Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:

1. The Affected Person is Responsible and submitted a Responsive Offer;
2. The City made a mistake that, if corrected, would have made the Affected Person eligible to participate in the next stage of the Procurement.

D. Method of Protest:

1. **Time:** If the Solicitation document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement.
2. **Contents:** The protest must include the following information:
 - a. Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

E. Required City Response. The City shall take the following actions, as appropriate:

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.720 D.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 5.33.720 D.2., the City shall issue a decision in Writing and

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provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

F. Optional City Response: In addition to the requirements of 5.33.720 E., the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:

1. Agree with the protest and take any corrective action necessary;
2. Issue a Written response to the protest and provide that decision to the Affected Person;
3. Refer the protest and any response to the Board of Appeals for decision;
4. Refer the protest and any response to the City Council for decision; or
5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

G. Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Procurement.

5.33.730 Protests and Judicial Review of Solicitation Documents and the Procurement Process

A. An Affected Person may protest the Procurement process or the Solicitation Document for Offers solicited pursuant to competitive sealed Bidding, competitive sealed Proposals, a special Procurement, or a class special Procurement. Prior to submitting a protest, an Affected Person may seek clarification of any provision of the Solicitation Document. Any clarification by the City is binding only if the City amends the Solicitation Document by Addendum.

B. Method of Protest

1. Time: A Written protest of the City's posting of a solicitation document shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer

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within seven (7) Days after a Solicitation Document is advertised. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document. A Written Protest of any Addendum shall be submitted by the close of the next business day after issuance of the Addendum.

2. Contents: The protest must include the following information:

- a. Sufficient information to identify the Solicitation that is the subject of the protest;
- b. A detailed statement of all the legal and factual grounds for the protest;
- c. Evidence or supporting documentation that supports the grounds on which the protest is based;
- d. A description of the resulting harm to the Affected Person; and
- e. The relief requested.

C. Required City Response.

1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.730 B.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by PCC Section 5.33.730 B.2. above, the ~~Purchasing Agent~~ Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business days before Offers are due, unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
4. The ~~Purchasing Agent's~~ Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the

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decision is final, the Affected Person must seek judicial review before the Opening of Bids, Proposals or Offers.

5. If the City receives a protest from an Affected Person in accordance with this rule, the City may extend Closing if the City determines an extension is necessary to consider the protest and to issue an Addendum to the Solicitation Document.

D. Optional City Response: In addition to the requirements of PCC Section 5.33.730 C. above, the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:

1. Agree with the protest and make any necessary corrections to the Solicitation Document or Procurement process;
2. Issue a Written response to the protest and provide that decision to the Affected Person;
3. Refer the protest and any response to the Board of Appeals;
4. Refer the protest and any response to the City Council for decision; or
5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

E. Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and exercised all administrative appeal rights. Judicial review is not available if the City withdraws the Solicitation Document that was the subject of the protest.

5.33.740 Protests and Judicial Review of Contract Award.

A. An Affected Person may protest the Award of a Contract, or the intent to Award a Contract, whichever occurs first, if:

1. The Affected Person would be eligible to be Awarded the Contract in the event that the protest was successful; and
2. The reason for the protest is that:
 - a. All lower Bids, higher ranked Proposals or other more Advantageous Offers are nonresponsive;

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- b. The City failed to conduct the evaluation of Offers in accordance with the criteria or processes described in the Solicitation Document;
- c. The City abused its discretion in rejecting the Affected Person's Offer as nonresponsive; or
- d. The City's evaluation of the Offers was in violation of these rules, ORS Chapter 279B or ORS Chapter 279A.

B. Method of Protest.

- 1. Time: A Written protest of the ~~Purchasing Agent's~~ Chief Procurement Officer's Award shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer within seven (7) Days after the Award of a Contract, or issuance of the Notice of Intent to Award the Contract, whichever occurs first. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document or Notice of Intent to Award.
- 2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Award that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest as described in PCC Section 5.33.740 A.2.a. - d. above;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.

C. Required City Response. The City shall take the following actions, as appropriate:

- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;

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2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.740 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by PCC Section 5.33.740 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days of the receipt of the protest unless a Written determination is made by the City that circumstances exist that require a longer time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of PCC Section 5.33.740 C. above, the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:
1. Agree with the protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review of the Intent to Award a Contract unless it has complied fully with the protest requirements of this section. Judicial review is not available if the City elects not to make an Award.

5.33.750 Protests of Other Violations.

Any violation of ORS Chapter 279A or 279B, except 279B.400 to 279B.425, by the City, for which no administrative remedy is otherwise provided by this Code, is subject to the following:

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A. A protest by an Affected Person may be made under this section only if a Contract is about to be Awarded or has been Awarded and:

1. An alleged violation of ORS 279A or 279B, except 279B.400 to 279B.425, has occurred in the Procurement process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;
3. The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
4. The Affected Person gave Written notice to the City describing the alleged violation no later than ten (10) Days after the date on which the alleged violation occurred and in no event more than ten (10) Days after the date of the execution of the Contract;
5. If the alleged violation is of ORS 279A, then it is one for which no judicial review is provided by another section of ORS Chapter 279A or 279B. If the alleged violation is of 279B, except 279B.400 to 279B.425, then it is one for which no judicial review is provided by another section of ORS Chapter 279B.

B. Method of Protest.

1. Time: A Written protest of the ~~Purchasing Agent's~~ Chief Procurement Officer's Award shall be provided to the Purchasing Agent no later than ten (10) Days after the date on which the alleged violation occurred and in no event no later than ten (10) Days after the date of the execution of the Contract. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.
2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Procurement or Solicitation that is the subject of the protest;
 - b. A detailed statement of the alleged violation and all the legal and factual grounds for the protest;

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- c. Evidence or supporting documentation that supports the grounds on which the protest is based;
- d. A description of the resulting harm to the Affected Person; and
- e. The relief requested.

C. Required City Response. The City shall take the following actions, as appropriate:

- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.750 B.2. and the reasons for that failure;
- 3. If the protest was timely filed and provides the information required by PCC Section 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
- 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of 5.33.750 C., the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:

- 1. Agree with the protest and take any corrective action necessary;
- 2. Issue a Written response to the protest and provide that decision to the Affected Person;
- 3. Refer the protest and any response to the Board of Appeals for decision;
- 4. Refer the protest and any response to the City Council for decision; or
- 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest

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- E. Judicial Review. An Affected Person may not seek judicial review of the City's decision unless it has complied with the Protest requirements of this section and exercised all administrative appeal rights.

5.33.760 Review of Prequalification and Debarment Decisions.

- A. The denial, revocation or revision of a Prequalification decision or a decision to debar a prospective Offeror must be appealed in Writing to the City within three (3) business days after receipt of the City's notice.
- B. The City Council delegates its authority to the ~~Purchasing Agent~~ Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the ~~Purchasing Agent~~ Chief Procurement Officer shall notify the Person appealing of a time and place of a hearing designed to consider the appeal within 30 Days or a date mutually agreed upon by both parties.
- C. The City Council delegates its authority to conduct a hearing to the ~~Purchasing Agent~~ Chief Procurement Officer. The ~~Purchasing Agent~~ Chief Procurement Officer may subdelegate the authority to conduct a hearing to any person the ~~Purchasing Agent~~ Chief Procurement Officer deems appropriate, including the Board of Appeals.

5.33.770 Purchasing Board of Appeals.

- A. Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the ~~Purchasing Agent~~ Chief Procurement Officer or when authorized or required by this Chapter.
- B. Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Purchasing Board of Appeals for the purposes described above.
- C. Jurisdiction of Board. The Purchasing Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the ~~Purchasing Agent~~ Chief Procurement Officer.
- D. Composition of Board.
1. The Purchasing Board of Appeals shall consist of three members. A quorum shall consist of three members.

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2. The members of the Board shall be:
 - a. A representative from the public purchasing sector;
 - b. The City Engineer or designee;
 - c. A member of the general public with affiliation to the purchasing industry.
3. The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the Purchasing Agent Chief Procurement Officer.
4. A member of the board shall serve as chairperson.
- E. Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.
- F. Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.
- G. Procedure and Rules. The Purchasing Agent Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.
- H. Staff. ~~The Bureau of Purchases~~ Procurement Services shall provide staff and appropriate assistance for the Board.

5.33.780 Powers of the Board.

- A. The Board shall be responsible for reviewing the decisions of the City arising under this Chapter. In regard to appeals of decisions regarding Prequalification or disqualification of Bidders or Proposers, the Board shall comply with Oregon state law and these rules.
- B. The Board shall consider only those matters that were raised by the Affected Person in its protest to the Purchasing Agent Chief Procurement Officer.
- C. The Board shall not consider the appeal of any Affected Person who did not file a timely appeal.
- D. The Board shall hear appeals based on administrative rules of procedure established by the Purchasing Agent Chief Procurement Officer. The

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administrative rules shall provide for notice and prompt hearing of appeals and protests, record-making, right to counsel and other procedural matters.

- E.** Following completion of a hearing, the Board shall prepare a Written decision that shall be mailed to all parties to the hearing by certified mail, return receipt requested

5.33.790 Appeal to Board.

- A.** Time. Any request for hearing by the Board shall be received by the ~~Purchasing Agent~~ Chief Procurement Officer no more than seven (7) Days from the date of the ~~Purchasing Agent's~~ Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to the ~~Bureau of Purchases~~ Procurement Services, Attn: ~~Purchasing Agent~~ Chief Procurement Officer and marked "Request for Hearing by the Purchasing Board of Appeals."
- B.** Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the ~~Purchasing Agent~~ Chief Procurement Officer and the Purchasing Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The ~~Purchasing Agent~~ Chief Procurement Officer shall schedule the time and place for the Board to meet giving consideration to the schedule of the Board.
- D.** Further Appeal. An Affected Person who is not satisfied with the decision of the Board may file a further Written appeal, but only if permitted by the ~~Purchasing Agent~~ Chief Procurement Officer. If not permitted by the ~~Purchasing Agent~~ Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the ~~Purchasing Agent~~ Chief Procurement Officer no later than three (3) Days from the date the Affected Person receives the Board's Written decision. The request shall be delivered to the ~~Bureau of Purchases~~ Procurement Services, Attn: ~~Purchasing Agent~~ Chief Procurement Officer and marked "Request for Hearing by City Council."
- E.** If so referred, City Council shall decide at its next available regularly scheduled hearing whether to hear the appeal. If City Council decides not to hear the appeal, the decision of the Board is final. If City Council decides to hear the appeal it shall be scheduled by the Council Clerk for hearing by City Council. The City Council's decision on the appeal shall be final upon issuance of City Council's order deciding the appeal. The City Council may also adopt the decision of the Board without further hearing by City Council. In this situation, the appeal to City Council shall be final upon issuance of City Council's order adopting the

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decision of the Board. The rules of City Council provided at Chapter 3.02 shall be the rules for any hearing on appeal.

F. If so permitted, the decision of City Council shall conclude an Affected Person's administrative remedies and further redress sought by an Affected Person shall be pursuant to state law. Otherwise, the Board's decision shall be final for any remedies that might be available to Affected Person under state law.

G. Costs: The ~~Purchasing Agent~~ Chief Procurement Officer may impose a reasonable fee on the Affected Person requesting a hearing before the Board or Council to defray costs of the appeal. The fee shall be paid at the time the hearing is requested or the protest shall be considered waived. In the event that the Person contesting the hearing prevails in its protest, the fee shall be refunded.

5.33.900 Fair Contracting and Employment Programs.

From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract documents so that prospective Offerors are aware of their requirements.

5.33.920 Records Maintenance; Right to Audit Records.

A. Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:

1. Performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair Contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
2. Any claims arising from or relating to their performance under a Contract;
3. Any cost and pricing data; and,
4. Payment to suppliers and Subcontractors.

B. Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.

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- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.
- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to PCC Section 5.33.920 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in disqualification as a Bidder or Proposer for future City Contracts or may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer.

5.33.930 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.

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B. Access to Plant or Place of Business. As a condition of Bidding or proposing, Bidders and Proposers agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:

1. To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
2. To investigate in connection with a Bidder's or Proposer's Bid or Proposal, a minority business or EEO certification, or Bidder or Proposer qualification.
3. To inspect for compliance with City programs required by the Solicitation Document.
4. To inspect for Contract compliance.

C. Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are qualified. Such inspections and tests shall be conducted in accordance with the terms of the Contract.

D. Procedures for Inspection, Trial Use and Testing. The City may establish operational procedures governing the inspection, testing and trial use of equipment, materials and the application of resulting information and data to Specifications or Procurements.

E. Conduct of Inspections and Tests:

1. Inspectors and testers. Inspections or tests shall be performed so as not to unduly delay the Work of the Contractor or Subcontractor. No change of any provision of the Specifications or the Contract may be required by the inspector or tester without Written authorization of the City, unless otherwise specified in the Solicitation Document. The presence or absence of an inspector or tester shall not relieve the Contractor or Subcontractor from any requirement of the Contract;
2. Location. When an inspection is made in the plant or place of business of a Contractor or Subcontractor, such Contractor or Subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the inspector or tester;

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3. Time of inspection or testing. Inspection or testing of supplies and services performed at the plant or place of business of any Contractor or Subcontractor shall be performed at reasonable times during normal business hours.

5.33.940 Contract Cancellation, Contractor Termination Procedures.

- A.** Grounds for Cancellation or Termination. The City may, at its option, cancel a Contract or terminate the Contractor's performance, if cancellation or termination is in the best interest of the City; or, for any material violation of the provisions of the Contract. Such provisions generally include, but are not limited to:

1. Standard terms and conditions included in Contracts;
2. Product or service Specifications;
3. Delivery or completion requirements; or
4. Contracted pricing and price escalation/de-escalation clauses.

- B.** The City and the Contractor may cancel the Contract at any time by mutual Written agreement.

- C.** Termination For Convenience.

1. Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a. The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b. The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or
 - c. For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or

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- d. If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e. If a receiver should be appointed on account of the Contractor's insolvency; or
 - f. If the Contractor is otherwise in material breach of any part of the Contract; or
 - g. If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
 - 2. Required Response to Declaration of Default. If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools and appliances located on the premises, as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On the completion of the Work, the City shall determine the total amount of compensation the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work. If the difference between this total amount and the sum of all amounts previously paid to the Contractor, (the unpaid balance) exceeds the expense incurred by the City in completing the Work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the surety;
 - 3. Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- G.** Refusal to Perform. In addition to and apart from the above-mentioned right of the City to terminate the Contractor's performance, the Contract may be canceled by the City for any willful failure or refusal on the part of the Contractor and its surety to perform faithfully the Contract according to all of its terms and conditions; however, in such event neither the Contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the Contractor's breach of Contract;
- H.** Remedies Cumulative. The City may, at its discretion, avail itself of any or all of the above rights or remedies and invoke anyone of the above rights or remedies without prejudice and without precluding the City from subsequently invoking any other right or remedy set forth above, or in the Contract, or available at law or in equity.

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I. Notice. The City shall provide the Contractor Written notice of the grounds for Contract cancellation or Contractor termination and of its intention to cancel the Contract or terminate the Contractor's performance. If the Contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of Contract cancellation or Contractor termination. The notice shall include:

1. The effective date of the intended cancellation or termination,
2. The grounds for cancellation or termination, and
3. Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.

J. The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided herein. If a Contract contains a cancellation or termination clause, that clause rather than PCC Section 5.33.940 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

K. Contract Completion By Substitute Contractor. If the Contractor has provided a performance and payment bond, the City may afford the Contractor's surety the opportunity, upon the surety's receipt of a cancellation or termination notice, to provide a substitute Contractor to complete performance of the Contract. The substitute Contractor may Contract with the surety or the City may Contract with the substitute Contractor selected by the surety. Performance by the substitute Contractor shall be rendered pursuant to all material provisions of the original Contract, including the provisions of the performance and payment bond. Substitute performance does not constitute the Award of a new Contract and shall not be subject to the provisions of ORS Chapter 279A, 279B or 279C.

EXHIBIT B**PORTLAND CITY CODE CONTRACT RULES****Substantive Rule Changes
Proposed for PCC 5.33
2010****Changes applicable to entire division**

- Changes reference from “Purchasing Agent” to “Chief Procurement Officer”
- Changes reference from “Bureau of Purchases” to “Procurement Services”

PCC 5.33.010 Definitions

- Revises definition for “Purchasing Agent”
- Revises definition for “Procurement Services”
- Adds definition for “Repair and Maintenance”

PCC 5.33.040 Authority of Chief Procurement Officer

- Adds provision for advertising solicitations when the proposed purchase is not in the current fiscal year budget when City Council approves of the purchase by Ordinance.

PCC 5.33.060 Authority of Directors

- Adds execution of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget.

PCC 5.33.105 Feasibility and Cost Analysis

- Section added to conform to new legislation
- Adds before conducting a procurement for services over \$250,000 to conduct an analysis to determine if it is feasible to use the City’s own personnel or resources to perform the same services.

PCC 5.33.145 Rules on all types of Cooperative Procurements

- Clarifies that cooperative procurements in excess of \$250,000 are subject to PCC 5.33.105.

PCC 5.33.200 Competitive Sealed Bidding

- Adds the description of the City’s Need To Purchase for invitations to bid.
- Clarifies that all contractual terms and conditions in the form of contract provisions be included within the ITB.
- Adds that the contract terms and conditions must specify the consequences of the Contractor’s failure to perform.

- Adds the “Good Cause” provision for requests for proposal and circumstances for its use.

PCC 5.33.210 Competitive Sealed Proposals

- Adds the description of the City’s Need To Purchase for requests for proposals.
- Clarifies that all contractual terms and conditions in the form of contract provisions be included within the request for proposal and consequences of the Contractor’s failure to perform.
- Adds that the contract terms and conditions must specify the consequences of the Contractor’s failure to perform.
- Adds the “Good Cause” provision for requests for proposal and circumstances for its use.

PCC 5.33.211 Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals

- Clarifies award of the multi-tiered or multi-step selection process.
- Provides for increasing or decreasing the number of proposers in a competitive range.

PCC 5.33.215 Negotiations, Discussions within the Competitive Range for Multi-tiered or Multi-step Proposals

- Clarifies the use of a competitive range of all proposers to enter into discussions for the purpose of correcting deficiencies in proposals.
- Clarifies when the City may increase or decrease the number of proposers in the competitive range.
- Clarifies the use of discussions and best and final offers in the competitive range.

PCC 5.33.500 Responsibility of Offerors

- Defines a satisfactory record of performance.
- Clarifies what constitutes a non-responsible Offeror.
- Adds the Form of Business Entity.

PCC 5.33.510 Prequalification of Prospective Offerors: Pre-Negotiation of Contract Terms and Conditions

- Clarifies the pre-negotiation of terms and conditions for use in future procurements.

PCC 5.33.640 Rejection of all or part of an Offer

- Deletes the responsibility of the Offeror (see Section 5.33.500 above)

PCC 5.33.760 Review of Prequalification and Debarment Decisions

- Adds ability to extend appeal hearing beyond 30 days

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PUBLIC IMPROVEMENTS AND CONSTRUCTION SERVICES

EXHIBIT C

Chapter 5.34

PUBLIC IMPROVEMENTS
AND CONSTRUCTION SERVICES**Sections:**

5.34.010	Definitions.
5.34.020	Application and Authority.
5.34.040	Affirmative Action.
5.34.060	Contracts for Construction Other than Public Improvements.
5.34.100	Overview of Source Selected <u>Selection</u> and Contractor Selection.
5.34.110	Emergency Contracts; Bidding and Binding <u>Bonding</u> Exemptions.
5.34.120	Selection of Substitute Contractor.
5.34.130	Joint Cooperative Purchasing.
5.34.140	General Rules for Joint Cooperative Procurements; Fees.
5.34.150	Competitive Bidding Requirement.
5.34.160	<u>Intermediate Procurements</u> ; Competitive Quotations.
5.34.300	Solicitation Documents; Required Provisions; Assignment or Transfer.
5.34.310	Notice and Advertising Requirements; Posting.
5.34.320	Specifications and Brand Names.
5.34.330	Facsimile Bids and Proposals.
5.33.340	Electronic Procurement.
5.34.410	Bid or Proposal Security.
5.34.420	Pre-Offer Conferences.
5.34.430	Addenda to Solicitation Documents.
5.34.440	Request for Clarification or Change.
5.34.450	Offer Submissions.
5.34.460	Pre-Closing Modification or Withdrawal of Offers.
5.34.470	Receipt, Opening and Recording of Offers.
5.34.480	Late Bids, Late Withdrawals and Late Modifications.
5.34.490	Mistakes.
5.34.493	First-Tier Subcontractors; Disclosure and Substitution.
5.34.500	Responsibility of Offerors.
5.34.510	Prequalification of Offerors.
5.34.520	Eligibility to Bid or Propose; Registration or License.
5.34.530	Disqualification of Persons.
5.34.600	Bid or Proposal Evaluation Criteria.
5.34.610	Offer Evaluation and Award; Determination of Responsibility.
5.34.620	Negotiation With Bidders Prohibited.
5.34.625	Contract Preferences; Resident Bidders.
5.34.630	Reciprocal Preferences.
5.34.640	Negotiation When Bids Exceed Cost Estimate.

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-
- 5.34.010 Definitions.**

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- A. The definitions contained in PCC Section 5.33.010 and PCC Section 5.33.140 are applicable to Chapter 5.34.
- B. **“Conduct Disqualification”** means a Disqualification pursuant to ORS 279C.440.
- C. **“Disqualification”** means the preclusion of a Person from contracting with the City for a period of time in accordance with PCC Section 5.34.530. Disqualification may be a Conduct Disqualification or DBE Disqualification.
- D. **“Foreign Contractor”** means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
- E. **“Notice”** means any of the alternative forms of public announcement of Procurements, as described in PCC Section 5.34.310.
- F. **“Work”** means all material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory system or structure.

5.34.020 Application and Authority.

- A. Public improvements. Chapter 5.34 applies to the Award of Contracts for public improvements and construction services for public improvements. Contracts for emergency work are governed by PCC Chapter 5.33 and ORS 279B.080.
- B. Contracts for minor alteration, ordinary repair or maintenance of public improvements, as well as other Contracts for construction services that are not defined as a public improvement under ~~ORS 279A.010~~ Section 5.33.010 shall be Awarded and executed pursuant to Chapter 5.33 and ORS 279B and not this Chapter. However, some portions of ORS 279C and this chapter may still be applicable to the resulting Contracts.
- C. Authority and Ethics
 - 1. The Authority of the City Council as the Local Contract Review Board is the same in regard to Chapter 5.34 as it is for Chapter 5.33, including the authorization of Contract amendments.

2. The Authority of the ~~Purchasing Agent~~ Chief Procurement Officer is the same for Chapter 5.34 in regard to public improvement and construction services Contracts as it is for Goods and Services as set forth in Chapter 5.33.
3. The authority of Bureau and Office directors and appropriation unit managers to authorize and execute Contracts and Contract amendments is the same in regard to Chapter 5.34 as it is in Chapter 5.33.
4. The rules stated in PCC Section 5.33.070 regarding the purchase of Goods and Services from City employees shall also apply to Public Improvements covered by PCC Chapter 5.34.

5.34.040 Affirmative Action.

- A. Pursuant to ORS 279A.100, the City may limit competition on Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B. Pursuant to ORS 279A.105, the City may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 1. A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 2. A business enterprise that is:
 - a. Certified under ORS 200.055 as an emerging small business; and
 - b. Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECDD).
- C. A Subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
 1. Its principal place of business is located in an area designated as economically distressed by the OECDD pursuant to administrative rules adopted by the OECDD; or
 2. The Contractor certifies in Writing to the City that a substantial number of the Subcontractor's employees or Subcontractors that will manufacture the Goods or complete the Services under the Contract reside in an area

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designated as economically distressed by the OECDD pursuant to administrative rules adopted by OECDD. For the purposes of making the foregoing determination, the City shall determine in each particular instance what proportion of a Contractor's Subcontractor's employees or Subcontractors constitute a substantial number.

3. The City shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the City, that the Offeror has not and will not discriminate against a Subcontractor in the Awarding of a Subcontract because the Subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
- D. The City may disqualify a Person from consideration of Award of the City's Contracts under ORS 200.065(5) or suspend a Person's right to be on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with these rules.

5.34.060 Contracts for Construction Other than Public Improvements

Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts, may be procured and amended as general trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and PCC 5.34.

5.34.100 Overview of Source Selection and Contractor Selection.

The City shall Award a Public Contract for Public Improvements pursuant to Chapter 5.34 using any method authorized by state law or City Code. Such different methods are called methods of "source selection." Source selection methods for Public Improvements include:

- A. Emergency Procurements;
- B. Substitution of Contractors by a Surety;
- C. Joint Cooperative Procurements;
- D. Competitive Quotations;
- E. Competitive Bidding; and

- F. Alternative Contracting Methods found in PCC Section 5.34.800 *et seq.* Class exemptions are located in PCC Section 5.34.830 G. while individual Contracts must be authorized by the City Council by ordinance.

5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

- A. The City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction. Those contracts are governed by ORS 279B.080 and Chapter 5.33 of this Code. Emergency contracts pursuant to a Proclamation of a State of Emergency or Disaster, however, are governed by Section 5.33.135.
- B. The Council or Person authorizing the Emergency Procurement shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The Emergency declaration ~~shall~~ may exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and shall thereafter be kept on file as a public record. ~~However, the City shall encourage competition for Emergency Contracts to the extent reasonable under the circumstances.~~
- C. The City shall seek competition for Emergency Contracts as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the City considers reasonable in responding to the Emergency.
- D. The authority to declare an Emergency and authorize an Emergency Contract shall be as follows:
1. ~~The Purchasing Agent~~ Chief Procurement Officer may declare the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Contract not to exceed \$150,000.
 2. A bureau director may declare the existence of an Emergency and authorize the bureau to enter into an Emergency Procurement Contract not to exceed \$150,000 only if the ~~Purchasing Agent~~ Chief Procurement Officer or Person to whom the powers of the ~~Purchasing Agent~~ Chief Procurement Officer have been delegated, is not available when the purchase needs to be made.
 3. A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract not to exceed \$500,000.

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4. A Commissioner-in-Charge of a bureau may declare the existence of an Emergency and authorize the City and the bureaus of which the Commissioner has responsibility to enter into an Emergency Contract over \$500,000.
- D E.** Following the declaration of an Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - E F.** If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
 - F G.** Any Contract Awarded under this section shall be Awarded within 60 Days, unless the City Council authorizes a longer period of time.
 - G H.** All documentation of Emergency Contracts shall be sent to the Purchasing Agent Chief Procurement Officer for record keeping purposes.
 - H I.** All Emergency Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City's Purchasing Rules.
 - I J.** After the Award of an Emergency Contract, the City shall execute a Written Contract with the Contractor as soon as possible.
 - J K.** All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will the City pay for anticipated lost profits or consequential damages as a result of the termination.
 - ~~**K.** The City shall seek competition for Emergency Contracts that are not public improvements as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever~~

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~~Solicitation time periods the City considers reasonable in responding to the Emergency.~~

- L.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.
- M.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. In addition, nothing herein shall prevent the ~~Purchasing Agent~~ Chief Procurement Officer or City Council from subsequently requesting such from bonds the Contractor after work begins.

5.34.120 Selection of Substitute Contractor.

If a Contractor provided a performance bond, the City may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the Competitive Procurement provisions of ORS Chapter 279C or these rules.

5.34.130 Joint Cooperative Purchasing.

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements for the acquisition of Public Improvements, provided that the Administering Contracting Agency's Solicitation and Award process for the original Contract was an open and impartial Competitive process that used source selection methods substantially equivalent to those found in PCC Chapter 5.34.
- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and PCC Chapter 5.34 if the Solicitation and Award process:
 - 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, or on the basis of a determination of the Proposer whose Proposal is most

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Advantageous based on evaluation factors set forth in the Request for Proposals in the case of Competitive Proposals when permitted by an exemption established by the City Council;

2. Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 3. Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- C. The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement for a Public improvement is substantially equivalent to those identified in ORS 279C and PCC Chapter 5.34.
- D. Protests. Protests regarding the use of all types of cooperative Procurements shall be governed by the applicable provisions of PCC Section 5.34.700 *et seq.*

5.34.140 General Rules for Joint Cooperative Procurements; Fees.

- A. If the City is the Administering Contracting Agency, then:
1. It may charge a fair and reasonable fee to Purchasing Contract Agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the Purchasing Contract Agency must enter into a Written agreement with it.
- B. If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the ~~Purchasing Agent~~ Chief Procurement Officer determines is fair and reasonable in light of all the circumstances surrounding the Procurement, including the savings that may be obtained if a cooperative Procurement is used, the cost of the Procurement in relationship to the fee, and other factors as may be considered. If a fee is paid, it will be borne by the Bureau or portion of the City on whose behalf the Procurement is being made.

5.34.150 Competitive Bidding Requirement.

The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except:

- A. Contracts made with Qualified Nonprofit Agencies providing employment opportunities for disabled individuals, in which case the rules stated in PCC Section 5.33.110 shall apply.
- B. Contracts, or classes of Contracts, exempted by the City Council pursuant to state law, including those stated in PCC Section 5.34.830;
- C. A public improvement contract with a value of less than \$5,000;
- D. Contracts not exceeding \$100,000, if made under procedures for Competitive quotations pursuant to PCC Section 5.34.160;
- E. Public improvement contracts Awarded as Emergency Contracts;
- F. Energy Savings performance contracts entered into in accordance with PCC 5.34;
- G. Contracts where federal law overrides this chapter;
- H. Contracts governed by ORS 279A.100 and PCC Section 5.34.040 regarding affirmative action;
- I. Any other Contract that is not governed by ORS 279A, 279B and 279C; and
- J. Contracts exempted by the City Council acting as the Local Contract Review Board, from using an ITB process pursuant to ordinance, in which case the selection shall follow the rules set forth in PCC Section 5.34.800 *et seq.* in regard to the alternative Contract method selected, unless the exemption authorizes a different method.

5.34.160 Intermediate Procurements; Competitive Quotations.

- A. Public Improvement Contracts estimated by the City not to exceed \$100,000, ~~or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects,~~ may be Awarded through the requirements of this rule.
- B. All requests for a price quotation for a public improvement anticipated to exceed \$50,000 shall be in Writing and include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.

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1. Written requests shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, if the estimated cost exceeds \$50,000.
 2. If the estimated cost is less than \$50,000, but all price quotations equal or exceed \$50,000, then the Solicitation shall be cancelled and a new request for Written price quotations, containing the BOLI provisions regarding prevailing wage shall be included.
- C.** Requests for quotations for public improvements estimated to be \$50,000 or less can be made orally, provided the City seeks at least three competitive quotations, and keeps a Written record of the sources and amounts of the quotations received. If three quotations are not reasonably available the City shall make a Written record of the effort made to obtain those quotations.
- D.** The City shall Award the Contract to the prospective Contractor whose Price Quotation will best serve the interests of the City, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the City shall make a Written record of the basis for Award.
- E.** Informal Intermediate level Public Improvement Contracts obtained by competitive quotations may be increased above the original amount of Award by change order or amendment within the limitations pursuant to PCC Section 5.34.020 C.3.

5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.

- A.** The Solicitation Document for a public improvement Contract shall include the following:
1. Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
 2. Notice of any pre-Offer conference as follows:
 - a. The time, date and location of any pre-Offer conference;
 - b. Whether attendance at the conference will be mandatory or voluntary; and
 - c. That statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum;

3. The deadline for submitting mandatory Prequalification applications and the class or classes of Work for which Offerors must be Prequalified if Prequalification is a requirement;
4. The name and title of the authorized City representative designated for receipt of Offers and contact representative (if different);
5. Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal Security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile or Electronic means (See PCC Section 5.34.330 regarding Facsimile Bids or Proposals and PCC Section 5.34.340 regarding Electronic Procurement);
6. The time, date and place of Opening;
7. The time and date of Closing after which the City will not accept Offers, which time shall be not less than five (5) Days after the date of the last publication of the advertisement, and may, in the sole discretion of the City, direct or permit the submission and receipt of bids by electronic means. If the City is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the City shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and PCC Section 5.34.493. For timing issues relating to Addenda, see PCC Section 5.34.430;
8. The office where the Specifications for the Work may be reviewed;
9. A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined in PCC Section 5.33.020 A.51.;
10. If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148), or both the state and federal prevailing rates of wage, a statement that no Offer will be received or considered by the City unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279.838 or ORS 279C.840 or 40 U.S.C. § 3141 to 3148, or both";

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11. A statement that the City will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board.
 12. Whether a Contractor or a Subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
 13. Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4) and PCC Section 5.34.040;
 14. How the City will notify Offerors of Addenda and how the City will make Addenda available (See PCC Section 5.34.430); and
 15. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in PCC Section 5.34.493.
 16. A statement that the Offeror must obtain EEO certification and have a valid City business license, if required.
- B.** The Solicitation Document shall also contain the following information about the evaluation process:
1. A statement that the City may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the City's finding that it is in the public interest to do so;
 2. The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
 3. Evaluation criteria, including the relative value applicable to each criterion, that the City will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized), along with the process the City will use to determine acceptability of the Work;
 - a. If the Solicitation Document is an Invitation to Bid, the City shall set forth any Special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in

allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the City has available concerning future use;

- b.** If the Solicitation Document is a Request for Proposals, the City shall refer to the additional requirements of PCC Section 5.34.850;
- C.** The City shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the City considers appropriate for the Public Improvement project.
- D.** The City must include all applicable Contract provisions required by Oregon law as follows:
 - 1.** Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1)); and all provisions regarding accelerated or twice-monthly payment if required by the City's Standard Construction Specifications;
 - 2.** Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
 - 3.** If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
 - 4.** If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
 - 5.** Payment of claims by public officers (ORS 279C.515(1));
 - 6.** Contractor and first-tier Subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
 - 7.** A Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract as provided in ORS 279C.515(3);
 - 8.** Hours of labor in compliance with ORS 279C.520;

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9. Environmental and natural resources regulations (ORS 279C.525);
 10. Payment for medical care and attention to employees (ORS 279C.530(1));
 11. A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements." (ORS 279C.530(2));
 12. Maximum hours, holidays and overtime (ORS 279C.540);
 13. Time limitation on claims for overtime (ORS 279C.545);
 14. Prevailing wage rates (ORS 279C.800 to 279C.870);
 15. Fee paid to BOLI (ORS 279C.830);
 16. BOLI Public Works Bond (ORS 279C.830(3));
 17. Retainage (ORS 279C.550 to 279C.570);
 18. Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
 19. Contractor's relations with Subcontractors (ORS 279C.580);
 20. Notice of claim (ORS 279C.605);
 21. Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
 22. Contractor's certification that all Subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board. or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work under the Contract.
- E. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent, which must be approved as to form by the City Attorney's Office. Unless approved in Writing

and approved as to form, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

5.34.310 Notice and Advertising Requirements; Posting.

- A.** The City shall furnish "Notice" as set forth PCC Sections 5.34.310 A.1. through 3. to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The City may charge a fee or require a deposit for the Solicitation Document. The City may furnish Notice using any method determined to foster and promote competition, including:

 - 1.** Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the City's Procurements;
 - 2.** Placing Notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN"(Oregon Procurement Information Network) or a successor electronic System; or
 - 3.** Placing Notice on the City's Internet Web site.
- B.** Pursuant to ORS 279C.360 and this rule, the City shall advertise every Solicitation for competitive bids or competitive proposals for a Public Improvement Contract, unless the City Council has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335 and PCC Section 5.34.820.

 - 1.** Unless the City publishes by Electronic Advertisement as permitted by PCC Section 5.34.310 B.2., the City shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the City may determine to be necessary or desirable to foster and promote competition.
 - 2.** The City Council finds that publishing Notice Electronically is likely to be cost effective. The City may publish by Electronic Advertisement if:

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- a. The City has published a Notice that it may publish future advertisements for Offers by Electronic Advertisement. The City shall publish such Notice weekly, for no less than four (4) consecutive weeks. The City Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City will publish future Electronic Advertisements or alternatively, the Web location where the City will publish information on accessing the Electronic Advertisement via a Telnet application;
- b. The City posts in its business office a Notice that the City will publish advertisements for Offers by Electronic Advertisement for no less than four consecutive weeks. The Notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where the City publishes Electronic Advertisements or alternatively, the Web location where the City publishes information on accessing the Electronic Advertisement via Telnet; and
- c. In addition to the City's publication required under PCC Section 5.34.310 B.2.a. or b., the City shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
- d. All advertisements for Offers shall set forth:
 - (1) The Public Improvement project;
 - (2) The office where Contract terms, conditions and Specifications may be reviewed;
 - (3) The date that Persons must file applications for Prequalification under ORS 279C.340, if Prequalification is a requirement, and the class or classes of Work for which Persons must be Prequalified;
 - (4) The scheduled Closing, which shall not be less than five (5) Days after the date of the last publication of the advertisement;
 - (5) The name, title and address of the City Person authorized to receive Offers;

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- (6) The scheduled Opening; and
 - (7) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. § 3141 to 3148).
- C. The City shall post a copy of each advertisement for Offers at ~~the Bureau of Purchases~~ Procurement Services. An Offeror may obtain a copy of the advertisement for Offers upon request to the Bureau.

5.34.320 Specifications and Brand Names.

- A. Specification content is in the sole discretion of the City of Portland, subject to statutory restrictions on the use of brand names.
- B. The City may consult with technical experts, suppliers, prospective contractors and representative of the industries with which the City will Contract. The City shall take reasonable measure to ensure that no Person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scope of Work (collectively, "documents"), and that no business with which the Person is associated realizes a material competitive advantage that arises from the City's use of those documents.
- C. A "brand name or equal" Specification may be used when it is Advantageous to the City, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City's determination of what constitutes a product that is equal or superior to the product specified is final unless otherwise specified. The use of a brand name shall mean "brand name or equal".
- D. A "brand name" Specification may be used requiring a Contractor to provide a specific brand when the ~~Purchasing Agent~~ Chief Procurement Officer, or designee, makes the following findings:
 - 1. The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Public Contract or substantially diminish competition for Public Contracts; or
 - 2. The use of a brand name Specification would result in a substantial cost savings to the City; or
 - 3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or

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4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies

5.34.330 Facsimile Bids and Proposals.

A. Authorization. The ~~Purchasing Agent~~ Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the ~~Purchasing Agent~~ Chief Procurement Officer determines that Bid or Proposal Security is or will be required, the City shall not authorize Facsimile Offers unless the City has established a method for receipt of such security. Prior to authorization the City must determine whether the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

1. For receiving, identifying, recording and safeguarding Facsimile Offers, and
2. To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive Procurement.

B. Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the City authorizes a Facsimile Offer, the City shall include in the Solicitation Document (other than a request for price quotations) provisions substantially similar to the following:

1. A "Facsimile Offer", as used in this Solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a Facsimile machine.
2. Offerors may submit Facsimile Offers in response to this Solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.
3. Facsimile Offers must be Signed by the Offeror.
4. The City reserves the right to Award the Contract solely on the Facsimile Offer. However, upon the City's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.
5. The data and compatibility characteristics of the City's receiving Facsimile machine are as follows:
 - a. Telephone number;

- b. Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.
- 6. The City is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents.
 - b. Availability or condition of the receiving Facsimile machine.
 - c. Incompatibility between the sending and receiving Facsimile machine.
 - d. Delay in transmission or receipt of documents.
 - e. Failure of the Offeror to properly identify the Offer documents.
 - f. Illegibility of Offer documents.
 - g. Security and confidentiality of data.

5.34.340 Electronic Procurement.

- A. General. The City may advertise Public Improvement Contracts Electronically if the ~~Purchasing Agent~~ Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective. However, if the Public Improvement Contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.
- B. The City may post a notice of Intent to Award a Contract Electronically at least seven (7) Days before the Award of a Public Contract.
- C. Required Factors. In determining whether to authorize Electronic Bids or Proposals, the City shall consider factors such as:
 - 1. Anticipated Bid or Proposal size and volume;
 - 2. Whether there is an urgent need for the Work being procured;
 - 3. Frequency of price changes;

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4. Availability, reliability, speed, and capacity of the receiving Electronic equipment;
 5. Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding Electronic Bids or Proposals, and ensuring their timely delivery to the Bid or Proposal Opening location; and,
 6. The means and method for sealing or securing the transmitted documents to preserve the sealed requirement of competitive Procurement.
- D. Security. If Bid or Proposal Security is required, Electronic submission shall not be authorized unless the City has provided another method for receipt of the security.
- E. Authorization; Contents of Solicitation Document. Bids or Proposals may be submitted Electronically only if specifically authorized by the Solicitation Document. If Electronic transmission is authorized, the City shall include provisions substantially similar to the following in the City's Solicitation Document:
1. Definition. Electronic Bid or Proposal, as used in this Solicitation Document, means a Bid or Proposal, modification of a Bid or Proposal, or withdrawal of a Bid or Proposal that is Electronically transmitted to and received by the City, in the manner specified in the Solicitation Document.
 2. Timely Submission. Bidders or Proposers may submit Electronic Bids or Proposals in response to this Solicitation Document. The entire Electronic Bid or Proposal shall arrive at the place and by the time specified in the Solicitation Document.
 3. Rejection of Bids or Proposals. Electronic Bids or Proposals that fail to furnish required representations or information, that are contingent or that reject or take exception to any of the terms, conditions, and provisions of the Solicitation Document, may be rejected and excluded from consideration, as otherwise provided by this Chapter.
 4. Signatures. Electronic Bids or Proposals shall contain the required signatures.
 5. Request for Original. The City reserves the right to Award the Contract solely on the Electronic Bid or Proposal. However, if requested to do so

by the City, the apparently successful Bidder or Proposer agrees to promptly submit the complete original signed Bid or Proposal.

6. Transmission Information. Data and compatibility characteristics.
7. Non-Responsibility for Transmission Failure. If the Bidder or Proposer chooses to transmit an Electronic Bid or Proposal, the City shall not be responsible for any failure attributable to the transmission or receipt of the Electronic Bid or Proposal regardless of cause.

5.34.410 Bid or Proposal Security.

- A. **Security Amount.** If The City requires Bid or Proposal Security, it shall be not more than 10% of the Offeror's Bid or Proposal. The City shall not use Bid or Proposal Security to discourage competition. The City shall clearly state any Bid or Proposal Security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal Security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(45) and ORS 279C.385. See also, PCC 5.34.915 and BOLI rules regarding the separate requirement for a Public Works Bond.
- B. **Requirement for Bid Security (Optional for Proposals).** Unless The City Council has exempted a Solicitation, or class of Solicitations, from Bid security pursuant to ORS 279C.390, the City shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$100,000. The ~~Purchasing Agent~~ Chief Procurement Officer nonetheless may require Bid security from any Offeror, or for any project, even if the City Council has exempted a class of Solicitations from Bid security if the ~~Purchasing Agent~~ Chief Procurement Officer believes it necessary to secure payment and performance. The ~~Purchasing Agent~~ Chief Procurement Officer may require Proposal Security in RFPs. See ORS 279C.400(5).
- C. **Form of Bid or Proposal Security.** The City may accept only the following forms of Bid or Proposal Security:
 1. A surety bond, signed by the surety's authorized Attorney in Fact, from a company authorized to do business in the State of Oregon and that is duly listed in the United States Treasury list as published in the Federal Register, or which is otherwise approved by the City Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The City Attorney has the authority to waive the requirement of the corporate seal: or

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2. A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or
3. A Cashier's check, or Offeror's certified check.

D. Return of Security. The City shall return or release the Bid or Proposal Security of all unsuccessful Offerors after a Contract has been fully executed and all required Bonds have been provided, or after all Offers have been rejected. The City may return the Bid or Proposal Security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the Security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

5.34.420 Pre-Offer Conferences.

- A.** The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.
- B.** The City may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.
- C.** If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- D.** Statements made by the City's representative at the pre-Offer conference, or elsewhere do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.
- E.** The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PCC Section 5.34.300.

5.34.430 Addenda to Solicitation Documents.

- A.** Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in

accordance with these rules, then the Offeror shall be bound by all Addenda so issued.

- B.** Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in PCC Section 5.34.310. The Solicitation Document shall specify how the City will provide Notice of Addenda and how the City will make the Addenda available (see, PCC Section 5.34.300). For example, the Solicitation Document could say: "City will not mail Notice of Addenda, but will publish Notice of any Addenda on City's Web site." Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- C.** Timelines; Extensions. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City should extend the Closing if the Purchasing Agent Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the Purchasing Agent Chief Procurement Officer determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. Notice of the Addenda shall be deemed to occur when the Addendum is posted on the City's web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
- D.** Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in PCC Section 5.34.440 by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tiered Solicitation process pursuant to PCC Section 5.34.850.

5.34.440 Request for Clarification or Change.

- A.** Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change to the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by PCC Section 5.34.430 D.

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- B.** Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.
- C.** Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Purchasing Agent Chief Procurement Officer if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D.** Identification of request for change. Envelopes containing requests for change of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
1. Solicitation Specification or Contract Provision Request for Change or Clarification; and
 2. Solicitation Document Number or Other Identification.
- E.** A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, request for change procedure shall be governed by the Solicitation Document and PCC Section 5.34.840 E. and PCC Section 5.34.850 F.
- F.** Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addenda.

5.34.450 Offer Submissions.

- A.** Offer and Acceptance. A Bid, Proposal or Price Quotation is an Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the City's acceptance for not less than 30 Days from closing unless otherwise specified in the Solicitation Document. After the 30 Days the Offer

shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.

- B.** The Offer may be extended beyond 30 Days if the Offeror and the City so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.
- C.** The City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- D.** Responsive Offer. The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- E.** A competitive Proposal is a "Firm Offer" for the period specified as provided in section A above, but the City may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms and the rules or the Solicitation Document has reserved for negotiation.
- F.** The City may Award a Contract only to a Responsible Offeror with a Responsive Offer.
- G.** Contingent Offers. Except to the extent that a Proposer is authorized to propose certain terms and conditions pursuant to PCC Section 5.34.850, a Proposer shall not make, and the City shall not accept, an Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- H.** Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under PCC Section 5.34.850, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing.
- I.** Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. Bids requiring a Written and non-electronic signature shall be signed in ink by an Authorized Representative of the Offeror. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening

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in accordance with the requirements for submitting an Offer under the Solicitation Document.

- J.** Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- K.** Documents. An Offeror shall provide the City with all documents and Descriptive Literature required under the Solicitation Document.
- L.** Facsimile or Electronic Submissions If the City permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The City shall not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
- M.** Product Samples and Descriptive Literature. The City may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- N.** Identification of Offers.
 - 1.** To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable.
 - 2.** The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- O.** Receipt of Offers. The Offeror is responsible for ensuring that the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

5.34.460 Pre-Closing Modification or Withdrawal of Offers.

- A.** Modifications. Once submitted, Bids or Proposals may only be modified in Writing prior to the time and date set for Bid or Proposal Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Bidder's or Proposer's letterhead, signed by an Authorized Representative of the Bidder or Proposer, state that the new document supersedes or modifies the prior Bid or Proposal and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it

has authorized Electronic submittal in the Solicitation Document. To ensure the integrity of the Bidding process, the envelope or Electronic submission containing any modifications to a Bid or Proposal shall be marked with the following information:

1. Bid or Proposal Modification.
2. Solicitation Number or Other Identification.

B. Withdrawals:

1. Bids or Proposals may be withdrawn by a Written notification of the Bidder or Proposer. The notice shall be signed by an Authorized Representative of the Bidder or Proposer, and must be received prior to the time and date set for Bid or Proposal Closing.
2. Written notifications to withdraw Bid or Proposal shall be marked with the following information:
 - a. Bid or Proposal Withdrawal.
 - b. Solicitation Number or Other Identification.

C. Documentation. All documents relating to the modification or withdrawal of Bids or Proposals shall be made a part of the appropriate Bid or Proposal Solicitation file.

D. Late Requests for Modification or Withdrawal. Any request for modification or withdrawal of a Bid or Proposal made after the time for Bid or Proposal Closing is late as provided by PCC Section 5.34.480. Any late submission shall be returned to the Bidder or Proposer unopened. If any late submission is opened inadvertently, the procedure provided by PCC Section 5.34.470 shall apply except the submission shall be returned to the sender.

5.34.470 Receipt, Opening and Recording of Offers.

- A.** Receipt. Each Offer, and modifications to Offers, shall, upon receipt, be Electronically or mechanically time-stamped by ~~the Bureau of Purchases~~ Procurement Services time clock, or marked by hand, but not opened, and shall be stored in a secure place until Bid or Proposal Opening. If Offers or modifications are opened inadvertently or opened prior to the time and date set for Bid or Proposal Opening because they were improperly identified by the Offeror, the opened Offers or modification documents shall be resealed and stored for

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Opening at the correct time. When this occurs, documentation of the resealing shall be placed in the file.

- B. Opening and Recording. Offers and modifications to Offers shall be opened publicly, at the time, date, and place designated in the Solicitation Document. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder, the Bid price(s), and such other information as considered appropriate shall be read aloud. In the case of Requests for Proposals or on voluminous Bids, the City may advise Bidders and Proposers, as part of the Solicitation Documents, that the Bid or Proposal items and prices will not be read aloud.
- C. Availability. After Opening, the City shall make Bids available for public inspection, but pursuant to ORS 279C.410. Proposals are not subject to disclosure until after notice of intent to Award is issued. In any event, the City may withhold from disclosure those portions of an Offer that the Offeror designates trade secrets or as confidential proprietary data in accordance with the Oregon Public Records Law, ORS 192.410 et seq. Application of the Oregon Public Records Law ORS 192.410 et seq. shall determine if the information designated as confidential and claimed to be exempt is in fact exempt from disclosure. To the extent the City determines the designated information is not in accordance with applicable law, the City shall make those portions available for public inspection. In order to facilitate public inspection of the non-confidential portion of the Bid or Proposal, material designated as confidential shall accompany the Offer, but the Offeror shall separate it, if requested, from the remainder of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of the Offeror's designation to the contrary. Copies of public records will be made available upon payment of the City's charges.

5.34.480 Late Bids, Late Withdrawals and Late Modifications.

- A. Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications, except as permitted by PCC 5.34.490 (Mistakes) or PCC.5.33.610 (Offer Evaluation and Award).
- B. For manual submissions of Offers, the ~~Bureau of Purchases'~~ Procurement Services' time clock shall be the clock of record and the date and time imprint of that clock on an Offer shall determine the timeliness of the submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing the Bureau's time stamp on the Offer retained for the Solicitation file

- C.** For Electronic submissions, when permitted, the time shown by the City as to the date of arrival of the Electronic submission shall determine the timeliness of the submission. Late Electronic submissions shall be deleted from the City's files, returned Electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file.
- D.** For Facsimile submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.
- E.** Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

5.34.490 Mistakes.

- A.** General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, the City should carefully consider whether to permit a waiver, correction or withdrawal of an Offer for certain mistakes.
- B.** Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in the City's discretion pursuant to this rule.
- C.** City notification. If the City believes the Offer contains a mistake the City shall notify the Offeror, note the apparent mistake and request that the Offeror verify the Offer in writing, or by electronic transmission within one business day after notification.
- D.** Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, the City shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by the City, or there are other indications of error so clear, as to reasonably justify the conclusion or that acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case the City shall be entitled to reject the Offer. The City may extend the time for response for good cause shown.
- E.** Verification. If the Offeror verifies its Offer, the City must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude the City from rejecting the Offer if it is clear that a mistake has been made and the City determines the intended Offer is not evident.

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- F.** Minor Informality. If the Offeror verifies its Offer, and the City sees no reason for rejection, the City may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:
1. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 2. Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
 3. Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.
- G.** Clerical Mistakes. If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, the City may in its discretion permit correction if the conditions of this section are met.
1. Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
 2. If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
 3. If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides the City with clear and convincing supporting evidence of the mistake and intended Offer within two business days after the City's initial notification of the mistake. The City may extend the time for response for good cause shown.

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- a. Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred and the Offer actually intended.
- b. The closer the corrected Offer is to the next lowest Offer the greater the need for the City to be sure that it has clear and convincing evidence that permits a correction to ensure the integrity of the competitive process.

5.34.493 First-Tier Subcontractors; Disclosure and Substitution.

- A. Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price estimated by the City to exceed \$100,000, all Bidders shall submit to the City a disclosure form as described by ORS 279C.370(2), identifying any first-tier Subcontractors that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
 1. Five percent of the total Contract Price, but at least \$15,000; or
 2. \$350,000, regardless of the percentage of the total Contract Price.
- B. Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the City shall:
 1. Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
 2. Open Bids publicly immediately after the Bid Closing; and
 3. Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the City.
- C. Bidder Instructions and Disclosure Form. For the purposes of this rule, the City in its Solicitation shall:

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1. Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
2. Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier Subcontractors ~~when the Contract value for a Public Improvement is greater than \$100,000~~ (see ORS 279C.370). Specifically, when the Contract Amount of a first-tier Subcontractor furnishing labor or labor and materials would be greater than or equal to: (i)

- a. 5% of the project Bid, but at least \$15,000, or (ii)
- b. \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:
 - a) (1) The Subcontractor's name,
 - b) (2) The category of Work that the Subcontractor would be performing, and
 - c) (3) The dollar value of the subcontract.

If the Bidder will not be using any Subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CITY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE."

- D. Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two (2) working hours after Bid Closing in the manner specified by the ITB.
- E. Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

- F. City Role. The City shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. The City also shall provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The City is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- G. Substitution. Substitution of affected first-tier Subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the City is not under an obligation to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution. Substitution of Minority, Women and Emerging Small Businesses are also subject to the City's Solicitation Document.

5.34.500 Responsibility of Offerors.

- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, the City shall consider whether the Offeror has:
 - 1. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all contractual responsibilities;
 - 2. ~~A satisfactory record of performance.~~ Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Among the matters the City may review in this regard is whether the Offeror has a record of material violations of state or federal prevailing wage laws. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror nonresponsible non-Responsible under this paragraph;

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3. A satisfactory record of integrity. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person.) The standards for Conduct Disqualification may be used to determine an Offeror's integrity. The City may find an Offeror not Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a Contract or subcontractor or in connection with the Offeror's performance of a Contract or subcontract. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror ~~nonresponsible~~ non-Responsible under this paragraph;
 4. Is legally Qualified ~~qualified~~ legally to Contract with the City, including, but not limited to, an EEO Certification and a current, valid, business license from the City. The Bureau of Purchases Procurement Services may determine that a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror ~~nonresponsible~~ non-Responsible;
 6. Not been disqualified by the City pursuant to ORS 279C.440 and PCC Section 5.34.530.
- B. In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279C.375.

5.34.510 Prequalification of Offerors.

- A. Prequalification Application Forms. Application forms may be obtained from the ~~Purchasing Agent~~ Chief Procurement Officer. Information required on the

application form shall be supplied fully and completely, unless patently inapplicable, and the Person in whose name the application is submitted, or the Authorized Representative of the corporation or association submitting the application, shall verify the information before a notary. Any prospective Bidder or Proposer shall supply further information or detail as the City may require to clarify a Prequalification application. All Prequalification applications shall be filed with or sent to the ~~Purchasing Agent~~ Chief Procurement Officer unless a Solicitation Document for a specific project otherwise provides.

- B. Prequalification. Prequalification applications submitted without designation for a specific project shall be considered as general Prequalification applications and processed pursuant to ORS 279C.430. The City may require Prequalification of Bidders or Proposers for specific projects on application forms prescribed by the City. The City shall indicate in the Solicitation Document if it will require Prequalification. Prequalification means the City conditions a Bidder's or Proposer's submission of a Bid or Proposal upon the Bidder's or Proposer's Prequalification. The City shall not consider a Bid or Proposal from a Bidder or Proposer that is not Prequalified if the City required Prequalification.
- C. General Prequalification Limits. All public improvement projects and painting projects estimated to cost more than \$100,000 require Prequalification. The ~~Purchasing Agent~~ Chief Procurement Officer has discretion to require Prequalification for projects under \$100,000 as provided in PCC Section 5.34.510 D.
- D. Special Prequalification. A separate special Prequalification may be required for a specific project when the City determines that the project is of a size, Scope or complexity that special Prequalification is required or such other circumstances exist, that in the opinion of the City, a special Prequalification would be of assistance in the selection of qualified contractors.
- E. Prequalification Presumed. If a Bidder or Proposer is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder or Proposer shall be rebuttably presumed qualified to perform similar Work for the City upon submission of proof of such Prequalification. If a Bidder or Proposer submits proof of Prequalification, then the Bidder or Proposer is rebuttably presumed qualified. Nothing contained in this paragraph shall waive the City requirements for Prequalification, the City's authority to require additional information or detail, or prior approval as otherwise set forth in this rule.
- F. Time for Filing Prequalification Applications. Prequalification applications shall be received by the ~~Purchasing Agent~~ Chief Procurement Officer at least nine (9) business Days prior to the date of Bid or Proposal Opening unless specifically

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stated otherwise in the Solicitation Document. Prequalification applications received less than nine (9) business Days prior to the Bid Opening may be processed or rejected in the City's sole discretion. If the application is not approved, notice shall be given by the City as provided by PCC Section 5.34.510 H. at least three (3) business Days prior to the Bid or Proposal Opening date.

G. Standards for Prequalification. A Bidder or Proposer may prequalify by demonstrating to the City's satisfaction that it is a Responsible Bidder or Proposer. The Bidder or Proposer shall demonstrate that it is a Responsible Bidder or Proposer based on the criteria set forth in 5.34.500.:

- ~~1. The Bidder's or Proposer's financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain such resources and expertise, indicate the Bidder or Proposer is capable of meeting all contractual responsibilities;~~
- ~~2. The Bidder's or Proposer's record of performance. Among the matters the City may review in this regard is whether the Offeror has a record of material violations of state or federal prevailing wage laws;~~
- ~~3. The Bidder's or Proposer's record of integrity;~~
- ~~4. The Bidder or Proposer is qualified to contract with the City, that is the Bidder or Proposer has the necessary licensing, certification and qualifications to contract with the City. The Bureau of Purchases Procurement Services may determine that such a Person is not legally qualified if:

 - ~~a. The Person does not have a business license with the City; or~~
 - ~~b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of contract funds, or through other means.~~~~
- ~~5. The Bidder or Proposer has supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Bidder fails to promptly supply information requested concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the prospective Bidder not to be responsible.~~

- H. Scope of Prequalification. The ~~Purchasing Agent~~ Chief Procurement Officer shall determine whether the applicant for Prequalification shall be considered Prequalified for City Bids or Proposals, and the extent of Prequalification if approved. The ~~Purchasing Agent~~ Chief Procurement Officer may limit the types of Work, materials or services on which Bids or Proposals shall be accepted from the applicant, may restrict the size or cost of project Bids to be received by the City from the applicant, or may impose any other restrictions which the ~~Purchasing Agent~~ Chief Procurement Officer finds appropriate under the circumstances. Thereafter, if the Bidder or Proposer has Prequalified, Bids or Proposals may be received from the Bidder or Proposer only within the limitations and restrictions imposed by the Prequalification decision.
1. Unless otherwise specified by the ~~Purchasing Agent~~ Chief Procurement Officer, any Bidder or Proposer whose application for Prequalification has been wholly disapproved may resubmit an application for a Prequalification no sooner than three months after the ~~Purchasing Agent's~~ Chief Procurement Officer's notice of disapproval. A Bidder or Proposer, whose application has been approved in part or who seeks a broadening of its Prequalification, or elimination of any restriction, may resubmit an application at any time provided a change of circumstances has occurred and the Bidder or Proposer submits new information to support its re-application.
 2. With or without a request from the Prequalified Bidder or Proposer, the Prequalification standing and any limitation on class of Work or size of project may be reviewed further by the ~~Purchasing Agent~~ Chief Procurement Officer and broadened or restricted as determined by the ~~Purchasing Agent~~ Chief Procurement Officer to be appropriate.
- I. Notice. If a Bidder's or Proposer's Prequalification is not approved in whole or in part, or is restricted or revoked, the City shall notify the Bidder or Proposer, specify the reasons, and inform the Bidder or Proposer of the right to a hearing before the ~~Purchasing Agent~~ Chief Procurement Officer, who shall exercise the powers of the City Council for this purpose. The ~~Purchasing Agent~~ Chief Procurement Officer has discretion, however, to refer this matter to the Board of Appeals.
- J. Appeal. The ~~Purchasing Agent~~ Chief Procurement Officer may adopt rules of procedure for the hearing, shall conduct the hearing and has the authority of the City Council as provided in ORS 279C.450. The appeal shall be conducted within 30 Days.
- K. Clarification. A Bidder or Proposer may seek clarification of a Prequalification decision by Written request received by the ~~Purchasing Agent~~ Chief Procurement

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Officer no later than 10 Days following issuance of a determination by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.520 Eligibility to Bid or Propose; Registration or License.

- A. The City shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.
- B. The City shall not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.
- C. An Offer received from a Person that fails to comply with this rule is nonresponsive and shall be rejected as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

5.34.530 Disqualification of Persons.

- A. Authority. The City may disqualify a Person from consideration of Award of the City's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with this rule.
 - 1. Standards for Conduct Disqualification. As provided in ORS 279C.440, the City may disqualify a Person for:
 - a. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor;
 - c. Conviction under state or federal antitrust statutes; or
 - d. Violation of a Contract provision that is regarded by the City to be so serious as to justify Conduct Disqualification. A violation under PCC Section 5.34.530 A.1.d. may include but is not limited to

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material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

2. Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., as Subcontractors) as follows:

- a. For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:

- (1) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or
- (2) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or
- (3) The Person has been disqualified by another public contracting agency pursuant to ORS 200.065.

- b. For a DBE Disqualification under ORS 200.075, the City may disqualify a Person upon finding that:

- (1) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or
- (2) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or
- (3) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise

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does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.

- c. If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the City shall not permit such Person to participate in the City's Contracts.
 - d. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with that City.
- B.** Notice of Intent to Disqualify. The City shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:
- 1. State that the City intends to disqualify the Person;
 - 2. Set forth the reasons for the Disqualification;
 - 3. Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the ~~Purchasing Agent~~ Chief Procurement Officer does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
 - 4. Include a statement of the authority and jurisdiction under which the hearing will be held;
 - 5. Include a reference to the particular sections of the statutes and rules involved;
 - 6. State the proposed Disqualification period; and
 - 7. State that the Person may be represented by legal counsel.
- C.** Hearing. The ~~Purchasing Agent~~ Chief Procurement Officer shall schedule a hearing upon the receipt of the Person's timely request. The ~~Purchasing Agent~~ Chief Procurement Officer shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

- D. Notice of Disqualification. The ~~Purchasing Agent~~ Chief Procurement Officer will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
1. The effective date and period of Disqualification;
 2. The grounds for Disqualification; and
 3. A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified Person must notify the ~~Purchasing Agent~~ Chief Procurement Officer in Writing within three (3) business Days after receipt of the notice of Disqualification if the Person intends to appeal the City's decision.

5.34.600 Bid or Proposal Evaluation Criteria.

- A. General. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal.
- B. Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
1. Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the City elects not to Award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the City, for the purpose of comparing Bids.
 2. Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the City, for the purpose of comparing Bids. The City shall specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern.
- C. Proposal Evaluation Criteria. If the City Council has exempted a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1),

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and has directed the use of an Alternative Contracting Method under ORS 279C.335(3), evaluation criteria shall be set forth in the Solicitation Documents.

5.34.610 Offer Evaluation and Award; Determination of Responsibility.

- A.** General. If Awarded, the City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375(2)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120), education service district. The City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- B.** Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375C(3)(b). To be a Responsible Offeror, the City must determine that the Offeror:

 - 1. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;
 - 2. Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
 - 3. Has a satisfactory record of integrity. An Offeror may lack integrity if The City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company,

predecessor or successor Person). The standards for Conduct Disqualification under PCC Section 5.34.540 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

4. Is qualified legally to Contract with the City, including having a current City business license and EEO certification. ~~The Bureau of Purchases Procurement Services~~ may determine that such a Person is not legally qualified if:
 - a. The Person does not have a business license with the City; or
 - b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 5. Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.
- C. Documenting City Determinations: The City shall document its compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c) and file that form with the Construction Contractors Board within 30 days after Contract Award,
- D. City Evaluation. The City shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The City shall not evaluate an Offer using any other requirement or criterion.
- E. Offeror Submissions.
1. The City may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:
 - a. Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

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- b. Examination of such elements as appearance or finish; or
 - c. Other examinations to determine whether the product conforms to Specifications.
- 2. The City shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The City shall reject an Offer providing any product that does not meet the Solicitation Document requirements. The City's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445 or these rules.
- F. Evaluation of Bids. The City shall use only objective criteria to evaluate Bids as set forth in the ITB. The City shall evaluate Bids to determine the Responsible Offeror offering the lowest Responsive Bid.
- G. Clarifications. In evaluating Bids, The City may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- H. Evaluation of Proposals. See PCC Section 5.34.850 regarding rules applicable to Requests for Proposals.
- I. The City may award a public improvement contract or may award multiple public improvement contracts when specified in the Invitation to Bid or the Request for Proposals.

5.34.620 Negotiation With Bidders Prohibited.

- A. Bids. Except as permitted by ORS 279C.340 and PCC Section 5.34.640, when all Bids exceed the Cost Estimate, the City shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the City and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with these rules, or any applicable Contract provisions or ordinance.
- B. Requests for Proposals. The City may conduct discussions or negotiations with Proposers only in accordance with the applicable requirements of PCC Section 5.34.850.

5.34.625 Contract Preferences; Resident Bidders.

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- A.** Award When Offers Identical. When the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:
1. The City shall Award the Contract to the Offeror among those submitting identical Offers that is offering Goods or Services that have been manufactured or produced in Oregon.
 2. If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the City shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
 3. If the City receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- B.** Determining if Offers are Identical. The City shall consider Offers identical in price, fitness, availability and quality as follows:
1. Bids received in response to an Invitation to Bid issued under ORS 279C.335 and PCC Chapter 5.34 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the services described in the Invitation to Bid at the same price.
 2. Proposals received in response to a Request for Proposals issued under ORS 279C.400 and PCC Chapter 5.34 are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
- C.** Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with PCC Section 5.34.625 A., the City may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information it determines is appropriate and necessary to allow it to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the

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criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Bidder or Proposer.

- D. Procedure for Drawing Lots. In any instance when this Rule calls for the drawing of lots, the City shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

5.34.630 Reciprocal Preferences.

- A. When evaluating Bids pursuant to PCC Section 5.34.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.
- B. The City shall use the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both
 - a. whether the Nonresident Bidder's state gives preference to in-state Bidders, and
 - b. the amount of such preference. Bidders or Proposers who believe that information is inaccurate shall notify the City prior to submitting their Bid to permit a reasonable investigation. Otherwise, the City shall rely on that information in making its determination.

5.34.640 Negotiation When Bids Exceed Cost Estimate.

- A. Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the City's Cost Estimate, prior to Contract Award the City may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the City's Cost Estimate. The Subcontractor disclosure and substitution requirements of PCC Section 5.34.493 do not apply to negotiations under this rule.
- B. Definitions. The following definitions apply to this administrative rule:
 - 1. **"Cost Estimate"** means the City's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

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2. **“Other Options”** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in PCC Section 5.34.850, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.
 3. **“Project”** means a Public Improvement.
 4. **“Value Engineering”** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life Cycle Costing, which may either increase or decrease absolute costs over varying time periods.
- C. Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the City, shall be excluded from consideration.
- D. Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the Scope of the Project is significantly changed from the original Bid. The Scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the City to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- E. Discontinuing Negotiations. The City may discontinue negotiations at any time, and shall do so if it appears to the City that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain Subcontractor pricing information upon request, shall be considered a lack of good faith.
- F. Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340.

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- G.** Public Records. ORS 279C.340 shall not be construed as creating any additional public records where that result is not otherwise contemplated by the Public Records law, ORS Chapter 192. Records of a Bidder used in Contract negotiations may not become public records unless they are also submitted to the City.

5.34.645 Rejection of Offers.

A. Rejection of an Offer.

- 1.** The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest.
- 2.** The City shall reject an Offer upon the City's finding that the Offer:
 - a.** Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b.** Takes exception to terms and conditions (including Specifications);
 - c.** Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d.** Offers Work that fails to meet the Specifications of the Solicitation Document;
 - e.** Is late;
 - f.** Is not in substantial compliance with the Solicitation Documents;
 - g.** Is not in substantial compliance with all prescribed public Solicitation procedures.
 - h.** Omits, or is unclear as to, the price; or the price cannot be determined in the Solicitation Documents;
 - i.** Requires a delivery date different from that required by the Solicitation Document;

- j. The Offeror failed to substantially comply with any Good Faith Efforts Specifications;
 - 3. The City shall reject an Offer upon the City's finding that the Offeror:
 - a. Has not been Prequalified under ORS 279C.430 and the City required mandatory Prequalification;
 - b. Has been Disqualified;
 - c. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d. Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;
 - e. Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - f. Has not submitted properly executed Bid or Proposal Security as required by the Solicitation Document;
 - g. Has failed to provide the certification required under PCC Section 5.34.645 C.;
 - h. Is not Responsible.
- B. **Form of Business.** For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and PCC Section 5.34.550.
- C. **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the City Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against a disadvantaged business enterprise, or minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for rejection.
- D. **Rejection of all Offers.** The City may reject all Offers for good cause upon the City's Written finding it is in the public interest to do so. The City shall notify all

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Offerors of the rejection of all Offers, along with the good cause justification and finding.

E. Criteria for Rejection of All Offers. The City may reject all Offers upon a Written finding that:

1. The content of, an error in, or the omission from the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
2. The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
3. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity, or the appearance of fairness and integrity of the Competitive process;
4. Causes other than legitimate market forces threaten the integrity of the Competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-Competitive conduct and inadvertent or intentional errors in the Solicitation Document;
5. The City cancels the Solicitation in accordance with PCC Section 5.34.660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

5.34.650 Notice of Intent to Award.

A. Notice: The City shall issue a Notice of Intent to Award a public improvement Contract to all Offerors.

1. If the Solicitation was posted by Electronic means, the City may post the Intent to Award Electronically in the same manner as the Solicitation.
2. If the Solicitation was not posted by Electronic means, and unless otherwise provided in the Solicitation Document, the City shall post notice of the City's intent to Award Contracts on the City's website or by Written notice posted at the office of the ~~Bureau of Purchases~~ Procurement Services. For Contracts in excess of \$500,000, a Written notice of intent to Award shall be mailed by regular mail to all Bidders or Proposers in addition to posting as provided above.

3. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the ~~Purchasing Agent~~ Chief Procurement Officer determines that a compelling governmental interest, such as loss of funding, safety, public inconvenience or loss of taxpayer or ratepayer funds requires prompt execution of the Public Improvement Contract. If so, the ~~Purchasing Agent~~ Chief Procurement Officer shall specify in the Notice of the Intent the time period when the Contract will be Awarded and shall cause the Solicitation file to be documented with the specific reasons for the shorter notice period.
4. As provided in ORS 279C.375(2), the Notice requirements of this rule do not apply to contracts excepted or exempted from competitive bidding under ORS 279C.335(1)(c) or (d).

B. The City's Award shall not be final until the later of the following three dates:

1. Seven (7) Days after the date of notice of intent to Award, unless the Solicitation Document provided a different period for protest of Contract Award or the ~~Purchasing Agent~~ Chief Procurement Officer determined that a shorter period of time was necessary pursuant to PCC Section 5.34.650 A.2. For purposes of this paragraph, the Day on which the Notice is posted from which the seven Days or other time period shall begin to run shall not be included, but the last Day of the period shall be included;
2. The City provides a Written response to all timely-filed protests that denies the protest and affirms the Award; or
3. Upon the conclusion of any administrative appeal pursuant to PCC Section 5.34.740 if the ~~Purchasing Agent~~ Chief Procurement Officer decides to permit an appeal.

5.34.660 Cancellation, delay or suspension of Solicitation.

- A. Cancellation in the Public Interest. The City may cancel a Solicitation for good cause if the City finds that the cancellation is in the public interest. The reasons for cancellation shall be made part of the Solicitation file.
- B. Delay or Suspension. Any Solicitation may be delayed or suspended in whole, or in part, when the delay or suspension is in the best interest of the City as determined by the City.

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- C. Costs. The City is not liable to any Offeror for costs, expenses or losses caused by the cancellation, delay or suspension.
- D. Notice. If the City cancels, delays or suspends a Solicitation prior to Opening, the City shall provide notice of cancellation in accordance with PCC Section 5.34.310. Such notice of cancellation shall:
 - 1. Identify the Solicitation;
 - 2. Briefly explain the reason for cancellation; and
 - 3. If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

5.34.670 Disposition of Offers if Solicitation Canceled.

- A. Prior to Offer Opening. If the City cancels a Solicitation prior to Offer Opening, the City will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the City will open the Offer to determine the source and then return it to the Offeror.
- B. After Offer Opening. If the City rejects all Offers, the City will retain all such Offers as part of the City's Solicitation file. If a Request for Proposals is cancelled after Proposals are received, the City may return a Proposal to the Proposer that submitted it. The City shall keep a list of returned Proposals in the file for the Solicitation.

5.34.675 Documentation of Award.

- A. Basis of Award. After Award, the City shall make a record showing the basis for determining the successful Offeror part of the City's Solicitation file.
- B. Contents of Award Record. The City's record shall include
 - 1. Bids.
 - a. Completed Bid tabulation sheet; and
 - b. Written justification for any rejection of lower Bids or Bids rejected as a result of a failure to meet mandatory Bid requirements.
 - 2. Proposals.

- a. The completed evaluation of the Proposals;
- b. Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
- c. If the City permitted negotiations in accordance with PCC Section 5.34.850 the City's completed evaluation of the initial Proposals and the City's completed evaluation of final Proposals.

5.34.680 Time for City Acceptance; Extension.

- A. Time for Offer Acceptance. An Offer submitted as a Firm Offer is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days, or such other period of time specified in the Solicitation Document, the Offer shall lapse unless extended.
- B. Extension of Acceptance Time. The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which the City may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agree-upon extension period. The extension may occur after the 30-Day time period referenced in PCC Section 5.34.680 A.

5.34.685 Availability of Award Decisions.

- A. Contract Documents. To the extent required, the City shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.
- B. Notification to Unsuccessful Offerors. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge, in Person or by submitting to the City a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- C. Bid Tabulations and Award Summaries. Upon request of any Person the City shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge that may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The City may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the City's web site.

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- D.** Copies from Solicitation Files. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

5.34.690 Performance and Payment Security; Waiver.

- A. Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a separate payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$100,000. Notwithstanding any exemption, the ~~Purchasing Agent~~ Chief Procurement Officer may require a performance bond, or payment bond, or both, in the ~~Purchasing Agent's~~ Chief Procurement Officer's sole discretion. See also, PCC 5.34.915 regarding the separate public works bond.
- B. Other Construction Contracts.** The City may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.
- C. Requirement for Surety Bond.** The City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's seal affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.
- D. Time for Submission.** The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by the City. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal Security.

5.34.695 Notification to State of Nonresident Contractor.

If the Contract Price exceeds \$10,000 and the Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

5.34.700 Protests and Judicial Review of Individual and Class Exemptions.

- A. An Affected Person may protest the City's approval of an individual or Class Exemption.
- B. Method of Protest
 - 1. Time: A Written protest of the City's approval shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer not later than seven (7) Days after the approval of the Individual or Class Exemption unless a different time period is provided in the Notice. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period.
 - 2. Contents. The Written protest must include:
 - a. Sufficient information to identify the Request that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;

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2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.700 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by PCC Section 5.34.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of 5.34.700 C, the ~~Purchasing Agent~~ Chief Procurement Officer may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review.
1. An Affected Person may not seek judicial review of the City Council's approval of an Individual or Class Exemption unless it Files an appeal in accordance with this rule and has exhausted all avenues of appeal provided by the ~~Purchasing Agent~~ Chief Procurement Officer.
 2. Judicial review is not available if the Request is denied by the City Council, Contract Board of Appeals or is withdrawn by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.710 Protests and Judicial Review of Multi-Tiered Solicitations.

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- A.** An Affected Person may protest their exclusion from multi-tiered Solicitations. Protest of Contract terms and conditions, however, shall be made pursuant to PCC Section 5.34.720.
- B.** Offerors may protest in one of two ways:

 - 1.** If no other protest remedies are provided in the Solicitation Document, an Affected Person can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award if the protest meets the requirements of PCC Section 5.34.710 C., pursuant to PCC Section 5.34.730 [protests of Contract Award]; or
 - 2.** If expressly required or permitted by the Solicitation Document, an Affected Person can file a Written protest after being excluded from the Competitive Range or after being excluded from any subsequent stages of Procurement.
- C.** Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:

 - 1.** The Affected Person is a Responsible and submitted a Responsive Offer;
 - 2.** The City made a mistake that, if corrected, would have made the Affected Person eligible to participate in the next stage of the Solicitation process.
- D.** Method of Protest.

 - 1.** Time. If the Solicitation Document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement, unless the Solicitation Document specifies a shorter period of time.
 - 2.** Contents: The protest must include the following information:

 - a.** Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b.** A detailed statement of all the legal and factual grounds for the protest;

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- c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- E. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.710 D.2., and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by PCC Section 5.34.710 D.2., the ~~Purchasing Agent~~ Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- F. Optional City Response: In addition to the requirements of PCC Section 5.34.710 E., the City may take any or all of the following actions:
 - 1. Agree with the Protest, in whole or in part, and permit the Affected Person to participate in the next stage of the Solicitation process;
 - 2. Issue a Written response to the protest and provide that determination to the Affected Person.
 - 3. Refer the protest to the Board of Appeals.
 - 4. Refer the protest to the City Council for consideration along with the ~~Purchasing Agent's~~ Chief Procurement Officer's Award; or
 - 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

- G. Judicial Review. An Affected Person may not seek judicial review of its elimination from a preliminary stage of a multi-tiered process unless it files a protest in accordance with this rule and has exhausted all avenues of appeal provided by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.720 Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.

- A. An Affected Person may protest the Solicitation process or the Solicitation Document for Offers solicited pursuant to Competitive sealed Bidding or through an alternative contracting process.
1. The exclusive method for protesting individual and class exemptions, is through PCC Section 5.34.700 and not this rule. The exclusive process of protesting a multi-tiered Solicitation process is pursuant to PCC Section 5.34.710 and not this rule.
 2. Prior to submitting a protest regarding Solicitation Documents or the Solicitation process, an Affected Person may seek clarification of any provision of the Solicitation Document. The City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the City unless the City amends the Solicitation Document by Addendum.
- B. Method of Protest.
1. Time: A Written protest regarding a Solicitation Document or the procurement process shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised unless the Solicitation Document requires a shorter period of time. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule.
 2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the portion or portions of the Solicitation Document that are being protested or the solicitation process or processes that are the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;

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- c. Evidence or supporting documentation that supports the grounds on which the protest is based;
- d. A description of the resulting harm to the Affected Person; and
- e. The relief requested.

C. Required City Response.

- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.720 B.2. and the reasons for that failure;
- 3. If the protest was timely filed and provides the information required by PCC Section 5.34.720 B.2., the ~~Purchasing Agent~~ Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business Days before Offers are due, unless a Written determination is made by the ~~Purchasing Agent~~ Chief Procurement Officer that circumstances exist that require a shorter time limit.
- 4. The ~~Purchasing Agent~~ Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the decision is final, the Affected Person must seek judicial review before the Opening of Bids, Proposals or Offers.
- 5. If the ~~Purchasing Agent~~ Chief Procurement Officer receives protest from an Affected Person in accordance with this rule, the ~~Purchasing Agent~~ Chief Procurement Officer may extend Closing if the City determines an extension is necessary to consider the protest and to issue an Addendum to the Solicitation Document.

D. Optional City Response: In addition to the requirements of PCC Section 5.34.720 C., the ~~Purchasing Agent~~ Chief Procurement Officer may take any or all of the following:

- 1. Agree with the protest and make any necessary corrections to the Solicitation Document or Procurement process;

2. Issue a Written response to the protest and provide that decision to the Affected Person.
 3. Refer the protest and any response to the Board of Appeals;
 4. Refer the protest and any response to the City Council for decision; or
 5. Any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review of the City's final decision regarding its protest of the contents of a Solicitation Document or the Solicitation process unless it fully has complied with the Protest requirements of this rule and has exhausted all avenues of appeal provided by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.725 Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.

- A. This Code provision applies only to City Solicitation Documents concerning Federal-Aid Certified projects that contain Supplemental Contract provisions implementing the requirements of the United States Department of Transportation and Part 26, Title 49 of the Code of Federal Regulations concerning Disadvantaged Business Enterprises (DBEs).
- B. An Affected Person whose Offer is rejected as nonresponsive as a result of noncompliance with the DBE requirements of the Solicitation Document may seek administrative reconsideration of that decision from the Oregon Department of Transportation (ODOT) in the time and manner set forth in the Solicitation Document.
- C. An Affected Person whose Offer has been rejected as nonresponsive to a Solicitation Document described in Paragraph A for reasons other than noncompliance with the DBE requirements of the Solicitation Document shall submit a protest to the ~~Purchasing Agent~~ Chief Procurement Officer in accordance with the applicable provisions of City Code and not to ODOT. Similarly, protests of any matters other than bid rejection for failure to meet DBE requirements shall be considered by the ~~Purchasing Agent~~ Chief Procurement Officer in accordance with the applicable provision of City Code and not by ODOT.
- D. An Affected Person whose Offer has been rejected as nonresponsive on multiple grounds, including a failure to meet the DBE requirements of the Solicitation Document, shall seek administrative reconsideration from ODOT regarding the

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rejection regarding DBE requirements and shall file a protest with the ~~Purchasing Agent~~ Chief Procurement Officer regarding any other grounds on which rejection was made in accordance with the applicable provision of City Code.

- E. An Affected person may not seek judicial review unless it fully has complied with the requirements of this rule and exhausted all avenues of administrative reconsideration, protest, or both.

5.34.730 Protest of Contractor Selection, Contract Award.

- A. An Affected Person may protest the Award of a Contract, or the intent to Award a Contract, whichever occurs first, if:

1. The Affected Person would be eligible to be Awarded the Public Contract in the event that the protest were successful; and
2. The reason for the protest is that:
 - a. All other Offers 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 Bid or Proposal as nonresponsive; or
 - d. The City's evaluation of Offers or the City's subsequent determination of Award is otherwise in violation of these rules, ORS Chapter 279C or ORS Chapter 279A.

- B. Method of Protest.

1. Time: A Written protest of the Notice of Intent to Award or Award itself shall be provided to the ~~Purchasing Agent~~ Chief Procurement Officer within seven (7) Days after the City posts a notice that it will make a Contract Award, or the Contract is Awarded, whichever occurs first, unless the Solicitation Document specified a shorter period of time. The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document.
2. Contents: The protest must include the following information:

- a. Sufficient information to identify the Contract or Notice of Intent to Award that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest.
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person submitting the protest; and
 - e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.730 B.2, and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by PCC Section 5.34.730 B.2., the ~~Purchasing Agent~~ Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business Days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of PCC Section 5.34.730 C., the City may take any or all of the following:
 - 1. Agree with the Protest and issue a revised Notice of Intent to Award or take any other corrective action that may be necessary to ensure that the Contract is Awarded to the appropriate Offeror;

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2. Issue a Written response to the protest and provide that decision to the Affected Person.
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review. An Affected Person may not seek judicial review unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.740 Protests of Other Violations.

Protests of any violation of ORS Chapter 279C, for which no administrative remedy is otherwise provided by this Code, are subject to this rule:

- A. An Affected Person can file a protest under this section only if a Public Contract is about to be Awarded or has been Awarded and:
1. An alleged violation of ORS 279C has occurred in the Solicitation process and violation has resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;
 2. The alleged violation deprived the Affected Person of the Award of the Contract or the opportunity to compete for the Award of the Contract;
 3. The Affected Person would have been a Responsible Bidder, Proposer or Offeror qualified to receive the Award of the Contract;
 4. The Affected Person gave Written notice to the City describing the alleged violation no later than seven (7) Days after the date on which the alleged violation occurred and in no event more than seven (7) Days after the date of the execution of the Contract; and
 5. If the alleged violation is of ORS 279C, then it is one for which no judicial review is provided by another section of PCC Chapter 5.34.
- B. Method of Protest.
1. Time: The ~~Purchasing Agent~~ Chief Procurement Officer shall not consider a protest submitted after the timeline established for submitting

such protest under this rule and shall not consider a protest under this section if a right to protest is elsewhere provided by this Code.

2. Contents: The protest must include the following information:

- a.** Sufficient information to identify the Solicitation that is the subject of the protest;
- b.** A detailed statement of the alleged violation and all the legal and factual grounds for the protest.
- c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
- d.** A description of the resulting harm to the Affected Person; and
- e.** The relief requested

C. Required City Response. The City shall take the following actions, as appropriate:

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.34.740 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by PCC Section 5.34.740 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business Days unless a Written determination is made by the City that circumstances exist that require a longer time limit.
- 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the ~~Purchasing Agent~~ Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D. Optional City Response: In addition to the requirements of PCC Section 5.34.740 C., the City may take any or all of the following:

- 1.** Agree with the Protest and take any corrective action necessary;

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2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision.
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest
- E. Judicial Review. An Affected Person may not seek judicial review of any violations covered by this rule unless it fully has complied with the protest requirements of this rule and has exhausted all avenues of appeal provided by the ~~Purchasing Agent~~ Chief Procurement Officer.

5.34.750 Review of Prequalification and Disqualification Decisions.

- A. The denial, revocation or revision of a Prequalification decision or a decision to disqualify a prospective Offeror must submit Written appeal to the City within three (3) business Days after receipt of the City's notice.
- B. The City Council delegates its authority to the ~~Purchasing Agent~~ Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the ~~Purchasing Agent~~ Chief Procurement Officer shall notify the Person appealing of a time and place of a hearing designed to consider the appeal within 30 Days or a date mutually agreed upon by both parties.
- C. The City Council delegates its authority to conduct a hearing to the ~~Purchasing Agent~~ Chief Procurement Officer. The ~~Purchasing Agent~~ Chief Procurement Officer may subdelegate the authority to conduct a hearing to any Person(s) the ~~Purchasing Agent~~ Chief Procurement Officer deems appropriate, including the Board of Appeals.

5.34.760 Purchasing Board of Appeals.

- A. Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the ~~Purchasing Agent~~ Chief Procurement Officer or when authorized or required by this Chapter.
- B. Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Purchasing Board of Appeals for the purposes described above.

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- C. Jurisdiction of Board. The Purchasing Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the ~~Purchasing Agent~~ Chief Procurement Officer.
- D. Composition of Board.
 - 1. The Purchasing Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2. The members of the Board shall be:
 - a. A representative from the public purchasing sector;
 - b. The City Engineer or designee;
 - c. A member of the general public with affiliation to the purchasing industry.
 - 3. The public members shall be appointed by the Mayor, subject to confirmation by City Council and shall serve for a period of up to two years, which may be extended by the ~~Purchasing Agent~~ Chief Procurement Officer.
 - 4. A member of the board shall serve as chairperson.
- E. Compensation. All members of the Board shall serve without pay, except that they may receive their regular salaries during time spent on Board matters.
- F. Vacancies. A vacancy on the Board shall be filled as soon as possible in accordance with the procedures described above.
- G. Procedure and Rules. The ~~Purchasing Agent~~ Chief Procurement Officer shall establish administrative rules of procedure for the Board and the Board shall follow that procedure for all matters heard by the Board.
- H. Staff. ~~The Bureau of Purchases~~ Procurement Services shall provide staff and appropriate assistance for the Board.

5.34.770 Powers of the Board.

- A. The Board shall be responsible for reviewing the decisions of the City arising under this Chapter. In regard to appeals of decisions regarding Prequalification or

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disqualification of Bidders or Proposers, the Board shall comply with Oregon state law and these rules.

- B. The Board shall consider only those matters that were raised by the Affected Person in its protest to the ~~Purchasing Agent~~ Chief Procurement Officer.
- C. The Board shall not consider the appeal of any Affected Person who did not file a timely appeal.
- D. The Board shall hear appeals based on administrative rules of procedure established by the ~~Purchasing Agent~~ Chief Procurement Officer. The administrative rules shall provide for notice and prompt hearing of appeals and protests, record-making, right to counsel and other procedural matters.
- E. Following completion of a hearing, the Board shall prepare a Written decision that shall be mailed to all parties to the hearing by certified mail, return receipt requested.

5.34.780 Appeal to Board.

- A. Time. Any request for hearing by the Board shall be received by the ~~Purchasing Agent~~ Chief Procurement Officer no more than seven (7) Days from the date of the ~~Purchasing Agent~~ Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to the ~~Bureau of Purchases~~ Procurement Services, Attn: ~~Purchasing Agent~~ Chief Procurement Officer and marked "Request for Hearing by the Purchasing Board of Appeals."
- B. Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the ~~Purchasing Agent~~ Chief Procurement Officer and the Purchasing Board of Appeals shall be stated as grounds for appeal.
- C. Time of Hearing. The ~~Purchasing Agent~~ Chief Procurement Officer shall schedule the time and place for the Board to meet giving consideration to the schedule of the Board.
- D. Further Appeal. An Affected Person who is not satisfied with the decision of the Board may file a further Written appeal, but only if permitted by the ~~Purchasing Agent~~ Chief Procurement Officer. If not permitted by the ~~Purchasing Agent~~ Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the ~~Purchasing Agent~~ Chief Procurement Officer no later than three (3) Days from the date the Affected Person receives the Board's Written decision. The request shall be delivered to

~~the Bureau of Purchases~~ Procurement Services, Attn: ~~Purchasing Agent~~ Chief Procurement Officer and marked "Request for Hearing by City Council."

- E. If so referred, City Council shall decide at its next available regularly scheduled hearing whether to hear the appeal. If City Council decides not to hear the appeal, the decision of the Board is final. If City Council decides to hear the appeal it shall be scheduled by the Council Clerk for hearing by City Council. The City Council's decision on the appeal shall be final upon issuance of City Council's order deciding the appeal. The City Council may also adopt the decision of the Board without further hearing by City Council. In this situation, the appeal to City Council shall be final upon issuance of City Council's order adopting the decision of the Board. The rules of City Council provided at PCC Chapter 3.02 shall be the rules for any hearing on appeal.
- F. If so permitted, the decision of City Council shall conclude an Affected Person's administrative remedies and further redress sought by an Affected Person shall be pursuant to state law. Otherwise, the Board's decision shall be final for any remedies that might be available to Affected Person under state law.
- G. Costs: The ~~Purchasing Agent~~ Chief Procurement Officer may impose a reasonable fee on the Affected Person requesting a hearing before the Board or Council to defray costs of the appeal. The fee shall be paid at the time the hearing is requested or the protest shall be considered waived. In the event that the Person contesting the hearing prevails in its protest, the fee shall be refunded.

5.34.800 Purpose.

PCC Section 5.34.800 *et seq.* is intended to provide guidance to Bureaus and divisions of the City of Portland regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the City's ~~Purchasing Agent~~ Chief Procurement Officer. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, PCC Section 5.34.880 implements the requirements of ORS 279C.335 pertaining to the adoption of model rules appropriate for use by the City govern the procedures for entering into ESPCs.

5.34.810 Definitions for Alternative Contracting Methods.

The following definitions shall apply to PCC Section 5.34.800 through PCC Section 5.34.890, unless the context requires otherwise:

- A. **Alternative Contracting Methods.** Innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the

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traditional method of design-Bid-build with Award based solely on price (in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in PCC Section 5.34.880, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under PCC Section 5.34.800 through PCC Section 5.34.890.

- B. Construction Manager/General Contractor (or "CM/GC").** A form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the City, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract.
- C. Design-Build.** A form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the City, and manages both design and construction. In this form of Contract, a single Person provides the City with all of the Personal Services and Work necessary to both design and construct the project.
- D. Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures").** As used in ESPC Procurement, any equipment, fixture or furnishing to be added or used in an existing building, structure or building/structure system, and any repair, alteration or improvement to an existing building, structure or building/structure system that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. Maintenance services are not Energy Conservation Measures, for purposes of PCC Section 5.34.880.
- E. Energy Savings Guarantee.** The energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the City that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts

that will be guaranteed, provisions related to the financial remedies available to the City in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the City after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

- F. **Energy Savings Performance Contract (or "ESPC").** A Public Improvement Contract between The City and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
- G. **Guaranteed Maximum Price (or "GMP").** The total maximum price provided to the City by the Contractor, and accepted by the City, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the Scope of Work. It may also include particularly identified contingency amounts.
- H. **Measurement and Verification (or "M & V").** As used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.
- I. **Project Development Plan.** A secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.
- J. **Qualified Energy Service Company (or "ESCO").** As used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs

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on projects involving existing buildings and structures that are comparable to the project under consideration by the City; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

- K. **Technical Energy Audit.** As used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the City of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

5.34.820 Use of Alternative Contracting Methods.

- A. **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and PCC Section 5.34.830. Use of Alternative Contracting Methods may be directed by the City's ~~Purchasing Agent~~ Chief Procurement Officer as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with City Code.
- B. **Energy Savings Performance Contracts.** Unlike other Alternative Contracting Methods covered by PCC Section 5.34.800 *et seq.* ESPCs are exempt from the competitive bidding requirement for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the City complies with the procedures set forth in PCC Section 5.34.880 related to the Solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.
- C. **Post-Project Evaluation.** ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the City's ~~Purchasing Agent~~ Chief Procurement Officer, on behalf of the City Council within 30 Days of the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. The ~~Purchasing Agent~~ Chief Procurement Officer shall forward such reports to the City Council in a timely manner. In the absence of a definition of "acceptance", the later of the date of final payment or the date of final completion of the Work will govern. ORS

279C.355 describes the timing and content of this evaluation, with three required elements:

1. Financial information, consisting of Cost Estimates, any Guaranteed Maximum Price, changes and actual costs;
2. A narrative description of successes and failures during design, engineering and construction; and
3. An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

5.34.830 Findings, Notice and Hearing.

A. The City Council may by ordinance exempt a Contract from the requirements of an ITB process if it makes the following findings:

1. It is unlikely that the exemption will encourage favoritism in the Awarding of Public Improvement Contracts or substantially diminish competition for public improvement Contracts as further described in PCC Section 5.34.830 F.; and
2. The exemption will likely result in substantial costs savings to the City. The "substantial cost savings" criterion at ORS 279C.335(2)(b) requires consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate" as further described in PCC Section 5.34.830 E.; or
3. If the Public Improvement relate to the operation, maintenance or construction of highways, bridges and other transportation facilities, that the exemption will result in substantial cost savings to the City or to the public.
4. As an alternative to the findings regarding substantial cost savings, the City may make a finding that identifies the project as a pilot project for which the City intends to determine whether the use of the alternate contracting process actually results in substantial cost savings to the City, or, if it is for a public improvement described in PCC Section 5.34.830 A.3. above, to the public, provided the City has not previously used the proposed alternate contracting method.

B. The City council may consider the type, cost and amount of the Contract the number of Persons available to bid and other such factors as may be deemed appropriate in declaring the exemption.

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- C.** Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the City. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe the anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.
- D.** The City Council shall require and approve additional findings in the following areas in order to declare the exemption:
1. Operational, budget and financial data;
 2. Public benefits;
 3. Value Engineering;
 4. Specialized expertise required;
 5. Public safety;
 6. Market conditions;
 7. Technical complexity; and
 8. Funding sources.
- E.** The City shall hold a public hearing before final adoption of the findings and a declaration of the exemption. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 Days before the hearing;

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1. The Notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the Competitive Bidding requirement of using an ITB. At the time of the notice, copies of the draft findings shall be made available to the public.
 2. At the hearing, the City shall offer an opportunity for any interested persons to appear and present comment;
 3. Notice of the hearing may be published simultaneously with the City's Solicitation of contractors for the alternative public contracting method when the City is required to act promptly due to circumstances beyond the City's control that do not constitute an Emergency as long as responses to the Solicitation are due at least five (5) Days after the meeting and approval of the findings;
- F.** Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:
1. Specified Findings that address the factors and other information specifically identified by statute; and
 2. Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.
- G.** Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised, competition will be encouraged, and Award made based upon identified selection criteria.
- H.** Class Exemptions. In making the findings supporting a class exemption the City shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, Contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from the City's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but must be defined

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by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2). The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:

1. Contract Amendments. Contract amendments, pursuant to the authority granted by PCC Section 5.34.020 C., and provided that the original Contract was executed in accordance with this chapter;
2. Tenant improvements. Tenant Improvements on City owned property are exempt from the requirements of Competitive low Bidding, but may be subject to other provisions of this Chapter or ORS 279C. Tenant improvements are exempt when:
 - a. The improvements are paid for in part, or in whole, by the tenant;
 - b. The improvements are primarily for the tenant's benefit; and
 - c. The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
3. Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
 - a. The City finds that a Contractor hired by a private developer or Person is at or near the site where City Work needs to be performed and the cost proposed by the private Contractor is reasonable and the cost of the Work will be less than \$25,000; or
 - b. The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
 - (1) The new Work is not within the Scope the original Contract and was not anticipated at the time that the original Contract was Awarded; and
 - (2) If the original Contract was less than \$25,000 the new work does not cause the total payment to the Contractor to exceed \$25,000; or
 - (3) If the original Contract was more than \$25,000, the new Work does increase the total amount paid to the Contractor by more than \$50,000.

5.34.840 Competitive Proposals; General Procedures.

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- A.** General Application: The City may utilize the RFP outlined in PCC Sections 5.34.840 C. through E. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.400 to 279C.410 and PCC Sections 5.34.800 to 5.34.890, unless other applicable statutes control the City's use of competitive Proposals for Public Improvement Contracts. Nothing in this rule shall limit the use of evaluation factors or other matters expressly permitted by those additional rules or authorized by ordinance.
- B.** ESPCs: For ESPCs, the RFP outlined in PCC Sections 5.34.840 C. through E. below shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in PCC Sections 5.34.800 to 5.34.890 includes the following steps:
- C.** Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

 - 1. Be reasonable estimates based on information available to the City;
 - 2. Treat all Proposals equitably; and
 - 3. Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the City. See ORS 279C.305.
- D.** Evaluation Factors.

 - 1. In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, the status of its Equal Employment Opportunity (EEO) certification, its efforts to diversify its workforce in order to reach all of the City's citizens and other related matters that affect cost or quality.
 - 2. In CM/GC contracting, in addition to PCC Section 5.33.840 D.1., those factors may also include the ability to respond to the technical complexity or unique character of the project, coordination of multiple disciplines, the

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time required to commence and complete the improvement, and related matters that affect cost or quality.

3. In Design-Build contracting, in addition to PCC Section 5.33.840 D.1. and 2., those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.
4. In ESPC contracting, in addition to the factors set forth in PCC Section 5.33.840 D.1., 2. and 3., those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the City and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

- E.** Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and PCC Sections 5.34.800 to 5.34.890, provided that the general Work Scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document.

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See PCC Section 5.34.850. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the Scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and Scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of PCC Section 5.34.880 below.

5.34.845 Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), the City may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the City shall first advertise and provide notice of the RFQ in the same manner in which RFP's are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. The Purchasing Agent Chief Procurement Officer shall decide whether to permit protests at the end of the RFQ process. Thereafter, the City may distribute RFPs to those qualified firms without further advertisement of the solicitation.

5.34.850 Requests for Proposals (RFP).

- A. Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding requirement of ORS 279C.335 (1), PCC Section 5.34.170 and PCC Sections 5.34.800 to 5.34.890. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and PCC Section 5.34.840 regarding competitive Proposal procedures.
- B. Solicitation Documents. In addition to the Solicitation Document requirements of PCC Section 5.34.300, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:
 1. The City shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply,

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references and warranty provisions. See PCC Section 5.34.840. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the City;

2. When the City is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the City must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. The City must describe the evaluation and discussion or negotiation process, including how the City will establish the Competitive Range;
3. The anticipated size of the Competitive Range shall be stated in the Solicitation document, but may be decreased if the number of Proposers that submit Responsive Proposals is less than the specified number, or may be increased as provided in PCC 5.34.850D.1.b.
4. When the City intends to Award Contracts to more than one Proposer, the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The City shall also include the criteria it will use to determine how the City will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

C. Evaluation of Proposals.

1. Evaluation. The City shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The City shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.
 - a. Clarifications. In evaluating Proposals, The City may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.
 - b. Limited Negotiation. If the City did not permit negotiation in its Request for Proposals, the City may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

- (1) Statement of Work; and
 - (2) Contract Price as it is affected by negotiating the statement of Work.
 - (3) The process for discussions or negotiations that is outlined and explained in PCC Sections 5.34.850 E.2. and 5.34.850 F. does not apply to this limited negotiation.
 2. Discussions; Negotiations. If the City permitted discussions or negotiations in the Request for Proposals, the City shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.
 - a. If the Solicitation Document provided that discussions or negotiations may occur at City's discretion, the City may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.
 - b. If the City proceeds with discussions or negotiations, the City shall establish a negotiation team tailored for the acquisition. The City's team may include legal, technical and negotiating personnel.
 3. Cancellation. Nothing in this rule shall restrict or prohibit the City from canceling the Solicitation at any time.
- D. Competitive Range; Protest; Award.**
1. Determining Competitive Range.
 - a. If the City does not cancel the Solicitation, after the Opening the City will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City will determine and rank the Proposers in the Competitive Range.
 - b. The City may increase the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely Competitive, or have a reasonable chance of being determined the best Proposer after the City's evaluation of revised Proposals submitted in accordance with the process described in this rule.

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2. **Protesting Competitive Range.** The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the City's evaluation and determination of the Competitive Range in accordance with PCC Section 5.34.710.
 3. **Intent to Award; Discuss or Negotiate.** After the protest period provided in accordance with these rules expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:
 - a. Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (1) An unsuccessful Proposer may protest the City's intent to Award in accordance with PCC Section 5.34.740.
 - (2) After the protest period provided in accordance with PCC Section 5.34.740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or
 - b. Engage in Negotiations with all Proposers in the Competitive Range, as provided in PCC Section 5.34.850 F. below; or
 - c. Engage in discussions with Proposers in the Competitive Range, as provided in PCC Section 5.34.850 E. below, accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, either select the highest ranking Proposer or conduct further negotiations with the Proposers in the Competitive Range;
 - d. Otherwise proceed in any other legal manner designed to select a or as specified by the RFP or ordinance.
- E. **Discussions; Revised Proposals.** If the City chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the City shall proceed as follows:
1. **Initiating Discussions.** The City shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the City identified

in the RFP as the subject of discussions. The City may conduct discussions for the following purposes:

- a. Informing Proposers of deficiencies in their initial Proposals;
 - b. Notifying Proposers of parts of their Proposals for which the City would like additional information; and
 - c. Otherwise allowing Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
2. Conducting Discussions. The City may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The City may terminate discussions with any Proposer in the Competitive Range at any time. However, the City shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with City before the City notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.
 - a. In conducting discussions, the City :
 - (1) Shall treat all Proposers fairly and shall not favor any Proposer over another;
 - (2) Shall not discuss other Proposers' Proposals;
 - (3) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal. Nothing in this paragraph, however, shall prevent the City from identifying deficiencies in a Proposal, as provided in PCC Section 5.34.850 E.1.a. above.
 - b. At any time during the time allowed for discussions, the City may:
 - (1) Continue discussions with a particular Proposer;
 - (2) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

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- (3) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.
3. Revised Proposals. If the City does not cancel the Solicitation at the conclusion of the City's discussions with all remaining Proposers in the Competitive Range, the City shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the City's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the City's notice.
 - a. Upon receipt of the revised Proposals, the City shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the City's scoring.
 - b. The City may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.
4. Intent to Award; Protest. The City shall provide Written notice to all Proposers in the Competitive Range of the City's intent to Award the Contract. An unsuccessful Proposer may protest the City's intent to Award in accordance with PCC Section 5.34.740. After the protest period provided in accordance with that rule expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence final Contract negotiations.

F. Negotiations.

1. Initiating Negotiations. The City may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:
 - a. Initial determination of the Competitive Range; or
 - b. Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
2. Conducting Negotiations, Scope. The City may negotiate:
 - a. The statement of Work;

- 5.34.860 RFP Pricing Mechanisms.**

- Current as of 12/23/2009 with corrections

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- C. A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the City in determining whether the project Scope is within the City's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.
 - 1. If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the City and included within the Contract.
 - 2. If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the City shall terminate the Contract. The public City may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- D. When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the City shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

5.34.870 Design-Build Contracts.

- A. General. The Design-Build form of contracting, as defined in PCC Section 5.34.810 C, has technical complexities that are not readily apparent. In order to use the Design-Build process, the City must be able to reasonably anticipate the following types of benefits:
 - 1. Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
 - 2. Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
 - 3. Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

4. Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); and
 5. Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.
- B.** Authority. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of PCC Sections 5.34.800 to 5.34.890 of these rules. See particularly PCC Section 5.34.820 on "Use of Alternative Contracting Methods" and PCC Section 5.34.880 pertaining to ESPCs.
- C.** Selection. Design-Build selection criteria may include those factors set forth above in PCC Sections 5.34.840 B.1., 2. and 3.
- D.** QBS Inapplicable. Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process is not applicable.
- E.** Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the City shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- F.** Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- G.** Contract Requirements. The City shall conform its Design-Build contracting practices to the following requirements:

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1. Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
2. Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the City, as well as requirements for professional liability insurance.
3. Risk Allocation. The Contract shall clearly identify the extent to which the City requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
4. Warranties. The Contract shall clearly identify any express warranties made to the City regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
5. Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.
6. Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the City is benefited from such deliverables.

5.34.880 Energy Savings Performance Contracts (ESPC).

- A. Generally. PCC Sections 5.34.800 to 5.34.890 include a limited, efficient method for the City to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. If the City chooses not to utilize these rules, the City may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any City not subject to all the requirements of ORS 279C.335.
- B. ESPC Contracting Method. The ESPC form of contracting, as defined in PCC Section 5.34.810 F., has unique technical complexities associated with the

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determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. The City shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the City must be able to reasonably anticipate one or more of the following types of benefits:

1. Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, Life Cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;
 2. Obtaining, through an ESCO, an Energy Savings Guarantee;
 3. Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;
 4. Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;
 5. Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;
 6. Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
 7. Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
 8. Satisfying local energy efficiency design criteria or requirements.
- C. Authority. Bureaus wanting to pursue an exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of PCC Section 5.34.800 through PCC Section 5.34.890.

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- D. No Findings. The City is only required to comply with the ESPC contracting procedures set forth in PCC Section 5.34.800 through PCC Section 5.34.890 in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the City is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set for in these rules.
- E. Selection. ESPC selection criteria may include those factors set forth above in PCC Sections 5.34.840 B.1., 2., 3., and 4. Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.
- F. QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 is not applicable.
- G. Licensing. If the ESCO is not an Oregon licensed design professional, the City shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
- H. Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the City's operations and maintenance staff, and any similar Personal Services or Work provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services and Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, The City may require that the ESCO provide performance security for M & V services and any Personal Services and Work

associated with the ESCO's Energy Savings Guarantee, if the City so provides in the RFP.

I. Contracting Requirements. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

1. General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

a. A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

b. The various phases of the ESCO's Work will include the following:

(1) The Technical Energy Audit phase of the Work;

(2) The Project Development Plan phase of the Work;

(3) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(4) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the City, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

2. Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the City shall conform its Design-Build

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contracting practices to the Design-Build contracting requirements set forth in PCC Section 5.34.870 G. above.

3. Pricing Alternatives. The City may utilize one of the following pricing alternatives in an ESPC:
 - a. A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;
 - b. A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
 - c. A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the City, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the City's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).
4. Permitted ESPC Scope of Work. The Scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted Scope of Work for ESPCs resulting from a Solicitation under PCC Sections 5.34.800 to 5.34.890 rules does not include maintenance services for the project facility.

5.34.890 Construction Manager/General Contractor (CM/GC).

- A. **General.** The CM/GC form of contracting, as defined in PCC Section 5.34.810 B., is a technically complex project delivery system. Unlike the Design-Build

form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the City and design professional, although in CM/GC there is a separate Contract between the City and design professional. In order to utilize the CM/GC method, the City must be able to reasonably anticipate the following types of benefits:

1. Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The City may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
 2. Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The City may consider value engineering, building systems analysis, Life Cycle Costing analysis and construction planning that lead to cost savings. The City shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and
 3. Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services. The City may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.
- B. Authority.** The City shall use the CM/GC form of contracting only in accordance with the requirements of these rules. See particularly, PCC Section 5.34.820 on "Use of Alternative Contracting Methods".
- C. Selection.** CM/GC selection criteria may include those factors set forth above in PCC Section 5.34.840 B.2.

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- D. Basis for Payment.** The CM/GC process adds specified Construction Manager Personal Services to traditional General Contractor Work, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at PCC Section 5.34.810 G. and Pricing Mechanisms in PCC Section 5.34.860.
- E. Contract Requirements.** Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:
1. Setting the GMP. The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP Scope.
 2. Adjustments to the GMP. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work Scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the Scope defined at the establishment of the GMP or most recent GMP amendment.
 3. Cost Savings. The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the City's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the City.)
 4. Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.
 5. Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

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6. Fee. Compensation for the CM/GC's Personal Services and Work shall be paid on the basis of a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.
7. Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).
8. Controlled Insurance Programs. For projects anticipated to exceed \$75 Million, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify:
 - a. anticipated cost savings from reduced premiums, claims reductions and other factors;
 - b. the allocation of cost savings; and
 - c. safety responsibilities and/or incentives.
9. Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:
 - a. Early Procurement of materials and supplies;
 - b. Early release of Bid packages for such things as site development; and
 - c. Other advance Work related to critical components of the Contract.
10. Subcontractor Selection. The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record Bids or price quotations, and competitively select Subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the City may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a

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minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.

11. Subcontractor Approvals and Protests. The Contract shall clearly establish whether the City must approve subcontract Awards, and to what extent, if any, the City will resolve Procurement protests of Subcontractors and suppliers. The related procedures and reporting mechanisms shall be established with certainty, including whether the CM/GC acts as the City's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City shall retain the right to monitor the subcontracting process in order to protect City's interests.
12. CM/GC Self-Performance. Whenever feasible, the Contract shall establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract shall include a process for City approval of CM/GC self-performance.
13. Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Good Faith Efforts and Workforce Training and Hiring), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and City.

5.34.900 Required Contract Clauses.

The City shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in PCC Section 5.34.300 regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

5.34.910 Waiver of Delay Damages Against Public Policy.

Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from The City's unreasonable delay in performing the Contract is void and unenforceable, as against public policy. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages, are permissible.

5.34.915 BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bonds requirements.

5.34.920 Retainage.

A. Retainage of 5 Percent. The amount to be retained from any given progress payment shall not exceed 5 percent of the payment. If the Contract Work is 50 percent completed and the Work is progressing satisfactorily, the City may, at its discretion, reduce or eliminate the retainage on the remaining progress payments. Any reduction or elimination of retainage shall be allowed only upon Written application of the Contractor, which application shall include Written approval of the Contractor's surety; except that when the Contract Work is 97.5 percent completed, the City may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Contract Work remaining to be done. Upon receipt of a Written application by the Contractor, the City shall respond in Writing within a reasonable time. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.

B. Form of Retainage. Unless the City finds in writing that accepting a bond or instrument described in 1. and 2. of this Subsection poses an extraordinary risk that is not typically associated with the bond or instrument, the City, in lieu of withholding moneys from payment, shall accept from the Contractor:

1. Bonds, securities, or other instruments that are deposited and accepted as provided in Subsection 5.34.920 D.1. of this rule; or

2. A surety bond deposited as provided in Subsection 5.34.920 D. of this rule.

B. C. Deposit in Interest-bearing accounts. Upon request of the Contractor, the City shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the City. Earnings on such account shall accrue to the Contractor. The City may determine the account into which the retainage is placed.

C. D. Alternatives to Cash Retainage. In lieu of cash retainage to be held by the City, the Contractor may select one of the following options:

1. Deposit of bonds, securities and other instruments:

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- a. The Contractor may deposit bonds, ~~or securities or other instruments~~ with the City as set forth in PCC Section 5.34.920 ~~B-1.b.~~ or in any bank or trust company to be held for the benefit of the City. If the City accepts the deposit, n-such event, the City shall reduce the retainage in an amount equal to the value of the bonds and securities. This reduction in retainage shall be made in the progress payments made subsequent to the time the Contractor deposits the bonds and securities;

- b. The value of the bonds and securities shall be determined periodically by the City, in the manner described in PCC Section 5.34.920 ~~B-D.1.c.~~, and the amount retained on progress payments shall be adjusted accordingly. The bonds and securities deposited by the Contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the City Treasurer and in a form approved by the City Attorney including, but not limited to, the following:
 - (1) Bills, certificates, notes or bonds of the United States;
 - (2) Other obligations of the United States or its agencies of the United States;
 - (3) Obligations of any corporation wholly owned by the federal government;
 - (4) Indebtedness of the Federal National Mortgage Association;
 - (5) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or
 - (6) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

- c. The value of bonds and securities deposited by the Contractor shall be calculated as follows:
 - (1) As to bonds or securities for which the "Bid" and "asked" prices are published on a regular basis in the Wall Street Journal or in the New York Times, the value shall be the average of the "Bid" and "asked" prices for the bonds or securities so published on (or most recently prior to) the date value is determined;

- (2) As to bonds or securities for which the "Bid" and "asked" prices are not published in the Wall Street Journal or the New York Times, the value shall be either: the average "Bid" price for the bond or security, on the date value is determined, as established by any two nationally recognized government securities dealers (selected by the City in its sole discretion) making a market in such investments; or, the "Bid" price published by a nationally recognized pricing service;
 - (3) As to certificates of deposit and bankers acceptances, the value shall be the face amount thereof, plus accrued interest.
- d. At the time the City determines that all requirements for the protection of the City's interest have been fulfilled, all bonds and securities deposited as above provided shall be released to the Contractor.
- 2. Execution of Escrow Agreement. The ~~Purchasing Agent~~ Chief Procurement Officer is authorized to execute any escrow agreement necessary to safeguard deposit of securities with the City subject to approval as to form by the City Attorney.
- 3. Deposit in Interest-Bearing Accounts. Upon Written request of the Contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on such account shall accrue to the Contractor but the interest shall remain in the account until the City authorizes its release. The account shall be established through the City Treasurer.
- D E.** Recovery of Costs. If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As Work on the Contract progresses, the City shall, upon request, inform the Contractor of all accrued costs.
- E F.** Additional Retainage When Certified Payroll Statements not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the City shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the City. The City shall pay the Contractor the amount retained

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under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements.

5.34.930 Fair Contracting and Employment Programs.

From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract Documents so that Persons desiring to enter into Contracts with the City are aware of their requirements.

5.34.940 Public Works Contracts.

A. Required Contract Conditions. Every Public Works Contract must contain the following provisions:

1. City authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515A.
2. Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
3. Employer notice to employees of hours and days that employees may be required to Work, as set forth in ORS 279C.520(2).
4. Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
5. Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
6. ~~Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.~~

B. Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotations or similar Procurement Specifications), must contain the following provisions:

1. The prevailing state rate of wage, as required by ORS 279C.830(1), either:
 - a. physically contained within or attached to hard copies of Procurement Specifications;

- b. included by a statement incorporating the applicable wage rate publication in the Specifications by reference; or
 - c. when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them.
- 2. If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication. The same options for inclusion of wage rate information stated in PCC Section 5.34.940 B.1. apply.
- 3. ~~Reference to payment of fee to BOLI, as required by ORS 279C.830(2).~~

5.34.950 City Payment for Unpaid Labor or Supplies.

- A. **Contract incomplete.** If the Contract is still in force, the City may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the City chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.
- B. **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The City shall not make payments to Subcontractors or suppliers for Work already paid for by the City.

5.34.960 Records Maintenance; Right to Audit Records.

- A. Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
 - 1. Their performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;

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2. Any claims arising from or relating to their performance under a Public Contract;
 3. Any cost and pricing data; and,
 4. Payment to suppliers and Subcontractors.
- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- C.** Contractors and Subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of the City, the Contractor or Subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.
- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to PCC Section 5.34.960 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.

- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer as provided in PCC Section 5.34.610 B.

5.34.970 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of submitting an Offer, Offerors agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
 - 1.** To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 - 2.** To investigate in connection with an Offer's Offer, a minority business or EEO certification, or Offeror qualification.
 - 3.** To inspect for compliance with City programs required by the Solicitation Document.
 - 4.** To inspect for Contract compliance.
- C.** Contractual Provisions. Contracts may provide that the City may inspect supplies and services at the Contractor's or Subcontractor's or supplier's office or facility and perform tests to determine whether they conform to the Solicitation Document, or, after Award, to the Contract requirements, and are acceptable. Such inspections and tests shall be conducted in accordance with the terms of the Contract.
- D.** Procedures for Inspection, Trial Use and Testing. The City may establish operational procedures governing the inspection, testing and trial use of equipment, materials and the application of resulting information and data to Specifications or Procurements.
- E.** Conduct of Inspections and Tests:
 - 1.** Inspectors and testers. Inspections or tests shall be performed so as not to unduly delay the Work of the Contractor or Subcontractor. No change of any provision of the Specifications or the Contract may be required by the inspector or tester without Written authorization of the City, unless

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otherwise specified in the Solicitation Document. The presence or absence of an inspector or tester shall not relieve the Contractor or Subcontractor from any requirement of the Contract;

2. Location. When an inspection is made in the plant or place of business of a Contractor or Subcontractor, such Contractor or Subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the inspector or tester;
3. Time of inspection or testing. Inspection or testing of supplies and services performed at the plant or place of business of any Contractor or Subcontractor shall be performed at reasonable times during normal business hours.

5.34.980 Contract Cancellation, Contractor Termination Procedures.

- A. Grounds for Cancellation or Termination. The City may, at its option, cancel a Contract or terminate the Contractor's performance, if cancellation or termination is in the best interest of the City; or, for any material violation of the provisions of the Contract. Such provisions generally include, but are not limited to:
 1. Standard terms and conditions included in Contracts;
 2. Product or service Specifications;
 3. Delivery or completion requirements; or
 4. Contracted pricing and price escalation/de-escalation clauses.
- B. The City and the Contractor may cancel the Contract at any time by mutual Written agreement.
- C. Termination For Convenience.
 1. Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a. The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b. The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or

- c. For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or
 - d. Any third party judicial proceeding relating to the Work other than a suit or action filed in regards to a labor dispute; or
 - e. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of a public improvement.
- D. **Payment When Contract is Canceled.** When the Contract, or any portion thereof, is canceled before completion of all items of Work in the Contract, payment shall be made, based on the Contract price, for the actual items of Work completed under the Contract, or by mutual agreement, for items of Work partially completed. No claim for loss of anticipated profits or overhead shall be allowed;
- E. **Responsibility for Completed Work if Contract Canceled.** Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for the Work completed, nor shall it relieve the surety of its obligation for any just claims arising from the Work performed.
- F. **Termination of the Contractor's Performance for Default.**
 - 1. **Declaration of Default.** The City may, after giving the Contractor and its surety seven (7) Days Written notice and an opportunity to cure deficient performance, terminate the Contractor's performance for any reasonable cause, including but not limited to those set forth in PCC Sections 5.34.980 F.1.a. to g. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the Contractor has received partial payment. The City may finish the Work by whatever method it may deem expedient;
 - a. If the Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract documents, or otherwise fail to pursue the Work in a timely manner; or

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- b. If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
 - c. If permitted by law, if the Contractor should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the Contract within a reasonable time, or as provided by the Bankruptcy Court; or
 - d. If the Contractor should make a general assignment for the benefit of the Contractor's creditors; or
 - e. If a receiver should be appointed on account of the Contractor's insolvency; or
 - f. If the Contractor is otherwise in material breach of any part of the Contract; or
 - g. If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
- 2. Required Response to Declaration of Default. If a default is declared and the Contractor's performance terminated, the Contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools and appliances located on the premises, as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On the completion of the Work, the City shall determine the total amount of compensation the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had the Contractor completed the Work. If the difference between this total amount and the sum of all amounts previously paid to the Contractor, (the unpaid balance) exceeds the expense incurred by the City in completing the Work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the surety;
- 3. Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- G. Refusal to Perform. In addition to and apart from the above-mentioned right of the City to terminate the Contractor's performance, the Contract may be canceled by the City for any willful failure or refusal on the part of the Contractor and its surety to perform faithfully the Contract according to all of its terms and conditions; however, in such event neither the Contractor nor the surety shall be

relieved from damages or losses suffered by the City on account of the Contractor's breach of Contract;

- H.** Remedies Cumulative. The City may, at its discretion, avail itself of any or all of the above rights or remedies and invoke anyone of the above rights or remedies without prejudice and without precluding the City from subsequently invoking any other right or remedy set forth above, or in the Contract, or available at law or in equity;
- I.** Notice. The City shall provide the Contractor Written notice of the grounds for Contract cancellation or Contractor termination and of its intention to cancel the Contract or terminate the Contractor's performance. If the Contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of Contract cancellation or Contractor termination. The notice shall include:

 - 1. The effective date of the intended cancellation or termination,
 - 2. The grounds for cancellation or termination, and
 - 3. Notice of the amount of time (if any) in which the City shall permit the Contractor to correct the failure to perform.
- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided in PCC Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than PCC Section 5.34.980 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

EXHIBIT D**PORTLAND CITY CODE CONTRACT RULES
Substantive Rule Changes
Proposed for PCC 5.34
2010****Changes applicable to entire division**

- Changes reference from “Purchasing Agent” to “Chief Procurement Officer”
- Changes reference from “Bureau of Purchases” to “Procurement Services”

PCC 5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.

- Clarifies the City’s intention to seek competition when feasible on emergency contracts (moved from K to C)

PCC 5.34.493 First-Tier Subcontractors; Disclosure and Substitution

- Clarifies bidder disclosure instructions regardless of the cost of the contract

PCC 5.34.500 Responsibility of Offerors

- Defines a satisfactory record of performance.
- Clarifies what constitutes a non-responsible Offeror.

PCC 5.34.510 Prequalification of Offerors

- Deletes criteria for determining responsible bidders by referencing 5.34.500 above.

PCC 5.34.750 Review of Prequalification and Disqualification Decisions.

- Adds ability to extend appeal hearing beyond 30 days

PCC 5.34.920 Retainage

- Clarifies the form(s) of retainage that may be required for construction contracts.

PCC 5.34.940 Public Works Contracts

- Deletes the reference to payment of the BOLI fee.