

## **TITLE 5 - REVENUE AND FINANCE**

### **TABLE OF CONTENTS**

#### **Chapter 5.04**

#### **FUNDS**

5.04.010	Provisions Made For.
5.04.020	Sundry Trusts Fund.
5.04.030	Trustees' Fund.
5.04.040	Parking Meter Fund.
5.04.050	Golf Fund.
5.04.070	Bonded Debt Interest and Sinking Fund.
5.04.140	Parking Facilities Fund.
5.04.150	Parking Facilities Bond Redemption Fund.
5.04.170	Revenue Sharing Fund.
5.04.175	State Revenue Sharing Fund.
5.04.180	CityFleet Operating Fund.
5.04.185	Facilities Services Operating Fund.
5.04.200	Printing and Distribution Services Operating Fund.
5.04.210	Improvement Warrant Sinking Fund.
5.04.220	Economic Development Trust Fund.
5.04.230	Insurance and Claims Operating Fund.
5.04.240	Worker's Compensation Self Insurance Operating Fund.
5.04.250	System Development Charge Sinking Fund.
5.04.270	Washington County Water Supply Construction Fund.
5.04.280	Washington County Water Supply Bonded Debt Service Sinking Fund.
5.04.290	Water Growth Impact Charge Trust Fund.
5.04.300	Bull Run Fund.
5.04.310	St. Johns Landfill End Use Plan Fund.
5.04.320	Sewer Revolving Loan Fund.
5.04.330	Environmental Remediation Fund.
5.04.400	Sewer System Operating Fund.
5.04.410	Sewer System Construction Fund.
5.04.420	Sewer System Debt Redemption Fund.
5.04.430	Sewer System Debt Proceeds Fund.
5.04.440	Sewer System Rate Stabilization Fund.
5.04.450	Sewer System Safety Net Fund.
5.04.460	Use of Sewage Disposal Fund.
5.04.470	Portland Police Fitness Room Trust Fund.
5.04.480	Property Management License Fund.
5.04.490	Graffiti Nuisance Abatement Trust Fund.
5.04.500	Technology Services Fund.
5.04.510	Arts Education and Access Fund.
5.04.515	Recreational Marijuana Tax Fund.
5.04.520	Mt. Hood Cable Regulatory Commission Agency Fund.
5.04.530	Inclusionary Housing Fund.
5.04.540	Housing Property Fund.

**Chapter 5.08****PAYMENT OF SALARIES, WAGES AND EXPENSES**

- 5.08.010 Biweekly Pay Period.
- 5.08.020 Preparation and Certification of Biweekly Time Reports.
- 5.08.030 Computing Daily and Hourly Rates of Pay.
- 5.08.040 When Auditor to Draw Checks.
- 5.08.060 Safety Glasses.
- 5.08.070 Clothing Allowance.
- 5.08.075 Year Defined.
- 5.08.105 Reimbursement to Employees in Educational Programs Authorized by Council.
- 5.08.110 Bus Fare for Meter Readers.
- 5.08.120 Payment of Salaries and Wages at Other than Times Specified.
- 5.08.130 Salaries Chargeable to More than One Fund.
- 5.08.140 Salary Deductions.
- 5.08.150 State Tax Street Fund.
- 5.08.160 Delivery of Checks Payable to Deceased Persons.
- 5.08.170 Hold Harmless Agreements.
- 5.08.180 Effect of Death Upon Assignments and Levies.

**Chapter 5.09****DEFERRED COMPENSATION PLAN**

- 5.09.005 Title.
- 5.09.010 Definitions.
- 5.09.020 Purpose.
- 5.09.030 Administration.
- 5.09.035 Education.
- 5.09.040 Participation in the Plan.
- 5.09.050 Compensation Deferral.
- 5.09.055 Catch-up Provisions.
- 5.09.056 Excess Deferrals.
- 5.09.060 Deferred Compensation Records.
- 5.09.070 Payment Options.
- 5.09.080 Distribution of Benefits Generally.
- 5.09.090 Qualified Domestic Relations Orders (QDRO).
- 5.09.100 Determination of Benefits Upon Death.
- 5.09.120 Unforeseeable Emergency.
- 5.09.130 Non-Assignability.
- 5.09.140 Amendment and Termination.
- 5.09.150 Transfers from other Code Section 457 (b) Plans.
- 5.09.155 Rollovers to Plan.
- 5.09.156 Rollovers From the Plan.
- 5.09.157 Purchase of Service Credits.
- 5.09.160 Unclaimed Assets.
- 5.09.170 Disclaimers.

<b>Chapter 5.10</b>	<b>CITY CHARITABLE CAMPAIGN</b>
5.10.010	Definitions.
5.10.020	Charitable Campaign.
5.10.030	Charitable Campaign Advisory Committee.
5.10.040	Eligibility for Participation in Charitable Campaign.
5.10.050	Administration of Charitable Campaign.
<b>Chapter 5.12</b>	<b>ASSIGNMENT OR GARNISHMENT OF SALARIES, WAGES OR CLAIMS</b>
5.12.010	Unlawful to Assign Salary or Wages.
5.12.020	Auditor Not to Recognize Assignment.
5.12.030	Exceptions.
5.12.040	Penalty.
5.12.050	Garnishments.
<b>Chapter 5.16</b>	<b>EMERGENCY CHECKS</b>
5.16.010	Issued When.
5.16.020	Extraordinary Circumstances Requiring Emergency Checks.
<b>Chapter 5.20</b>	<b>BUDGET PROCEDURE</b>
5.20.010	Budget Procedure.
5.20.020	Reimbursable Expenditures Account.
<b>Chapter 5.24</b>	<b>AUDITOR'S RECORDS AND REPORTS</b>
5.24.010	Permanent Records to be Kept by Auditor.
5.24.020	Auditor to Report on Balance in Appropriation.
<b>Chapter 5.30</b>	<b>COLLECTIONS AND FORECLOSURE PROCESS</b>
5.30.010	Purpose.
5.30.020	Definitions.
5.30.030	Applicability and Foreclosure Options.
5.30.040	Authorities and Responsibilities.
5.30.050	Collection Process.
5.30.060	Adjustment of Open Lien Amounts.
5.30.070	Catch-up Payment Program.
5.30.080	Hardship Payment Program
5.30.090	Negotiation of Bonded Lien Payment Contracts.
5.30.100	Preparation of Foreclosure List.
5.30.110	Council Action on Foreclosure List.
5.30.120	Purchase of Property by the City.
5.30.130	Recording Notice of Foreclosure Sale.
5.30.140	Notice to Persons on Foreclosure List of Foreclosure Action.
5.30.150	Payment of Lien.
5.30.160	Presale and Sale Conditions.
5.30.170	Conduct of Foreclosure Sale.
5.30.180	Waste, Improvements to the Property, and Nuisance Abatement Procedures.

- 5.30.190 Certificate of Sale and Notice of Sale to Property Owner.
- 5.30.200 Entry of Collections and Sales.
- 5.30.210 Redemption.
- 5.30.220 Issuance of Deed.
- 5.30.230 Payment of Taxes.
- 5.30.240 Sale of Property Purchased by City.

## **Chapter 5.31**

### **COLLECTIONS & FORECLOSURE PROCESS FOR DELINQUENT SEWER SAFETY NET LIENS**

- 5.31.005 Purpose.
- 5.31.010 Definitions.
- 5.31.015 Applicability and Foreclosure Options.
- 5.31.020 Authorities and Responsibilities.
- 5.31.025 Collection Process.
- 5.31.027 Renegotiation of Installment Payment Contracts.
- 5.31.030 Preforeclosure Process and Review for Delinquent Tax Accounts.
- 5.31.035 Preparation of Preforeclosure List.
- 5.31.045 Review of Final Foreclosure List.
- 5.31.050 Council Action on Final Foreclosure List; Recording of Notice.
- 5.31.055 Notice to Persons on Final Foreclosure List of Foreclosure Action.
- 5.31.060 Purchase of Property by the City.
- 5.31.065 Payment of Lien and Presale and Sale Conditions.
- 5.31.070 The Sale.
- 5.31.075 Certificate of Sale and Notice to Property Owner.
- 5.31.080 Lien Docket Entry.
- 5.31.085 Redemption.
- 5.31.090 Issuance of Deed.
- 5.31.095 Waste, Improvements to the Property, Nuisance Abatement.
- 5.31.100 Payment of Taxes.
- 5.31.105 Sale of Property.

## **Chapter 5.33**

### **GOODS AND SERVICES**

- 5.33.010 Definitions.
- 5.33.020 City Council as Local Contract Review Board.
- 5.33.030 Application of Purchasing Code.
- 5.33.040 Authority of Chief Procurement Officer.
- 5.33.050 Authority for Golf Concession Contracts.
- 5.33.055 Authority of Appropriate Unit Managers.
- 5.33.060 Authority of Directors.
- 5.33.065 Authority for Stormwater Improvements.
- 5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.
- 5.33.075 Affirmative Action.
- 5.33.080 Environmentally Preferable Procurement.
- 5.33.085 Preference for Goods Fabricated or Processed within State or Services Performed Within State.

5.33.090	Use of Price Agreements.
5.33.100	Overview of Source Selection and Contractor Selection.
5.33.105	Feasibility and Cost Analysis.
5.33.110	Qualified Rehabilitation Facilities.
5.33.120	Sole-Source Procurements.
5.33.130	Emergency Procurements.
5.33.135	Declaration of State of Emergency or Disaster.
5.33.140	Cooperative Purchasing.
5.33.145	Rules on all types of Cooperative Procurements.
5.33.150	Joint Cooperative Procurements.
5.33.160	Permissive Cooperative Procurements.
5.33.170	Interstate Cooperative Procurements.
5.33.180	Small Procurements.
5.33.190	Intermediate Procurements.
5.33.200	Competitive Sealed Bidding.
5.33.205	Multi-Step Sealed Bids.
5.33.210	Competitive Sealed Proposals.
5.33.211	Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals.
5.33.220	Special Procurements.
5.33.300	Public Notice of Solicitation for Contracts over \$150,000.
5.33.310	Specifications and Brand Names.
5.33.320	Bids or Proposals are Offers.
5.33.330	Facsimile Bids and Proposals.
5.33.340	Electronic Procurement.
5.33.350	Reverse Auctions.
5.33.360	Contract Conditions.
5.33.400	Offer Preparation.
5.33.410	Bid or Proposal Security.
5.33.420	Pre-Offer Conferences.
5.33.430	Addenda to Solicitation Document.
5.33.440	Request for Clarification or Change.
5.33.450	Offeror Submission.
5.33.460	Pre-Closing Modification or Withdrawal of Offers.
5.33.470	Receipt, Opening and Recording of Offers.
5.33.480	Late Offers, Late Withdrawals and Late Modifications.
5.33.490	Mistakes.
5.33.495	Time for City Acceptance.
5.33.500	Responsibility of Offerors.
5.33.505	Qualified Products Lists.
5.33.510	Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.
5.33.530	Debarment of Prospective Offerors.
5.33.540	Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
5.33.610	Offer Evaluation and Award.
5.33.620	Negotiation With Offerors Prohibited.

5.33.625	Contract Preferences.
5.33.630	Reciprocal Preferences.
5.33.635	Contract Preferences: Recycled Materials.
5.33.640	Rejection of All or Part of an Offer.
5.33.645	Rejection of All Offers.
5.33.650	Notice of Intent to Award.
5.33.660	Cancellation, Delay or Suspension of Solicitation.
5.33.670	Disposition of Offers if Solicitation Canceled.
5.33.675	Documentation of Award.
5.33.685	Availability of Award Decisions.
5.33.690	Performance and Payment Security; Waiver.
5.33.695	Notification to State of Nonresident Contractor.
5.33.700	Protests and Judicial Review of Special Procurements.
5.33.710	Protests and Judicial Review of Sole-Source Procurements.
5.33.720	Protests and Judicial Review of Multi-Tiered Solicitations.
5.33.730	Protests and Judicial Review of Solicitation Documents and the Procurement Process.
5.33.740	Protests and Judicial Review of Contract Award.
5.33.750	Protests of Other Violations.
5.33.760	Review of Prequalification and Debarment Decisions.
5.33.770	Procurement Board of Appeals.
5.33.780	Powers of the Board.
5.33.790	Appeal to Board.
5.33.900	Social Equity Contracting and Employment Programs.
5.33.920	Records Maintenance; Right to Audit Records.
5.33.930	Right to Inspect Plant or Place of Business.
5.33.940	Contract Cancellation, Contractor Termination Procedures.

## **Chapter 5.34**

## **PUBLIC IMPROVEMENTS AND CONSTRUCTION SERVICES**

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 Selection and Contractor Selection.
5.34.110	Emergency Contracts; Bidding and Bonding 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	Intermediate Procurements; 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.
5.34.535	Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
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 Preference; Resident Bidders.
5.34.630	Reciprocal Preferences.
5.34.640	Negotiation When Bids Exceed Cost Estimate.
5.34.645	Rejection of Offers.
5.34.650	Notice of Intent to Award.
5.34.660	Cancellation, Delay or Suspension of Solicitation.
5.34.670	Disposition of Offers if Solicitation Canceled.
5.34.675	Documentation of Award.
5.34.680	Time for City Acceptance; Extension.
5.34.685	Availability of Award Decisions.
5.34.690	Performance and Payment Security; Waiver.
5.34.695	Notification to State of Nonresident Contractor.
5.34.700	Protests and Judicial Review of Individual and Class Exemptions.
5.34.710	Protests and Judicial Review of Multi-Tiered Solicitations.
5.34.720	Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.
5.34.725	Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.
5.34.730	Protest of Contractor Selection, Contract Award.
5.34.740	Protests of Other Violations.
5.34.750	Review of Prequalification and Disqualification Decisions.
5.34.760	Procurement Board of Appeals.
5.34.770	Powers of the Board.
5.34.780	Appeal to Board.
5.34.800	Purpose.
5.34.810	Definitions for Alternative Contracting Methods.
5.34.820	Use of Alternative Contracting Methods.
5.34.830	Findings, Notice and Hearing.

5.34.840	Competitive Proposals; General Procedures.
5.34.845	Requests for Qualifications (RFQ)
5.34.850	Requests for Proposals (RFP).
5.34.860	RFP Pricing Mechanisms.
5.34.870	Design-Build Contracts.
5.34.880	Energy Savings Performance Contracts (ESPC).
5.34.890	Construction Manager/General Contractor (CM/GC).
5.34.900	Required Contract Clauses.
5.34.910	Waiver of Delay Damages Against Public Policy.
5.34.915	BOLI Public Works Bond.
5.34.920	Retainage.
5.34.930	Social Equity Contracting and Employment Programs.
5.34.940	Public Works Contracts.
5.34.950	City Payment for Unpaid Labor or Supplies.
5.34.960	Records Maintenance; Right to Audit Records.
5.34.970	Right to Inspect Plant or Place of Business.
5.34.980	Contract Cancellation, Contractor Termination Procedures.

#### **Chapter 5.36**

#### **PROPERTY CONTROL**

5.36.001	Surplus Property Policy.
5.36.010	Disposition of Surplus Property.
5.36.015	Disposition of Unclaimed and Found Personal Property.
5.36.020	Sale of Buildings for Removal from City Property.
5.25.025	Purchase and Resale by the City of Tax-Foreclosed Property.
5.36.030	Loans of Personal Property Owned by City.
5.36.035	Lost or Stolen City Property.
5.36.040	Parking Meter Fund Equipment.
5.36.050	Use of City Automobiles for Transporting Firing Squads.
5.36.060	Use of Water Bureau Property by Bureau of Shops.
5.36.080	Zoological Specimens.
5.36.090	Gifts and Loans of Property.
5.36.100	Use of City Property for Elections.
5.36.110	Use of City Property for Air Quality Measuring Stations.
5.36.115	Designation of "Persons In Charge."

#### **Chapter 5.40**

#### **DEMANDS AND DISBURSEMENTS**

5.40.010	Drawing Checks in Payments of Claims.
5.40.020	Certain Demands to be Submitted to Council.
5.40.030	Appropriation to be Charged for All Demands.
5.40.040	Requisitions Required.
5.40.070	Funds Held for Benefit of Police Contributions Committee.
5.40.080	Requisition of Funds for Purchasing Police Evidence.

#### **Chapter 5.48**

#### **CHARGES FOR SERVICES PERFORMED**

5.48.010	Authorization.
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5.48.020	Application and Deposit.
5.48.030	Accounting Procedure.
5.48.035	Bureau of Emergency Communications - Recordings - Rates.
5.48.036	Office of City Attorney and OMF Risk Management Division - Records - Rates.
5.48.040	Collection of Money Due the City.
5.48.050	Improvements Without Assessment.
5.48.060	Interdepartmental Services Authorized.
5.48.070	Accounting Procedure for Interdepartmental Services.
<b>Chapter 5.50</b>	<b>COLLECTIONS SECTION</b>
5.50.010	Collections Section.
5.50.020	Compromise Authorization.
5.50.030	Money Collected.
<b>Chapter 5.52</b>	<b>PETTY CASH AND CHECKS</b>
5.52.010	Petty Cash and Change Accounts.
5.52.020	Cancellation of Checks and Issue of in Lieu Checks.
5.52.030	Cancellation of City Assessments on Mortgage records.
5.52.040	When Checks Are to Be Canceled.
5.52.050	Drawing Checks on Charter Appropriations.
<b>Chapter 5.56</b>	<b>AMBULANCE SERVICE</b>
5.56.010	Police Radio Dispatch Service.
5.56.020	Acceptance by Ambulance Companies.
<b>Chapter 5.60</b>	<b>MISCELLANEOUS CHARGES</b>
5.60.010	Charges For Architectural Services.
5.60.040	Employee Lists Furnished by Accounting Division Manager.
5.60.050	Licensees' Lists Furnished by License Bureau.
5.60.110	Driving City Cars to and from Work
5.60.120	Lien Accounting System Access.
<b>Chapter 5.64</b>	<b>MISCELLANEOUS FISCAL PROVISIONS</b>
5.64.010	Fiscal Agency in New York City.
5.64.020	Appointment of Deputy Auditors.
5.64.030	Treasurer to Cash Credit Union Checks.
5.64.040	Bureau of Water Works Accounts.
5.64.050	Execution of Releases from Claims for Damages.
5.64.060	Cancellation of Refund Checks.
5.64.070	Refunds.
5.64.090	Investment of Available Funds.
5.64.100	Determination of City's Subrogation for Time Loss Payments.
5.64.110	Procedure upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

<b>Chapter 5.68</b>	<b>PROFESSIONAL, TECHNICAL AND EXPERT SERVICE CONTRACTS</b>
5.68.010	Definition.
5.68.015	General Requirements – PTE Manual.
5.68.020	Application.
5.68.030	Public Announcement of Requirements.
5.68.035	Authority to Obligate City for Professional, Technical or Expert Services.
5.68.050	Review by City Attorney.
5.68.060	Outside Legal Services.
5.68.070	Procedure for Selection of Bond Counsel.
5.68.080	Contractor’s Compliance with Workers’ Compensation Requirements.
<b>Chapter 5.72</b>	<b>ECONOMIC DEVELOPMENT PROJECTS</b>
5.72.010	Purpose.
5.72.020	Definitions.
5.72.030	Economic Development - Applications.
5.72.040	Economic Development - Initial Review, Standards.
5.72.050	Housing - Applications.
5.72.060	Housing - Initial Review, Standards.
5.72.070	Initial Determination of Eligibility, Final Approval, Appeals.
5.72.080	General Conditions; Document Preparation and Review.
5.72.090	Application Processing, Financial Considerations.
5.72.100	Administrative Fees.
5.72.110	Bond Issuance.
5.72.120	Reporting Requirements.
<b>Chapter 5.73</b>	<b>ART EDUCATION AND ACCESS INCOME TAX</b>
5.73.010	Definitions.
5.73.020	Tax Imposed.
5.73.030	Net Revenues Distribution.
5.73.040	Intergovernmental Agreements.
5.73.050	Citizen Oversight Committee.
5.73.060	Audits.
5.73.070	Effective Dates.
5.73.080	Revenue Bureau Responsibilities.
5.73.090	Limitation on Costs.
5.73.100	Confidentiality.
5.73.110	Frivolous Filing, False Filing and Hacking.
<b>Chapter 5.74</b>	<b>ACQUISITION OF ART</b>
5.74.010	Purpose.
5.74.020	Definitions.
5.74.030	Dedication.
5.74.040	Public Art Trust Fund.
5.74.050	Siting.
5.74.060	Guidelines.

5.74.070      Ownership.  
5.74.080      Decisions.  
5.74.090      Implementation.

**CHAPTER 5.75**

**CLAIMS UNDER ORS CHAPTER 197**

5.75.010      Purpose.  
5.75.020      Definitions.  
5.75.030      Filing an Amended Claim.  
5.75.040      Review of Amended Claim by Program Manager.  
5.75.050      Hearing on Amended Claim by City Council.  
5.75.060      Filing a New Claim.  
5.75.070      Review of New Claim by Program Manager.  
5.75.080      Hearing on New Claim by City Council.  
5.75.090      Claim Processing Fee.  
5.75.100      Determination of Common Law Vested Right.  
5.75.110      Hearing on a Common Law Vested Right By City Council.



**TITLE 5 - REVENUE AND FINANCE**

(Title added by Ordinance No. 130672, effective May 15, 1970.)

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.01 - DELEGATION OF  
AUTHORITY TO OBLIGATE THE CITY**

(Chapter repealed by Ordinance Nos. 174509 and  
174904, effective January 1, 2001.)

**CHAPTER 5.04 - FUNDS**

**Sections:**

5.04.010	Provisions Made For.
5.04.020	Sundry Trusts Fund.
5.04.030	Trustees' Fund.
5.04.040	Parking Meter Fund.
5.04.050	Golf Fund.
5.04.070	Bonded Debt Interest and Sinking Fund.
5.04.140	Parking Facilities Fund.
5.04.150	Parking Facilities Bond Redemption Fund.
5.04.170	Revenue Sharing Fund.
5.04.175	State Revenue Sharing Fund.
5.04.180	CityFleet Operating Fund.
5.04.185	Facilities Services Operating Fund.
5.04.200	Printing and Distribution Services Operating Fund.
5.04.210	Improvement Warrant Sinking Fund.
5.04.220	Economic Development Trust Fund.
5.04.230	Insurance and Claims Operating Fund.
5.04.240	Worker's Compensation Self Insurance Operating Fund.
5.04.250	System Development Charge Sinking Fund.
5.04.270	Washington County Water Supply Construction Fund.
5.04.280	Washington County Water Supply Bonded Debt Service Sinking Fund.
5.04.290	Water Growth Impact Charge Trust Fund.
5.04.300	Bull Run Fund.
5.04.310	St. Johns Landfill End Use Plan Fund.
5.04.320	Sewer Revolving Loan Fund.
5.04.330	Environmental Remediation Fund.
5.04.400	Sewer System Operating Fund.
5.04.410	Sewer System Construction Fund.
5.04.420	Sewer System Debt Redemption Fund.
5.04.430	Sewer System Debt Proceeds Fund.
5.04.440	Sewer System Rate Stabilization Fund.
5.04.450	Sewer System Safety Net Fund.
5.04.460	Use of Sewage Disposal Fund.
5.04.470	Portland Police Fitness Room Trust Fund.
5.04.480	Property Management License Fund.
5.04.490	Graffiti Nuisance Abatement Trust Fund.
5.04.500	Technology Services Fund.
5.04.510	Arts Education and Access Fund.
5.04.515	Recreational Marijuana Tax Fund.
5.04.520	Mt. Hood Cable Regulatory Commission Agency Fund.
5.04.530	Inclusionary Housing Fund.
5.04.540	Housing Property Fund.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.04.010 Provisions Made For.**

In addition to funds created in accordance with the provisions of the Charter, there shall be the funds set forth in this Chapter and such other funds as from time to time may be provided for by ordinance.

#### **5.04.020 Sundry Trusts Fund.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Sundry Trusts Fund, created by Ordinance No. 118746, passed by the Council July 1, 1964, shall contain accounts for trust monies which neither belong in the Trustees' Fund nor require an individual trust fund. The following accounts are authorized for the Sundry Trusts Fund:

- A.** Animals for zoo account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- B.** Civic Emergency Account. This account shall receive the City's share of the annual allocation from the Civic Emergency Fund under ORS 463.170. Expenditures shall be limited to athletic, recreational, educational, or charitable purposes. The Mayor and the Auditor are authorized to draw on this account when requisitions are presented approved by the Mayor, and one other Commissioner;
- C.** Elephant Purchase Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- D.** Health Protection Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- E.** Recreation Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)
- F.** Rose Test Garden Account. This account shall be administered in accordance with Ordinance No. 110776; passed by the Council September 23, 1959. The Mayor and the Auditor are authorized to draw checks on this account when requisitions are presented approved by the Commissioner In Charge of the Bureau of Parks;
- G.** Oaks Pioneer Park Museum Account. This account shall be administered in accordance as hereinafter provided:

All monies received from charges arising out of the operation of Oaks Pioneer Park Museum, under contract or otherwise, shall be deposited with the Treasurer of the City. The Treasurer shall hold all such funds so received in the Oaks Pioneer Park Museum Account. Disbursements shall be made in accordance with budgetary procedures upon requisition approved by the Commissioner In Charge of the Bureau of Parks and shall be limited to maintenance, operational costs, and improvement of the Oaks Pioneer Park Museum. The Mayor and Auditor are authorized to draw warrants on this account when requisitions are presented and approved by the Commissioner In Charge of the Bureau of Parks.



**TITLE 5**  
**REVENUE AND FINANCE**

- H.** Drake Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the east side of the Willamette River and north of the Sellwood Bridge known as the Drake Property which was purchased by the City under Ordinance No. 128587, passed February 20, 1969, for the Willamette Parkway System. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- I.** Portland Shipbuilding Property Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property on the west side of the Willamette River at the foot of S.W. Nebraska Street known as the Portland Shipbuilding Property, which was purchased by the City under Ordinance No. 128623; passed February 26, 1969. Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- J.** Officer Friendly Account. (Repealed by Ordinance No. 135666, effective December 6, 1972.)
- K.** Willamette Oaks Park Account. Until such time as the Council may determine, this account shall receive all rentals and related revenues derived from the property in Willamette Oaks Park purchased by the City from Leonard and Ruth Steele under authority of Ordinance NO. 130097; passed November 19, 1969, for the Willamette Parkway System (Lots 1,2 and 42 Willamette Oaks Park Addition). Expenditures from this account other than those required in connection with rentals derived from the property, shall be limited to the improvement and expansion of the property. This account shall be administered by the Commissioner In Charge of the Bureau of Parks.
- L.** Portland Zoo Hospitalization and Research Account. (Repealed by Ordinance No. 150375, effective September 11, 1980.)

**5.04.030 Trustees' Fund.**

There is hereby created a Trustees' Fund which shall be credited with all cash and securities deposited with the City Treasurer to protect the City against loss on account of certain obligations, and with all money and/or securities deposited with the City Treasurer pending information or accrual of time for its application. The City Treasurer shall receive into such fund installment payments on municipal assessments against real property, including payments which are too small to be entered on the Lien Docket as a credit, it being provided that a payment shall be too small for such entry when it is less than one-third of the total amount to be paid as shown on the open lien docket. When such deposits in the Trustees'

## **TITLE 5**

### **REVENUE AND FINANCE**

Fund make an amount sufficient for entry the Treasurer shall make application thereof as a payment on such assessment, make a proper entry thereof in his books, and the Auditor shall make a proper entry thereof in his books. The amounts deposited in the Trustees' Fund shall be applied as provided in the receipt showing the terms of deposit. The City Treasurer shall upon receiving a deposit under the provisions of this Section issue a receipt therefor, a copy of which shall be filed with the City Auditor and be credited to the Trustees' Fund. No cash or collateral securities shall be returned by the City Treasurer without written approval of the City Auditor. The City Treasurer upon returning cash or collateral securities shall take a receipt from the depositor in duplicate, the original of which shall be filed with the City Auditor, who is hereby authorized to credit the City Treasurer with the amount of the receipt. In cases where deposits are made by persons interested in local improvements no refund shall be made unless the contemplated improvement is not made or the owner of the property for account of which the deposit was made promptly pays or bonds the assessment. If the improvement is made and the owner fails to pay and/or bond the assessment within twenty (20) days after its entry in the open lien docket the deposit shall be applied to a payment pro tanto of the assessment and the Treasurer and Auditor shall make proper book entries thereof.

#### **5.04.040      Parking Meter Fund.**

The Parking Meter Fund is hereby created and the Treasurer of the City is hereby directed to deposit to the credit of the fund all fees or money received on account of collections from present or future installations of parking meters. All disbursements from such fund shall be in conformance to regular budget procedure.

Whenever the City Treasurer shall deem it advisable to dispose of slugs and tokens received in collections from the City's parking meters and which are not lawful monies of the United States, he shall sell, cash, redeem or destroy the slugs and tokens and shall deposit all sums so realized to the credit of the Parking Meter Fund.

#### **5.04.050      Golf Fund.**

A fund to be known and designated as the Golf Fund is hereby created. All revenues derived from the operation of the municipal golf links shall be credited to the Golf Fund, and all disbursements from the fund shall be in conformance with regular budget procedure.

#### **5.04.070      Bonded Debt Interest and Sinking Fund.**

The Bonded Debt Interest and Sinking Fund is hereby created to which shall be credited the proceeds from the tax levy of the City for interest on bonded indebtedness of the City and the tax levy to provide for the purchase of securities as an investment and/or payment of redemptions of the bonded indebtedness of the City together with such other receipts as may be realized in connection with the administration of the bonded debt of the City but not limited to interest on investments. Expenditures from the fund shall be for the payment of the principal and interest on bonded debt of the City to be paid from ad valorem taxes and for any other expenditures authorized to be paid from tax levies for general obligation bonds of the City.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.04.140      Parking Facilities Fund.**

The Parking Facilities Fund is hereby created into which shall be deposited all fees, rentals and charges received by the City from the operation of the off-street parking facility at S.W. 2nd Avenue and Jefferson Street and from which expenses of operation and maintenance of the facility shall be paid all in accordance with Ordinance No. 128235, passed December 18, 1968.

**5.04.150      Parking Facilities Bond Redemption Fund.**

The Parking Facilities Bond Redemption Fund is hereby created into which shall be paid the accrued interest from the sale of the bonds, plus an amount capitalized from bond principal which will in the aggregate together with interest to be received from investments provide for the interest payments on the revenue bonds due August 1, 1969, February and August 1, 1970, and February 1, 1971, the net revenues of the Parking Facilities Fund and amounts from net parking meter revenues required for the reserve amount, if any; and from which shall be paid the principal of and the interest on the outstanding revenue bonds, and the principle, interest and premium, if any, on any revenue bonds issued on a parity therewith, all in accordance with Ordinance No. 128235, passed December 18, 1968.

**5.04.160      Sewage Disposal Fund.**

(Repealed by Ordinance No. 160515, effective March 28, 1988.) See Sections 5.04.400 - 460.

**5.04.165      Countercyclical Fund.**

(Repealed by Ordinance No. 150375, effective September 11, 1980.)

**5.04.170      Revenue Sharing Fund.**

(Added by Ordinance No. 135516, effective November 2, 1972.) The Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the federal government under the State and Local Fiscal Assistance Act of 1972. Into this Fund shall be deposited all payments received from the federal government under the Act, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund. The monies shall be expended only for purposes authorized under the Act.

**5.04.175      State Revenue Sharing Fund.**

(Added by Ordinance No. 145065, effective January 19, 1978.) The State Revenue Sharing Fund is hereby created for the receipt and expenditure of monies received from the State of Oregon under Senate Bill 11 (Engrossed) effective July 27, 1977. All payments received from the State of Oregon under this Act, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund shall be deposited to this Fund. The monies shall be expended only for purposes authorized under this Act.

**5.04.180      CityFleet Operating Fund.**

(Added by Ordinance No. 161018, amended by Ordinance Nos. 163837, 176003, 178797 and 181483, effective January 18, 2008.)

## **TITLE 5**

### **REVENUE AND FINANCE**

- A.** The CityFleet Operating Fund is hereby created as an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Other receipts of the Fund shall include service charges to users, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be in accordance with appropriations made by the Council.
- B.** Short-term loans from the General Fund to the CityFleet Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized without interest to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

#### **5.04.185 Facilities Services Operating Fund.**

(Added by Ordinance No. 163837; amended by Ordinance Nos. 176003 and 181483, effective January 18, 2008.)

- A.** The Facilities Services Operating Fund is hereby created (by Ordinance 163156, June 27, 1990) as an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Receipts of the Fund shall include proceeds of these Interagency Agreements, service charges to users, interest earned by the Fund, and any other monies which are appropriate revenues. Fees shall be collected and deposited into this Fund for all property management related services involving leases, and for the purchase and sale of City owned real property. Expenditures from the Fund shall be in accordance with appropriations made by the Council.
- B.** The costs of repair, maintenance, taxes or any other expense incurred in providing any property management services, shall be the responsibility of the bureau or agency using or responsible for the property. All net revenues (defined as revenue, less all appropriate expenses) from rents, leases or sales shall accrue to the bureau or agency using or responsible for the property.
- C.** Any property that is not specifically used or the responsibility of any bureau or agency is defined as “unassigned property,” and shall be the responsibility of the Office of Management and Finance (General Fund). Net revenue for these properties shall be considered total revenue from the rent and sale of all these properties, less total expenses for all these properties. Any net revenue from these properties, shall be transferred to the General Fund at the end of each fiscal year.
- D.** Any property acquired by the City from any source shall be inventoried with the Office of Management and Finance.

**TITLE 5**  
**REVENUE AND FINANCE**

- E. Short-term loans from the General Fund to the Facilities Services Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

**5.04.190 Communications Service Operating Fund.**

(Repealed by Ordinance No. 181483, effective January 18, 2008.)

**5.04.200 Printing and Distribution Services Operating Fund.**

(Added by Ordinance No. 161018; amended by Ordinance Nos. 163837, 176003 and 181483, effective January 18, 2008.)

- A. The Printing and Distribution Services Operating Fund is an internal service fund within the Office of Management and Finance described in Chapter 3.15 of this Code. The major operating funds for this Fund shall be generated by Interagency Agreements with the City bureaus and others using the services. Other receipts of the Fund shall include service charges to users, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be made in accordance with appropriations made by the Council.
- B. Short-term loans from the General Fund to the Printing and Distribution Services Operating Fund, which are to be repaid in the same fiscal year in which the loan is made, are hereby authorized to provide temporary working capital, as needed, provided that each loan is first approved in writing by the Commissioner of Finance and Administration.

**5.04.210 Improvement Warrant Sinking Fund.**

(Added by Ordinance No. 139574, effective March 13, 1975.) The Improvement Warrant Sinking Fund is hereby created. Funds obtained from the issuance of general obligation improvement warrants issued pursuant to statute and authorized by the Council shall be placed in this Fund and expended only for payments duly authorized for the construction of public improvements. All proceeds from the collection of unbonded assessments, the sale of improvement bonds, and the foreclosure of improvement liens for unbonded assessments, realized from the improvement with respect to which such general obligation improvement warrants are issued, shall be placed in the fund to be applied to the call and payment of such warrants as rapidly as funds are available as provided by statute.

**5.04.220 Economic Development Trust Fund.**

(Added by Ordinance No. 140900, effective November 20, 1975.) The Economic Development Trust Fund is hereby established for receipt and accountability for the assets of the Trust for economic development in the model cities neighborhood established by the agreement between the City and MEDIA authorized by Ordinance No. 132652, passed May 6, 1971. The City succeeded the Metropolitan Economic Development Industrial Alliance as trustee, and this Fund shall be administered by the City in accordance with the

## **TITLE 5**

### **REVENUE AND FINANCE**

terms of the trust, set forth in the agreement and by Resolution No. 31575, adopted May 28, 1975.

This Fund shall receive the assets turned over to the City by MEDIA and shall also receive principal and interest on loans receivable, interest on invested capital, proceeds from sale of investments and any other income of the Trust. Expenditures shall be in accordance with appropriations made by the Council for purposes of the Trust.

#### **5.04.230 Insurance and Claims Operating Fund.**

(Added by Ordinance No. 142290; amended by Ordinance Nos. 150375, 176003 and 181483, effective January 18, 2008.)

- A.** The Insurance and Claims Operating Fund is hereby created as an internal service fund under the Office of Management and Finance, described in Chapter 3.15 of this Code. Receipts of the Fund shall include service charges to user funds for administrative and legal expenses, insurance premiums and loss reserves, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be in accordance with the appropriations made by the Council.
- B.** Expenditures and encumbrances shall be limited to the balance in the Fund at the time and to purposes for which there is an appropriation or other source of reimbursement authorized at the time.

#### **5.04.240 Workers' Compensation Self Insurance Operating Fund.**

(Added by Ordinance No. 144762; amended by Ordinance Nos. 150375, 176003 and 181483, effective January 18, 2008.) The Workers' Compensation Self Insurance Operating Fund is hereby created as an internal service fund under the Office of Management and Finance described in Chapter 3.15 of this Code. Receipts of the Fund shall include service charges to user funds for administrative and legal expenses, insurance premiums, expected and unanticipated loss reserves, interest earned by the Fund and any other monies which are appropriate revenues. Expenditures from the Fund shall be made in accordance with appropriations made by the Council. Expenditures and encumbrances shall be limited to the balance in the Fund at the time and to purposes for which there is an appropriation or other source of reimbursement authorized at the time.

#### **5.04.250 System Development Charge Sinking Fund.**

(Added by Ordinance No. 147298, effective February 28, 1979.) The System Development Charge Sinking Fund is hereby created. Funds obtained from the issuance of General Obligation Bancroft Bonds issued pursuant to statute and authorized by the City Council for this purpose shall be placed in this Fund and expended only for payments duly authorized for construction or expansion of systems development. All proceeds from the collection of Bonded Assessments, realized from System Development Charge Assessments with respect to such General Obligation Bancroft Bonds are issued, shall be placed in the fund to be applied to the call and payment of General Obligation Bancroft Bonds pursuant to the call schedule set forth in the offer and as provided by statute.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.04.270 Washington County Water Supply Construction Fund.**

(Added by Ordinance No. 148968, effective January 26, 1980.) The Washington County Water Supply Construction Fund is hereby created. Contributions from other water purveyors and the City of Portland and receipts obtained from the issuance of general obligation bonds, payable from water revenues, issued for the purpose of constructing a water supply line to Washington County shall be placed in this fund and expended only for duly authorized payments for the oversizing of the southeast Water Supply Line and the Washington County Water Supply Line. Upon completion of the supply line to Washington County and after all liabilities for the construction thereof have been satisfied, any balance remaining in this Fund shall be transferred to the Washington County Water Supply Bonded Debt Service Sinking Fund and this Fund shall be discontinued.

**5.04.280 Washington County Water Supply Bonded Debt Service Sinking Fund.**

(Added by Ordinance No. 148986, effective January 26, 1980.) The Washington County Water Supply Bonded Debt Service Sinking Fund is hereby created. Water revenues in the form of contributions from other water purveyors and the City of Portland shall be placed in this Fund and expended only for duly authorized payments of principal and interest for bonds issued for the purpose of constructing a water supply line to Washington County. Upon payment of all principal and interest of said bond issue, any balance remaining in this Fund shall be returned, on a prorated basis, to the contributors and this Fund shall be discontinued.

**5.04.290 Water Growth Impact Charge Trust Fund.**

(Added by Ordinance No. 153288, effective May 26, 1982.) The Water Growth Impact Charge Trust Fund is hereby created. Revenues received by the City for growth impact charges from other water purveyors shall be placed in this Fund and expended only for duly authorized payments for expansion of the total water system capacity. Should this Fund become unnecessary, due to changes in the water sales contracts with other water purveyors, any remaining funds at that time shall be paid to the Water Fund.

**5.04.300 Bull Run Fund.**

(Added by Ordinance No. 156178; effective July 21, 1984.) The Bull Run Fund is hereby created. Receipts received by the City resulting from the sale of items promoting the City water system, such as, but not limited to, bottled water, posters and books, shall be placed in this Fund and expended only for duly authorized payments to directly promote or advertise the City water system to attract development within the City. Should this Fund become unnecessary for any reason, any remaining money remaining in this Fund at the time it is discontinued shall be paid to the Water Fund.

**5.04.310 St. Johns Landfill End Use Plan Fund.**

(Added by Ordinance No. 160973, effective July 23, 1988.) The St. Johns Landfill End Use Plan Fund is hereby created. Revenues received by the City from the Metropolitan Service District which are designated for implementation of the St. Johns Landfill End Use Plan per Section 9 of the City-Metro Agreement adopted by Ordinance No. 158522 and other contributions and revenues designated for implementation of the End Use Plan shall

## **TITLE 5**

### **REVENUE AND FINANCE**

be placed in this Fund. Monies from this Fund, including interest earned by the Fund, shall be expended only for duly authorized payments to cover the costs of implementing the St. Johns Landfill End Use Plan. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Refuse Disposal Fund.

#### **5.04.320 Sewer Revolving Loan Fund.**

(Added by Ordinance No. 166407, effective April 7, 1993.) The Sewer Revolving Loan Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from transfers made to the Fund from the Sewer System Operating Fund, and monies derived from the re-payment of loans made to properties participating in the Private Plumbing Revolving Loan Program. Monies from this Fund, including interest earned by the Fund, shall be used for making loans to certain owners of single-family residential property located in the Mid-Multnomah County Sewer System Project, and shall be expended only for duly authorized payments to cover the costs of implementing the Private Plumbing Revolving Loan Program. Money in the Sewer Revolving Loan Fund may be commingled with other City money for investment purposes. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Sewer System Construction Fund.

#### **5.04.330 Environmental Remediation Fund.**

(Added by Ordinance No. 167121, effective November 17, 1993.) The Environmental Remediation Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from the sale of Revenue Bonds, remediation charges and transfers made to the Fund from the Refuse Disposal Fund; and from which all expenditures relating to the System shall be made. Monies from this Fund, including interest earned by the Fund, shall be used for specifically identified remediation projects and debt service. Money in the Environmental Remediation Fund may be commingled with other City money for investment purposes. Should this Fund become unnecessary any monies remaining in this Fund shall be paid to the Refuse Disposal Fund.

#### **5.04.400 Sewer System Operating Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Operating Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with operation and maintenance of the sewer system, including sanitary and drainage services. Monies in the Sewer System Operating Fund may be transferred to the Sewer System Debt Redemption Fund, the Sewer System Construction Fund, or the Sewer System Rate Stabilization Fund. Money in the Sewer System Operating fund may be commingled with other City money for investment purposes.

#### **5.04.410 Sewer System Construction Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Construction Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with construction of sewerage facilities,



**TITLE 5**  
**REVENUE AND FINANCE**

including sanitary and drainage facilities. Money in the Sewer System Construction Fund may be commingled with other City money for investment purposes.

**5.04.420 Sewer System Debt Redemption Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Debt Redemption Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt and expenditure of monies associated with the retirement of debt incurred by the sewer system. Money in the Sewer System Debt Redemption Fund may be commingled with other City money for investment purposes.

**5.04.430 Sewer System Debt Proceeds Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Debt Proceeds Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from the issuance of Sewer System debt. Monies in the Sewer System Debt Proceeds Fund shall be transferred to the Sewer System Construction Fund for expenditure and to the Sewer System Operating Fund for reimbursement of costs associated with the issuance of debt and to the Sewer System Debt Redemption Fund for the retirement of debt. Money in the Sewer System Debt Proceeds Fund may be commingled with other City money for investment purposes.

**5.04.440 Sewer System Rate Stabilization Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Rate Stabilization Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies transferred from the Sewer System Operating Fund. Monies in the Sewer System Rate Stabilization Fund shall be transferred to the Sewer System Operating Fund for expenditure. Money in the Sewer System Rate Stabilization Fund may be commingled with other City money for investment purposes.

**5.04.450 Sewer System Safety Net Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The Sewer System Safety Net Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of monies derived from loans made to the Fund from the State Assessment Deferral Revolving Loan Fund, and monies derived from the payment of deferred assessments by properties participating in the Sewer Safety Net Program. Monies in the Sewer System Safety Net Fund shall be paid to the Local Improvement District Construction Fund for payment of sewer assessments for properties participating in the Sewer Safety Net Program, and shall be used to retire loans received from the State Assessment Deferral Revolving Loan Fund.

**5.04.460 Use of Sewage Disposal Fund.**

(Added by Ordinance No. 160515, effective March 28, 1988.) The funds described in Portland City Code Sections 5.04.400 through 5.04.450 shall in the aggregate constitute the Sewage Disposal Fund, and shall be used for only those Sewage Disposal Fund purposes authorized by the Charter of the City of Portland, Oregon. If any of the funds associated with operation, maintenance, construction or debt management of the Sewer

## **TITLE 5**

### **REVENUE AND FINANCE**

System become unnecessary or for any reason are dissolved and discontinued, then any remaining balances in that fund or funds shall be transferred to the Sewer System Operating Fund. If the Sewer System Operating Fund is dissolved and discontinued, then any remaining balances in that fund shall be transferred to the City's General Fund. However, in no case shall any funds be transferred to the City's General Fund until all outstanding debt of the sewer system is repaid according to terms and conditions of related bond and note ordinances.

#### **5.04.470      Portland Police Fitness Room Trustee Account.**

(Added by Ordinance No. 168683, effective April 12, 1995.) The Portland Police Fitness Room Trust Account is hereby created. Into this fund shall be deposited monies received from fitness room membership dues (through payroll deduction), the City of Portland and other contributors. Disbursements shall be made upon a requisition request from a Police Bureau's Fitness Room Committee with signature approval by either the Chief of Police or an Assistant Chief. Monies from this fund by either the Chief of Police or an Assistant Chief. Monies from this fund shall be used for maintenance and repairs of equipment, equipment replacement, and new fitness room equipment.

#### **5.04.480      Property Management License Fund.**

(Added by Ordinance No. 170223, effective July 1, 1996.) The Property Management License Fund is hereby made a part of the Code of the City of Portland, Oregon, for the receipt of any revenues derived from assessments levied under the former downtown Economic Improvement District created by Ordinance No. 164665, together with all revenues generated by the Downtown Property Management License program (City Code Chapter 6.06.) Monies derived from proceeds of the Downtown Property Management License program and delinquent Economic Improvement District assessments, as well as from interest earned on that money, shall be spent only for the services described in Section 6.06.010 of the Code of the City of Portland and for any costs of the City's administration of the Downtown Property Management License program.

#### **5.04.490      Graffiti Nuisance Abatement Trust Fund.**

(Added by Ordinance No. 172612; amended by Ordinance No. 172810, effective November 4, 1998.) There is hereby created a City of Portland graffiti nuisance abatement trust fund. Any donations in support of graffiti abatement will be placed into the fund, together with any monies received in connection with voluntary nuisance abatement consent forms. Expenditures from this fund may occur upon the approval of any two of the following: (1) the Mayor; (2) the Commissioner-in-Charge of the Office of Neighborhood Involvement; and (3) the Graffiti Abatement Manager. Such expenditures shall be limited to: the payment of the cost of removal of graffiti; the purchase, acquisition, operation and maintenance of graffiti removal equipment and supplies; the costs of administering the graffiti nuisance abatement ordinance; and such other public purposes as may be approved by the City Council.

**5.04.500 Technology Services Fund.**

(Added by Ordinance No. 176003; amended by Ordinance Nos. 177852 and 181483, effective January 18, 2008.) The Technology Services Fund is hereby created as an internal service fund under the Bureau of Technology Services as described in Section 3.15.070 of this Code. The purpose of this Fund is to receive and record expenditures related to the management, operation and delivery of a variety of technology services to City bureaus and offices. The Fund also supports facilitation of multi-year funding of major technology initiatives. The Fund is supported primarily by charges to City bureaus for corporate and bureau-specific services.

**5.04.510 Arts Education and Access Fund.**

(Added by Resolution No. 36939 (approved at November 6, 2012 election); effective December 5, 2012.) The Arts Education and Access Fund is hereby created. The purpose of the Fund is to receive Gross Revenues received from the Arts Education and Access Income Tax and provide the Net Revenues to the School Districts and to the Regional Arts and Culture Council solely for the purposes established in Chapter 5.73 of this Code. In no case shall Net Revenues be transferred from the Arts Education and Access Fund to the City's General Fund, or any other fund, for any other purpose.

**5.04.515 Recreational Marijuana Tax Fund.**

(Added by Resolution No. 37217 (approved at November 8, 2016 election); effective November 8, 2016.) The Recreational Marijuana Tax Fund is hereby created. The purpose of the Fund is to receive gross revenues received from the Recreational Marijuana Tax, to provide funding for the purposes identified in Section 6.07.145 of this Code and costs related to the administration of the tax. Except for those established purposes, in no case shall revenues be transferred from the Recreational Marijuana Tax Fund to the City's General Fund, or any other fund, for any other purpose.

**5.04.520 Mt. Hood Cable Regulatory Commission Agency Fund.**

(Added by Ordinance No. 186065, effective June 5, 2013.) The Mt. Hood Cable Regulatory Commission Agency Fund is hereby created for the receipt and expenditure of monies received from cable franchisees and Public, Education and Government fees on behalf of Multnomah County and the cities of Gresham, Fairview, Troutdale, and Wood Village under the Intergovernmental Agreement, approved by Ordinance No. 166168 enacted on January 20, 1993, and as modified by subsequently approved amendments. Into this Fund shall be deposited all payments received from the cable franchisees of the County and the Cities, interest earned thereon while in this Fund and any other monies which are appropriate revenues of this Fund. The monies shall be expended only for purposes authorized under the Intergovernmental Agreement, and the Commission's approved budget.

**5.04.530 Inclusionary Housing Fund.**

(Added by Ordinance No. 187855, effective August 1, 2016.) The Inclusionary Housing Fund is hereby created to receive net revenues from the Construction Excise Tax. Disbursements from the fund shall be for the purposes identified in Section 6.08.130 of

## **TITLE 5**

### **REVENUE AND FINANCE**

this Code. Except for those established purposes, in no case shall any funds be transferred from the Inclusionary Housing Fund to the City's General Fund, or any other fund, for any other purpose.

#### **5.04.540      Housing Property Fund.**

(Added by Ordinance No. 188175, effective December 21, 2016.) The Housing Property Fund is hereby created in order to record the transactions of resources and requirements resulting from the acquisition, development, and operation of property by the Portland Housing Bureau. Except to further these established purposes, in no case shall any funds be transferred from the Housing Property Fund to the City's General Fund, or any other fund, for any other purpose.

**CHAPTER 5.08 - PAYMENT OF SALARIES,  
WAGES AND EXPENSES**

**Sections:**

- 5.08.010 Biweekly Pay Period.
- 5.08.020 Preparation and Certification of Biweekly Time Reports.
- 5.08.030 Computing Daily and Hourly Rates of Pay.
- 5.08.040 When Auditor to Draw Checks.
- 5.08.060 Safety Glasses.
- 5.08.070 Clothing Allowance.
- 5.08.075 Year Defined.
- 5.08.105 Reimbursement to Employees in Educational Programs Authorized by Council.
- 5.08.110 Bus Fare for Meter Readers.
- 5.08.120 Payment of Salaries and Wages at Other than Times Specified.
- 5.08.130 Salaries Chargeable to More than One Fund.
- 5.08.140 Salary Deductions.
- 5.08.150 State Tax Street Fund.
- 5.08.160 Delivery of Checks Payable to Deceased Persons.
- 5.08.170 Hold Harmless Agreements.
- 5.08.180 Effect of Death Upon Assignments and Levies.

**5.08.010 Biweekly Pay Period.**

All officers and employees of the City shall be paid for time earned and allowed under provisions of this Code. Such payments shall be biweekly. A pay period shall hereafter comprise 14 calendar days. Thursday, October 1, 1953, will be the first day and Wednesday, October 14, 1953, will be the last day of the first pay period; thereafter, each pay period will commence on Thursday and extend through the Wednesday of the second week.

**5.08.020 Preparation and Certification of Biweekly Time Reports.**

(Amended by Ordinance Nos. 132896, 136888, 147197 and 180917; effective May 26, 2007.)

- A.** It shall be the duty of the head of each appropriation unit to cause to be prepared, to approve, and to certify biweekly time reports for employees whose time deviates from standard biweekly hours and standard cost centers or when an employee is not to be paid, and cause the same to be transmitted to Central Payroll.

Biweekly time reports are not necessary for employees who worked their standard hours and whose time gets charged to the standard cost center. A payroll warrant will be automatically written for active employees whose standard time gets charged to their standard cost centers. However, each bureau manager shall submit a certification to the Accounting Division to the effect that all employees who will be paid and for whom no time report is submitted, did in fact, render the services to be paid.

## **TITLE 5**

### **REVENUE AND FINANCE**

- B.** Such biweekly time reports shall contain a statement of each applicable employee of the hours on duty, including overtime which has been approved by the Commissioner In Charge, or the Auditor as to his department; and the hours of duty, including vacation, holidays, sick leave, compensatory time off; and other leaves of absence with pay. A notation shall also be made of the number of days absent because of injury in the line of duty. A notation shall also be made of sick leave used or disability or pension benefits paid as a result of an injury by a third party.
- C.** In addition to the above, the biweekly time reports covering a member of Portland Fire & Rescue assigned to a 56-hour week shall carry a notation as to the number of regular duty hours worked in excess of the average of 112 hours biweekly. Such excess hours shall be accumulated and credited to those normal work periods that do not provide for an average biweekly accumulation of 112 hours.
- D.** The biweekly time reports shall be transmitted to the Auditor not later than the Friday following each pay period; provided, if the Thursday or Friday is a holiday, an additional day shall be allowed.
- E.** In the event of error or omission requiring payroll adjustment as a result of any provision of a labor agreement such as failure to notify an employee of a change of shift schedule, assignment to duty of an employee not entitled to such assignment under contractual requirements, or other error or omission which can appropriately be adjusted by an adjustment on the biweekly time report, the biweekly time report shall carry a notation concerning the error or omission which is the basis of such adjustment.

#### **5.08.030 Computing Daily and Hourly Rates of Pay.**

(Amended by Ordinance No. 180917, effective May 26, 2007.) The daily rate for all employees except those of Portland Fire & Rescue assigned to a 56-hour week shall be determined by dividing the biweekly rate by the number 10 and the hourly rate by dividing such daily rate by 8. The daily rate for the employees of Portland Fire & Rescue assigned to a 56-hour week shall be determined by dividing the biweekly rate by the number 14 and the hourly rate shall be determined by dividing such daily rate by 8.

#### **5.08.040 When Auditor to Draw Checks.**

(Amended by Ordinance Nos. 136887, 160146 and 173369 effective May 12, 1999.) When the biweekly time report shall have been approved by the head of the appropriation unit as being correct and by the Personnel Director that the employees were employed according to law, then the Auditor shall prepare the payroll records and draw and deliver checks not later than the second Friday following the end of each pay period or at such time as required by applicable federal or state law in accordance with Chapter 5.08.120 of the City Code in payment of salaries of officers and employees for payroll so certified; provided, that where such Friday is a holiday, checks shall be delivered the day previous.

**5.08.050 Allowance for Use of Private Automobile.**

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

**5.08.060 Safety Glasses.**

Safety glasses shall be worn by employees working in an area where a continuous eye hazard exists, subject to the conditions set forth in this Section.

- A.** The Employee Relations Office shall investigate units in which there may be continuous eye hazards and shall report the findings, and make recommendations to the Commissioner of Finance. The Commissioner of Finance, subject to the approval of the Commissioner In Charge of the unit concerned shall authorize a safety glasses program for a unit or for employees within a unit who may perform duty which is a continuous hazard to the eyes;
- B.** Safety glasses with safety frames and uncorrected lenses (planos) will be supplied by the City without cost to the employee. Employees who need corrective lenses will obtain the prescription for their lenses at their own expense from a doctor of their own choosing. In addition, such employees will also bear the cost of the ground lenses and frames. However, if corrective lenses and frames are obtained through the City, the City will allow as a credit the amount which the City pays for planos with standard safety frames;
- C.** Payment for corrective lenses and frames will be made to the supplier by the City, which in turn will collect such cost from the employee, less the allowance for planos with standard frames. Such collections shall be turned over to the City Treasurer to be credited to the appropriate revenue account;
- D.** The expenditure of City funds for safety glasses shall be limited to those units where a continuous eye hazard exists;
- E.** Corrective glasses will be property of the employee. Planos will be the property of the City. Replacement of broken glasses will be made on the same basis as the originals were obtained;
- F.** Once issued, safety glasses are to be worn at all times while in the hazardous work area as a condition of employment.

**5.08.070 Clothing Allowance.**

(Amended by Ordinance Nos. 131329, 141241 and 180917, effective May 26, 2007.) Each employee of the Bureau of Police or Portland Fire & Rescue who is to receive an annual clothing allowance as provided in Section 3.20.170 or Section 3.22.100 shall be paid such clothing allowance as follows:

## **TITLE 5**

### **REVENUE AND FINANCE**

- A.** The clothing allowance shall be at the rates specified in the current contracts with the Portland Fire Fighters Association Local 43 IAFF and the Portland Police Association.
- B.** The clothing allowance shall be payable on or after July 1 of each year from funds budgeted for this purpose. Eligibility for such payment and the amount of the payment for each eligible employee shall be dependent on the assignment of the employee and the duration of such assignment during the previous fiscal year.
- C.** An employee who has served for less than a full year in a position for which a clothing allowance is authorized shall receive an allowance prorated for the number of full calendar months served. For the purpose of this Section, time served shall not include leave without pay, nor time on sick leave and/or disability benefits in excess of a total of 30 days during the fiscal year.
- D.** An eligible employee who separates from the City service shall receive a prorated allowance at the time of separation. The rate of such payment shall be the same as that paid during the fiscal year of separation.

#### **5.08.075 Year Defined.**

“Year” means the fiscal year, from July 1 to June 30 inclusive, as established by ORS 294.095 and 293.605, unless otherwise expressly indicated in this Code.

#### **5.08.090 Travel Expenses.**

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

#### **5.08.095 Miscellaneous Expenses.**

(Repealed by Ordinance No. 175485, effective July 1, 2001.)

#### **5.08.100 Rules For Travel and Miscellaneous Expenses.**

(Repealed by Ordinance No. 176302, effective April 5, 2002.)

#### **5.08.105 Reimbursement to employees in Educational Programs Authorized by the Council.**

(Added by Ordinance No. 133632, effective November 10, 1971.) Whenever the Council has authorized an off-duty educational program for employees on an individual basis to improve professional skills and has provided for reimbursing the employee for specific expenditures upon his successful completion of a course in accordance with the requirements for the program, reimbursement will be made upon requisition to the City Auditor approved by the City Personnel Officer. For employees on a General Fund payroll, the reimbursement shall be charged to the General Fund. Reimbursement for an employee on a special fund payroll shall be charged to that special fund.

#### **5.08.110 Bus Fare for Meter Readers.**

Meter readers of the Bureau of Water Works shall be paid additional compensation over and above their salary as an allowance for bus fare while traveling in the line of duty is



such bus fare has not been paid directly by the Bureau of Water Works. The additional compensation to be paid each meter reader shall be at the rate of \$17.50 per month, which shall be prorated for any part of a month in which the employee has not been required to pay his own bus fare.

**5.08.120 Payment of Salaries and Wages at Other Than Times Specified.**

Whenever it becomes necessary to pay for labor or overtime at other than the specified times indicated by this Chapter, time reports shall be certified as soon as may be required and transmitted to the Auditor for payment.

**5.08.130 Salaries Chargeable to More Than One Fund.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) When the payroll of any bureau or department is made up of persons whose salaries are chargeable to more than one fund, such salaries may be paid by checks drawn on one such fund in the manner provided for regular payrolls provided that in such cases the bureau or department head shall draw an interdepartmental bill at the end of each month, charging the appropriation of the proper fund and crediting the revenue of the fund from which payment was made.

**5.08.140 Salary Deductions.**

(Replaced by Ordinance No. 172205; amended by 172562, 173326, 176426, 177833, 179023, 179643, 181483, 182887, 184215, 184257, 184399, 185028, 185536 and 186272, effective October 2, 2013 .)

A. Salary and wage deductions, other than Public Employees Retirement System, Worker's Compensation Self-Insurance and assignments or garnishments prescribed by law or authorized by an employee, shall be made on the biweekly payrolls. Only the employee may authorize voluntary deductions or changes in exemptions for tax withholding purposes. Each authorization bearing the signature of the employee shall be kept on file by the Office of Management and Finance.

1. Federal Income and Withholding Tax
2. Social Security and Medicare
3. State Income and Withholding Tax
4. Savings Bonds-City Treasurer
5. Workers' compensation Self-Insurance
6. Public Employees Retirement System
7. PACE Credit Union
8. MULTCO Employees Credit Union

**TITLE 5**  
**REVENUE AND FINANCE**

9. IBEW Credit Union
10. ING Financial Advisors, LLC
11. PACE Credit Union-Deferred Compensation
12. ICMA-Deferred Compensation
13. ITT Hartford-Deferred Compensation
14. Nationwide Retirement Solutions
15. Portland Police Commanding Officers Association-PPCOA
16. Portland Metropolitan Employees Union, DCTU, Local 189
17. Painters and Allied Trade Union, Local 10
18. International Brotherhood of Electrical Workers, Local 48
19. Willamette Lodge, IAMAW, Local 63
20. Operating Engineers, Local 701
21. United Association of Plumbing & Pipe Fitting, Local 290
22. Auto Mechanics, Mt. Hood Lodge, Local 105
23. Municipal Employees Union, Local 483
24. Portland Police Association
25. Fire Fighter Association, Local 43
26. City of Portland Professional Employees Association, COPPEA
27. City Treasurer Trustee Fund for Benefit of Portland Police Contributions Committee-Police Special Contributions
28. Portland Police Beneficiary Association
29. Portland Police Historical Society
30. Portland Police Athletic Association
31. Fire & Police Insurance Association

**TITLE 5**  
**REVENUE AND FINANCE**

- 32. Fire & Police Disability and Retirement Fund
  - 33. Nationwide Auto Insurance
  - 34. Family Cancer Plan Insurance Company
  - 35. Kaiser Health Plan
  - 36. Standard Insurance
  - 37. Portland Building Fitness Center
  - 38. Maintenance Bureau Fitness Center
  - 39. Parking Patrol's Fitness Center
  - 40. Portland Police Fitness Room Trustee Fund
  - 41. C-Tran Employee Transit Program
  - 42. Portland Police Relocation Loan Program Repayment Fund.
  - 43. Z-Man Scholarship Foundation.
  - 44. Portland Police Association Cover Foundation.
  - 45. Police Activities League of Greater Portland.
  - 46. Jeff Morris Fire & Life Safety Foundation.
  - 47. Boys & Girls Clubs of Portland Metropolitan Area.
  - 48. Oregon 529 College Savings Plan.
  - 49. Portland Police Honor Guard.
- B.** Each entity or agency authorized by Subsection A. to receive money through the use of the payroll deduction system, except those agencies or entities referred to in Subsection C., shall pay to the City a fee of 50 cents for each payroll deduction that is made from an employee's paycheck.
- C.** The entities or agencies whose names are preceded by the numbers described herein shall not be required to pay the fee described in Subsection B.: 1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 14., 15., 16., 17., 18., 19., 20., 21., 22., 23., 24., 25., 26., 31., 32., 35., 36., 43., 44., 45., 46., 47., 48. and 49.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.08.150 State Tax Street Fund.**

Whenever salaries chargeable to the State Tax Street Fund are paid on payrolls charged to the General Fund, the Commissioner of Public Works may at the beginning of each month, estimate the amount of service to be charged during the ensuing month and transfer such amount from the State Tax Street Fund to the General Fund by departmental bill. At the end of each month, when the exact amount chargeable to the State Tax Street Fund is determined the amount transferred must be correct by departmental bill.

#### **5.08.160 Delivery of Checks payable to Deceased Persons.**

(Amended by Ordinance Nos. 133986 and 173369, effective May 12, 1999.) Delivery of checks payable to any person employed by the City, or payable to any person receiving disability or retirement benefits from the City, shall be made in the following manner upon the death of such person:

- A.** Where the person's estate is admitted to probate in any county in Oregon, delivery shall be made to the representative thereof after the Auditor has been furnished a certified copy of letters testamentary or letters of administration;
- B.** Where the person's estate is admitted to probate outside this state, delivery shall be made as provided in Subdivision A of this Section, except that the Auditor shall first notify the Department of Revenue of the total amount to be paid. Delivery of checks shall not be made less than 30 days after notice to the department of revenue and 90 days after death;
- C.** Where the person's estate is not probated, and the heir or next of kin making claim for checks is a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Auditor a hold harmless agreement as provided in Section 5.08.170;
- D.** Where the person's estate is not probated, and the heir or next of kin making claim for checks is not a resident of Oregon, delivery shall be made to that heir or next of kin after that individual has furnished the Auditor a hold harmless agreement as provided in Section 5.08.170 and if the amounts total more than \$200 a bond, underwritten by a surety authorized to do business in this State, to defend and indemnify the City, its officers, agents and employees against any claim, suit, action or judgment arising out of the delivery or payment of the checks;
- E.** Checks payable to deceased employees, or to persons entitled to disability or retirement benefits prior to their death, shall be drawn in the usual course of business only, and shall be delivered by the Auditor as provided by this Section, without further action of Council;
- F.** The Auditor shall attach to each check issued under this Section an authorization for transfer in the following form:

#### **AUTHORIZATION FOR CHECK TRANSFER**

**TITLE 5**  
**REVENUE AND FINANCE**

KNOW ALL MEN BY THESE PRESENTS

That . . . . . (name of applicant) has applied for transfer of Check No. . . . . dated . . . . . 19 . . . . , payable to . . . . . (name of payee), deceased, as . . . . . (Heir, next of kin, executor or administrator of the estate), that pursuant to Title 5 of the Code of the City of Portland, as amended, I am authorized to deliver said check to . . . . . (name of applicant) and the Treasurer of the City of Portland is directed to cash the same upon. . . . . endorsement thereof.

**PLEASE DO NOT DETACH**

.....

Auditor of the City of Portland

By

Deputy

The Auditor shall furnish the Treasurer a copy of all authorizations for transfer he issues, and the Treasurer shall honor all checks described in the authorizations for transfer when endorsed by the applicant named therein.

**5.08.170      Hold Harmless Agreements.**  
(Amended by Ordinance No. 173369, effective May 12, 1999.) Hold harmless agreements required by subdivisions C and D of Section 5.08.160 shall be in the following form:

**HOLD HARMLESS AGREEMENT**

**WHEREAS** there was due and owing by the City of Portland, Oregon, to  
.....who died ....., 19 ....., the sum of  
\$ .....representing .....  
..... and the Auditor of the City of Portland holds said sum in the form of  
checks drawn payable to the said deceased; and

**WHEREAS** there will be no probate of the decedent's estate and I, as .....  
..... (heir, next of kin) of the deceased, have applied to the Auditor of the City  
of Portland for delivery of these checks according to the provisions of Title 5 of the  
Portland Municipal Code, as amended, whereby the Auditor may deliver these checks to  
me, as ....., (heir, next of kin) only upon condition that I first release  
and discharge the City of Portland, its officers, agents and employees from all liability with  
respect to delivery of these checks and payment thereof, and agree to defend and indemnify  
the City of Portland, its officers, agents and employees therefrom;

**NOW, THEREFORE**, in consideration of the payment to me of said sum, I hereby  
release and discharge the City of Portland, its officers, agents and employees from all  
liability arising from or consequent upon the payment to me of said sum and I hereby  
assume and agree to and with said City, its officers, agents and employees that I will defend

**TITLE 5  
REVENUE AND FINANCE**

and indemnify them against any claim, suit, action or judgment in consequence of the delivery of checks for, or payment of, said sum.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this

..... day of ....., 19 .....

.....(SEAL)

.....

Address

**WITNESS:**

.....

.....

Address

Approved as to form:

.....

City Attorney

**5.08.180 Effect of Death upon Assignments and Levies.**

- A.** The Auditor shall recognize no power of Attorney or assignment of wages, salary, disability or retirement benefits, reimbursement of expenses or contributions, or any other monies owing a person by virtue of past or present employment with the City, after the death of that person, notwithstanding Section 5.12.030.
- B.** If the Auditor receives notice of garnishment (except from the State Tax Commission of Oregon) or an order for payment of money into any federal or state court in Oregon, which notice or order applies to wages, salary or other monies due an employee of the City, and the employee is deceased or dies at any time before return is made thereon, the Auditor shall hold all monies pending further order of court and shall immediately notify the City Attorney of the notice or order and of the employee's death. Upon receipt of this notice the City Attorney shall file a supplemental pleading in the case wherein the garnishment or levy was undertaken, to advise the court of the employee's death and to obtain an order of court as to what disposition should be made of the monies held by the Auditor. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.
- C.** The Auditor shall make a return upon any notice of levy issued by the United States Treasury Department and any notice of garnishment issued by the State Tax Commission of Oregon, of wages, salary or other monies due an employee of the City, if the employee is living at the time the notice is served. If the employee is deceased at the time the notice is served, the Auditor shall:

  - 1.** Make payment as provided in Section 5.08.160, advising the recipient thereof, in writing, of the existence of the tax lien; and
  - 2.** Notify the taxing authority, in writing, of the fact and date of the employee's death, the date and amount of the payment, the name and address of the

**TITLE 5**  
**REVENUE AND FINANCE**

recipient thereof, and the recipient's relationship to the deceased. The procedure authorized herein shall be followed notwithstanding Section 5.12.050.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.09 - DEFERRED  
COMPENSATION PLAN**

(Chapter added by Ordinance No. 176183, effective  
January 1, 2002.)

**Sections:**

5.09.005	Title.
5.09.010	Definitions.
5.09.020	Purpose.
5.09.030	Administration.
5.09.035	Education.
5.09.040	Participation in the Plan.
5.09.050	Compensation Deferral.
5.09.055	Catch-up Provisions.
5.09.056	Excess Deferrals.
5.09.060	Deferred Compensation Records.
5.09.070	Payment Options.
5.09.080	Distribution of Benefits Generally.
5.09.090	Qualified Domestic Relations Orders (QDRO).
5.09.100	Determination of Benefits Upon Death.
5.09.120	Unforeseeable Emergency.
5.09.130	Non-Assignability.
5.09.140	Amendment and Termination.
5.09.150	Transfers from other Code Section 457 (b) Plans.
5.09.155	Rollovers to Plan.
5.09.156	Rollovers From the Plan.
5.09.157	Purchase of Service Credits.
5.09.160	Unclaimed Assets.
5.09.170	Disclaimers.

**5.09.005 Title.**

(Amended by Ordinance Nos. 179417, 182168, 185726, 186746 and 187574, effective February 10, 2016.)

- A.** The City of Portland, Oregon (City), maintains a deferred compensation plan authorized by Section 457 of the Internal Revenue Code of 1986, as amended (“IRC”) that was originally adopted by City Council on December 17, 1981 and became effective January 1, 1982.
- B.** Name of Plan. This Plan shall be known as the City of Portland Governmental 457(b) Plan.



**TITLE 5**  
**REVENUE AND FINANCE**

- C. Effective Date. The effective date of this Plan, as amended, shall be February 10, 2016.
- D. Service Providers. As of August 11, 2005, the service providers offered by the Plan are:
  - 1. Voya Retirement Insurance and Annuity Company
  - 2. Advantis Credit Union

**5.09.010 Definitions.**

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.) As used in this Chapter, unless the context otherwise requires:

- A. **“Account”** means the bookkeeping account or accounts maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains or losses attributable to the investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expense charged against such Participant's Deferred Compensation, which are maintained by the Participant's Investment Providers. Account also includes the Participant's Roth Account, and appropriate rollover accounts under Sections 5.09.150 and 5.09.155 that must be segregated.
- B. **“Acknowledgement”** means the document that highlights some of the terms of the Plan and contains the Participant's acknowledgement and understanding of the terms of the Plan.
- C. **“Beneficiary”** means the person(s) designated by the Participant to receive any benefits payable under the plan in the event of the Participant's death. The term Beneficiary may also include the Participant's estate.
- D. **“Beneficiary Designation”** means a document specifying the Beneficiary/Beneficiaries who is/are to receive any part of the Participant's Account in the event of the Participant's death.
- E. **“Committee”** means the Deferred Compensation Committee which makes recommendations for Council to approve regarding plan design, Service Providers, and consultative support on behalf of the Plan.
- F. **“Compensation”** means the total annual remuneration for employment payable by the City that would be included in the Federal gross income of the Participant but for the Participant's election to participate in the Plan.

**TITLE 5**  
**REVENUE AND FINANCE**

- G. “Deferred Compensation”** means the amount of Compensation otherwise payable to the Participant that the Participant and the City mutually agree shall be deferred in accordance with the provisions of the Plan.
- H. “Employee”** means an elected official of the City, or a full-time or part-time City Employee who is eligible for benefits offered by the City or a benefit eligible employee of the Portland Development Commission. Independent contractors and leased employees are not eligible.
- I. “Includable Compensation”** means the remuneration for service performed for the City which is currently includable in gross income (such amount will not include any amounts excluded from gross income pursuant to this Chapter). Severance pay is excluded. Pay for unused vacation, comp time, and holiday pay is included if deferred prior to a severance from employment and pursuant to this Chapter.
- J. “Normal Retirement Age”** means age 70-1/2 or that age selected in writing by a Participant in accordance with this Subsection. A Participant’s Normal Retirement Age determines the period during which a Participant may defer those amounts described in Subsection 5.09.050 C. Once a Participant has to any extent utilized the “catch up” provisions of Subsection 5.09.050 C., the Participant’s Normal Retirement Age may not be changed. As an alternative to age 70-1/2, a Participant may, at any time prior to Severance from Employment or prior to utilization of the “catch up” provisions of Subsection 5.09.050 C., designate his or her Normal Retirement Age to be any of the following:
- 1.** Any age which is:
    - a.** Not earlier than the earliest age at which the Participant has the right to retire and receive immediate and unreduced retirement benefits from the pension plan of which the Participant is a member (i.e., the Fire and Police Disability, Retirement and Death Benefit Plan for fire fighters and police officers who are members of that Plan and the Public Employee's Retirement System (PERS) for all other Participants); and
    - b.** Not later than the date the Participant attains age 70-1/2.
- K. “Participant”** means any Employee who fulfills the eligibility and enrollment requirements of this Chapter.
- L. “Participating Employer”** means the Portland Development Commission (PDC), or any entity that has adopted the City of Portland Governmental 457(b) Plan, and is legally related to the City of Portland. For employees of a “Participating Employer”, wherever this Chapter references the “City” with respect to the

**TITLE 5**  
**REVENUE AND FINANCE**

employment relationship, services performed and compensation paid, the term “City” shall also mean the “Participating Employer”.

- M. “Participation Agreement”** means an agreement between the City and a Participant, on a form prescribed by the City, that provides for the deferral of Compensation due a Participant to a future date for service currently rendered by the Participant to the City.
- N. “Plan”** means the program established by this Chapter which has as its purposes the deferral of Compensation to Participants using pre and/or post tax deferrals.
- O. “Plan Administrator”** means the Bureau of Human Resources Director, or his or her designee, who prepares and provides documents, materials and support services required to administer the Plan on behalf of Participants.
- P. “Plan Year”** means a calendar year.
- Q. “Records”** means the materials and forms maintained in files for each Participant in the Deferred Compensation Plan.
- R. “Roth Account”** means the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her Roth Deferrals including any amounts transferred into the Plan.
- S. “Roth Deferrals”** means Deferred Compensation which is designated irrevocably as a Roth Deferral by the Participant at the time the deferral election is made, and which is included in the Participant’s taxable income at the time the Participant would have received such amount in Compensation. All Roth Deferrals will be made in compliance with Internal Revenue Code Section 402A.
- T. “Service Providers”** means the financial institutions that have contracts with the City to provide investment services to Participants consistent with the terms of the Plan.
- U. “Severance from Employment”** means the severance of the Participant’s employment with the City. A Participant shall be deemed to have severed his or her employment with the City when, in accordance with the established practices of the City, the employment relationship is considered to be terminated.
- V.**

  - 1. “Unforeseeable Emergency”** means severe financial hardship to the Participant resulting from

## **TITLE 5**

### **REVENUE AND FINANCE**

- a.** a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in IRC Section 152a) of the Participant, or a designated beneficiary,
  - b.** loss of the Participant's property due to casualty, or
  - c.** the need to pay for the funeral expenses of the participant's spouse or dependent (defined in IRC Section 152(a),) or
  - d.** other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
- 2.** The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved;
  - a.** Through reimbursement or compensation by insurance or otherwise;
  - b.** By liquidation of the Participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or
  - c.** By cessation of deferrals under this Chapter.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

- W. “Withdrawal Agreement”** means an agreement between the City and a Participant on a form prescribed by the City that allows the Participant to elect and change the manner in which the value of the Participant’s Account is paid.

#### **5.09.020 Purpose.**

(Amended by Ordinance No. 182168, effective October 3, 2008.) The purpose of this Chapter is to establish a program that has as its purpose the deferral of Compensation to eligible Employees and the deferral of income taxation on the Deferred Compensation. The program established by this Chapter is limited to the terms contained in the Chapter, and as such no other plan provisions are to be implied or assumed, even if such provisions would be permissible under the IRC. Except as specifically set forth otherwise, in the event the terms or provisions of any Component Plan, summary or description of this Plan or of any other instrument are interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling.

#### **5.09.030 Administration.**

(Amended by Ordinance Nos. 176426, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.) This Chapter shall be administered by the Bureau of Human Resources Director, or his or her designee, with the assistance of the Deferred Compensation Committee. The Committee shall consist of the Chief Administrative

## **TITLE 5**

### **REVENUE AND FINANCE**

Officer of the Office of Management and Finance, the Director of the Bureau of Human Resources, and the City Treasurer or their respective designees. The Committee shall study all matters connected with providing a deferred compensation plan on the best basis possible with relation both to the welfare of the Participants and the City. The Committee shall have authority to devise specifications for deferred compensation plans, advertise for responses and bids, and analyze responses. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is authorized to negotiate and execute all contracts, including contracts with Service Providers. The terms of any contract with the Plan may authorize the assessment of fees to be charged against Service Providers or other contractors that may be necessary to fund the administration of the Plan. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is further authorized to prepare and provide any other documents, materials and support services that may be required to administer the Plan. The Committee members may participate in the Plan established herein if otherwise eligible, but shall not be entitled to participate in decisions relating solely to their own participation.

#### **5.09.035 Education.**

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.) All promotional and City-sponsored employee marketing and education efforts relating to the Plan may be coordinated with other similar efforts sponsored by the Health and Financial Benefits Office within the Bureau of Human Resources. The Committee shall not offer investment advice to employees or plan Participants.

#### **5.09.040 Participation in the Plan.**

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.)

- A.** Eligibility. Employees shall be eligible to enroll as Participants in the Plan, as provided in this Section, on the first day of the month following the month in which they will have completed 30 days in a paid status. A Participant who terminates his or her employment with the City and then returns to City employment after the expiration of 12 calendar months following said termination date must comply with the eligibility waiting period applicable to such person upon his or her return before being eligible to participate in the Plan again. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease in the event the Participant takes a leave of absence without pay, but any such Participant may continue full participation in the Plan upon returning to pay status with the City. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease while the Participant is receiving distributions in accordance with, and subject to, the restrictions of Sections 5.09.070, 5.09.080, 5.09.090, and 5.09.100.
- B.** Enrollment in the Plan. An eligible Employee may become a Participant and defer Compensation not yet earned by executing a Participation Agreement, and submitting it to the Bureau of Human Resources, Health and Financial Benefits

## **TITLE 5**

### **REVENUE AND FINANCE**

Office in an acceptable format. Compensation will be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into by the 15th of the preceding month.

- C.** The Participation Agreement shall be in a format provided by the City, which shall include the following:

  - 1.** The Participant's name;
  - 2.** The dollar amount or percent of Compensation to be deferred;
  - 3.** Other relevant statements necessary and appropriate for carrying out the purposes of this Chapter; and
  - 4.** The investment or deposit preference shall be made in a format provided by the City.
- D.** When an eligible Employee executes a Participation Agreement, an Acknowledgement and a Beneficiary Designation shall also be completed. A Participant may change the Beneficiary Designation at any time by completing a new Beneficiary Designation and submitting it to the Bureau of Human Resources, Health and Financial Benefits Office. A change of Beneficiary Designation shall become effective on the date received by the Bureau of Human Resources, Health and Financial Benefits Office, and must be received prior to the date of death.
- E.** The City, upon the request of an eligible Employee, will reduce each pay period the salary of the eligible Employee by an amount of money designated by that Employee in the Employee's Participation Agreement. The City shall pay that amount to the Service Provider designated in the Employee's Participation Agreement.
- F.** Once per month, a Participant may modify his or her Participation Agreement as to the amount of Compensation not yet earned to be deferred during each Plan Year. Any modification as to the amount of Compensation to be deferred by a Participant must be submitted in a format provided by the City, and received by the Bureau of Human Resources, Health and Financial Benefits Office, by the 15th of the month prior to the month in which said modification is to become effective.
- G.** A Participant may revoke the Participation Agreement at any time with respect to any pay period by submitting notification in a format provided by the City, which must be received by the Bureau of Human Resources, Health and Financial Benefits Office, prior to the date upon which the Participant desires the revocation to be effective.
- H.** Prior to severance from employment with the City, a Participant may make a special election to be processed within their final paycheck of their vacation, comp, and/or

**TITLE 5**  
**REVENUE AND FINANCE**

holiday pay-out. A Participant must submit a Participation Agreement before they sever employment and before the amount is available to the employee. The election can be made as a dollar or percentage amount. This election will only apply once on the final paycheck issued. The maximum deferral limits shall apply in accordance with Sections 5.09.050 and 5.09.055. If not previously elected during the calendar year, the participant may elect the 3-year catch-up provision pursuant to Section 5.09.055.

- I.** A Participant who has severed his or her employment or who has revoked the Participation Agreement may again participate in the Plan, provided that he or she is eligible, by submitting a new Participation Agreement.
- J.** For purposes of Plan administration, a revocation of a Participation Agreement will be considered a Participation Agreement modification. The most recent Participation Agreement shall be controlling with respect to all accounts, including amounts deferred under prior agreements.
- K.** Automatic Enrollment in the Plan.
  - 1.** Collective Bargaining Agreements requiring Automatic Enrollment.
    - a.** If the City and a labor organization representing a unit of City employees agree in collective bargaining, the Eligible Employees in such bargaining unit will be automatically deemed to have executed a Participation Agreement. With respect to then currently Eligible Employees such deemed executed Participation Agreement will be effective commencing with the payroll period designated in such collective bargaining agreement. If no payroll period is designated in the collective bargaining agreement, the Participation Agreement will be effective the first payroll period after the effective date of such collective bargaining agreement.
    - b.** New Eligible Employees who are covered by such a collective bargaining agreement will be automatically deemed to have executed a Participation Agreement effective for the first payroll period in which they could complete a Participation Agreement, unless another date is specified in the applicable collective bargaining agreement.
    - c.** Notwithstanding the preceding in this Section, the deemed executed Participation Agreement will not be effective prior to the time described in the required notice described in Subsection 5.09.040 K. 2.

**TITLE 5**  
**REVENUE AND FINANCE**

2. Advance Notice. An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to IRC Section 414(w), including the amount of contributions that will be made, the employee's right to elect to not have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before each Plan Year or before such other time when the automatic provision will first become applicable to an Eligible Employee.
  - a. Opting Out of Automatic Enrollment. A Participant shall have the right to opt out of automatic enrollment at any time by completing a Participation Agreement or by providing notice of the election to not have any amount withheld from his or her Compensation.
  - b. Deferral Amount. The amount deferred from an Eligible Employee's Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of IRC Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment, and the applicable minimum and maximum deferral percentages.

**5.09.050 Compensation Deferral.**

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A. The amount of Compensation which may be deferred by a Participant shall be subject to the following limits:
  1. The minimum amount deferred shall not be less than \$10 per pay period per plan election;
  2. The maximum amount of Compensation which may be deferred during a plan year shall not exceed the lesser of the dollar amount provided under IRC sections 457(e)(15) and 415(d).

**5.09.055 Catch-up Provisions**

(Amended by Ordinance Nos. 179417, 182168, 186746 and 187574, effective February 10, 2016.)

- A. **Three year catch-up provision:** Notwithstanding the language of Subsection 5.09.050 A.2., during each of a Participant's last three (3) taxable years ending before the Participant attains Normal Retirement Age, the maximum amount deferred shall be the lesser of:
  1. the maximum allowed under Subsection 5.09.050 A. 2. for the current taxable year plus so much of the maximum established for purposes of



**TITLE 5  
REVENUE AND FINANCE**

Subsection 5.09.050 A.2. for prior taxable years as has not previously been deferred under Subsection 5.09.050 A.2.; or

2. Two times the applicable dollar amount under Subsection 5.09.050 A.2. above.

For the purposes of this section, a prior year shall be taken into account only if such year began after December 31, 1981, and the participant was eligible to participate in the plan during all or a portion of the year. For purposes of counting prior years, only years of service with the City may be considered. Participant may only make this election once with respect to any IRC section governmental 457(b) deferred compensation plan of the employer based on the Participant's basic defined benefit plan of the State.

- B. Age 50 catch-up provision:** All Participants who are eligible to make elective deferrals under the Plan and who have attained age 50 before the close of the calendar year shall be eligible to make catch-up contributions subject to the limitations of IRC Sections 414(v) and 414(v)(6)(c). Additional deferrals under this section of the Plan may be made except during the three (3) years prior to normal retirement age while utilizing the catch-up provision provided for in Subsection 5.09.055 A. of the Plan. Age 50 catch-up contributions will not be taken into account for purposes of determining a participant's underutilized amounts under the three year catch-up provision. The Participant must select the catch-up which results in the higher contribution amount. The amount shall be administered to reflect changes in accordance with the IRC Section 457(e)(15) and 415(d).
- C. Coordination with other plans.** If a Participant participates in more than one deferred compensation plan authorized under IRC Section 457, the maximum deferral under all such plans shall not exceed the applicable deferral limits described in Section 5.09.050, as adjusted by the Secretary of the Treasury (subject to modification by the catch-up limitations described in Section 5.09.055), which also shall apply to all IRC Section Governmental 457(b) Plans in which the Participant participates. If a Participant participates in a plan described in IRC Section 403 (b), 401 (k), 408 (k) or 501 C (18), amounts deferred by the Participant to such plan(s) and excluded from the Participant's gross income in any taxable year under such plan(s) shall not reduce the limitation described in Section 5.09.050 of this Section and the catch-up limitation described in Section 5.09.055.
- D. Uniform Service Provision.** This Plan shall be administered in accordance with Section 414(u) of the IRC for employees who return to work after absences from employment due to military service. Accordingly, notwithstanding the provisions of this section limiting the amount of compensation which may be deferred under the Plan, a Participant who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Act of 1994 (USERRA) may defer an additional amount under the Plan as provided in that Act for the years of

## **TITLE 5**

### **REVENUE AND FINANCE**

his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the annual limits on deferrals set forth in this section in the year in which deferred, but shall be subject to the limits for the year to which such deferrals relate. This subsection shall apply retroactively to December 12, 1994.

#### **5.09.056 Excess Deferrals.**

(Added by Ordinance No. 179417; amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.) A Participant who participates in the Plan and another Governmental 457(b) Plan of another employer shall be responsible for complying with the deferral limits. In the event of an excess amount, the Participant shall notify the Plan Administrator so that the excess and the proportionate earnings on the excess as determined by the Plan Administrator in accordance with IRC Section 457 may be distributed as soon as practicable after the Plan Administrator determines that the amount is an excess deferral.

#### **5.09.060 Deferred Compensation Records.**

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A.** The City shall maintain records necessary and appropriate to the efficient administration of this Chapter, and such records shall be maintained by the City until a Participant or his or her designated Beneficiaries have received the payment of such amounts as they are entitled to receive under the terms of the applicable Withdrawal Agreement.
- B.** All amounts of Compensation deferred pursuant to this Chapter, shall be held in a trust, custodial account or contract described in IRC Section 457(g). Any change in the net value of the assets of a Participant invested under the Plan shall result in a commensurate change in the total amount distributable to the Participant or the Beneficiary of the Participant and shall not result in any increase or decrease in the net worth of the City.
- C.** As to those amounts held in trusts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Oregon. All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- D.** As to those amounts held in annuity contracts, notwithstanding any contrary provision of the Plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred

**TITLE 5**  
**REVENUE AND FINANCE**

pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the State of Oregon, for the exclusive benefit of Participants and Beneficiaries under the Plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. All amounts of compensation deferred under the Plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.

- E.** As to those amounts held in custodial accounts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of Participants and Beneficiaries under the Plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees. All amounts of compensation deferred under the Plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- F.** When a Participant agrees to participate in the Plan, the Participant may indicate his or her preference with respect to the investment or deposit option to be used in investing or depositing the Participant's deferred income.
- G.** If a Participant newly enrolls in the Plan using the Employee Self Service (ESS) system or the written EZ Enroll form, and does not otherwise designate an investment or deposit preference, the Participant will be defaulted into the Plan's Target Date Fund based on their year of birth.

**5.09.070 Payment Options.**

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.)

- A.** Subject to the restrictions on the distribution of benefit payments appearing in Sections 5.09.080, 5.09.090, and 5.09.100, the options available to a Participant or Beneficiary for distributing the value of the Participant's Account are:

  - 1.** Lump Sum
  - 2.** Substantially equal monthly, quarterly, semi- annual or annual installments until the Account is exhausted.

**TITLE 5**  
**REVENUE AND FINANCE**

3. Substantially equal monthly, quarterly, semi- annual or annual payments for a designated period.
4. Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse.
5. Payments equal to payments made by the issuer of a retirement annuity policy.
6. Such other option as the Participant chooses, and as authorized by this Plan.

**5.09.080 Distribution of Benefits Generally.**

(Amended by Ordinance Nos. 177367, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.)

- A. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.
- B. Distribution of a Participant's Account to a Participant or a Beneficiary shall be made in accordance with the manner and method of payments selected in the Withdrawal Agreement, which election may be changed by a Participant or Beneficiary, subject to the restrictions of the Plan.
- C. At the time distribution to a Participant commences, such distribution shall be made in a manner in which the Participant will receive a minimum portion of the amount payable with respect to the Participant during the life expectancy of the Participant (as determined as of the commencement of the distribution). Therefore, distributions to a Participant must be made in accordance with the distribution tables promulgated by the Secretary of the Treasury pursuant to IRC Section 457(d)(2)(B)(i)(I).
- D. A minimum amount shall be distributed during each calendar year. The required minimum distribution for each calendar year shall be determined by dividing the Account balance (as determined under Section 1.104(a)(9)-1, Q&A F-5 of the proposed Federal income tax regulations or any successor to such regulations) by the lesser of the applicable life expectancy (as determined under Q&A F-1A(d) of Section 1.104(a)(9)-1 of the proposed Federal income tax regulations or any successor to such regulations) or the applicable divisor (as determined under Q&A-

**TITLE 5**  
**REVENUE AND FINANCE**

4 of Section 1.104(a)(9)-2 of the proposed Federal income tax regulations or any successor to such regulations).

- E.** Notwithstanding the provisions of Subsection D., distribution of a Participant's Account may be made through an annuity contract that is purchased from an insurance company, with funds from the Participant's Account. Any annuity contract so purchased must satisfy the applicable minimum distribution requirements of Section 1.401(a)(9)-1 of the proposed Federal income tax regulations (and any successor regulations) and the applicable minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Federal income tax regulations (and any successor regulations). In the event such an annuity contract is purchased, the amount of the annuity payments shall be determined under the annuity contract.
- F.** In no event shall the distribution of a Participant's Account commence earlier than:
- 1.** the calendar year in which the Participant attains his or her Normal Retirement Age as defined in Subsection 5.09.010 K.,
  - 2.** the Participant's Severance from Employment, or
  - 3.** when the Plan Administrator or designee approves a distribution pursuant to an Unforeseeable Emergency of a Participant.
- G.** Distribution of a Participant's Account to a Participant may commence no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 or actually severs from employment.
- H.** Notwithstanding Subsection 5.09.080 J., distributions of a Participant's Account shall cease if the Participant is re-employed by the City.
- I.** All distributions hereunder shall be made in accordance with the regulations under IRC Section 401(a)(9), including Section 1.401(a)(9)-2 of the Federal income tax regulations and such other provisions as are prescribed by the Commissioner of Internal Revenue. Accordingly, no distribution shall be made under any option that does not satisfy IRC Section 401(a)(9), including Section 401(a)(9)(G).
- J.** Participants may elect changes to election dates and/or payment amounts, except for selections made pursuant to Subsection 5.09.070 A.5.
- K.** Voluntary In-Service Distribution: Notwithstanding anything in this chapter to the contrary, a Participant who is an active employee of the City shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:

**TITLE 5**  
**REVENUE AND FINANCE**

1. the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater),
  2. the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan pursuant to Subsection 5.09.080 I.
  3. no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
  4. the Participant elects to receive the distribution.
- L.** Distribution of a Participant's Account shall commence no earlier than Severance from Employment.

**5.09.090 Qualified Domestic Relations Orders (QDRO).**

(Replaced by Ordinance No. 177367; amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.)

- A.** Effective January 1, 2002, court ordered distributions in the form of QDROs are recognized and allowed by the Plan. The Plan or the Plan's designee shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions hereunder. QDROs must be submitted in a form acceptable to the Plan or its designee, and may order Participant Plan assets be divided into a separate account for the benefit of an Alternate Payee. Distribution of those assets may be allowed as provided in Subsection 5.09.090 B. and C. All state and federal taxes on distributions from the Alternate Payee's account will be the responsibility of the Alternate Payee and not to the Plan Participant. The Alternate Payee's account shall be subject to the IRC and Regulations, state law, and the Plan.
- B.** If administered by the Plan, the responsibility for the fees provided for under ORS 243.507 shall be apportioned to the Participant and the Alternate Payee based on the fraction of the plan assets received by the Participant and the Alternate Payee at the time the Alternate Payee's interest in the Plan is established. The apportioned fees shall be immediately paid to the Plan out of the distributions to the Participant and out of the distributions to the Alternate Payee until their respective obligations are paid.
- C.** Any QDRO submitted to and accepted by the Plan or its designee may provide that an Alternate Payee may take an immediate distribution of some or all of the assets established in the separate account or make any distribution election from the payout options available to Plan Participants, or may elect to leave the separate

account in the Plan, in which case, the Alternate Payee shall have the same rights as a participant under the Plan.

**5.09.100 Determination of Benefits Upon Death**

(Replaced by Ordinance No. 179417; amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A.** Upon the death of a Participant, Former Participant or Alternate Payee, the Plan Administrator shall direct that the deceased Participant's, Former Participant's or Alternate Payee's Participant Account, be distributed to the Beneficiary in accordance with the provision of this Section 5.09.100.
- B.** The designation of a Beneficiary shall be made in a manner that is satisfactory to the Plan Administrator. A Participant, Former Participant, or Alternate Payee may at any time revoke his or her designation of a Beneficiary or change his or her Beneficiary by submitting notice prior to the date of death of such revocation or change with the Plan Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's, Former Participant's, or Alternate Payee's death, the death benefit shall be payable to the Participant's, Former Participant's, or Alternate Payee's estate.
- C.** The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant, Former Participant, Alternate Payee or Beneficiary, as the Plan Administrator may deem appropriate. The Plan Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- D.** Death benefits payable to a Beneficiary shall be made in a form as selected by the Beneficiary in accordance with the available options. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary shall be distributed in a lump sum payment in accordance with IRC Section 401(a)(9) and any applicable State of Oregon law or statute. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary shall comply with the requirements of the Plan.
- E.** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant or Former Participant, shall be made in accordance with the requirements in Subsections F. through J. and shall otherwise comply with IRC Section 401(a)(9) and the Regulations thereunder.
- F.** In accordance with the Beneficiary's election, if minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:

## **TITLE 5**

### **REVENUE AND FINANCE**

1. begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's or Former Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
  2. be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- G.** In accordance with the Beneficiary's election, if the designated Beneficiary is the Participant's or Former Participant's surviving spouse and minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant, minimum payments to the surviving spouse as the designated Beneficiary must begin by the later of:
1. December 31 of the calendar year immediately following the calendar year in which the Participant or Former Participant dies, or
  2. December 31 of the calendar year in which the Participant or Former Participant would have attained 70  $\frac{1}{2}$ .
- The payments to the surviving spouse as the designated Beneficiary must be made over a period not to exceed the surviving spouse's life expectancy. Notwithstanding the foregoing, for purposes of this subsection, an Alternate Payee who is a spouse or former spouse will be treated as a Participant's or Former Participant's surviving spouse.
- H.** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's or Former Participant's death, the Participant's or Former Participant's entire interest will be distributed according to State of Oregon law or statute by December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- I.** If the Participant or Former Participant dies on or after the date distributions begin and there is a designated Beneficiary, distributions shall be based on the longer of the remaining life expectancy of the Participant or Former Participant or the remaining life expectancy of the Participant's or Former Participant's designated Beneficiary.
- J.** Life expectancies calculations will be computed using the factors in the Single Life Table set forth in IRC Section 1.401(a)(9)-9, A-1, as follows:
1. The Participant's or Former Participant's remaining life expectancy is calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.



**TITLE 5**  
**REVENUE AND FINANCE**

2. If the Participant's or Former Participant's surviving spouse is the Participant's or Former Participant's sole, primary designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's or Former Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
3. If the Participant's or Former Participant's surviving spouse is not the Participant's or Former Participant's sole, primary designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's or Former Participant's death, reduced by one for each subsequent year.
4. If the Participant or Former Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's or Former Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's or Former Participant's death is the quotient obtained by dividing the Participant Account by the Participant's or Former Participant's remaining life expectancy calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.

**5.09.110 Distribution Commencing After Death of Participant.**

(Repealed by Ordinance No. 179417, effective August 11, 2005.)

**5.09.120 Unforeseeable Emergency.**

(Amended by Ordinance Nos. 179417, 182168 and 186746, effective August 6, 2014.) A Participant may apply on a form supplied by the Bureau of Human Resources Director, or his or her designee, for payment prior to Severance from Employment or Retirement from City employment but such applications may be granted only if the Participant is experiencing an Unforeseeable Emergency which would cause undue hardship if payment were denied. If the Bureau of Human Resources Director, or his or her designee, finds that a Participant is experiencing an Unforeseeable Emergency, he or she may approve an amount reasonably needed to satisfy the unforeseen emergency be made to the Participant. Payment will be made within 90 days of the date of such approval. Participants who request and are granted a hardship withdrawal from their deferred compensation account may not have their salaries reduced under the terms of this Chapter for a period of six (6) months following such hardship withdrawal. If the Bureau of Human Resources Director, or his or her designee, denies the application for payment, said denial shall be in writing. A Participant may appeal the decision to the Committee. An appeal must be in writing and

## **TITLE 5**

### **REVENUE AND FINANCE**

received by the Plan Administrator within 30 days of the date of denial. The Committee shall issue a written decision within 90 days of receipt of the appeal by the Plan Administrator. Any decision of the Committee is final.

#### **5.09.130 Non-Assignability.**

(Amended by Ordinance Nos. 177367, 182168 and 186746, effective August 6, 2014.) Neither the Participant, nor the Participant's Beneficiary shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payment which may be due the Participant under the plan, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. Nor shall any amounts deferred pursuant to this Chapter be subject to attachment, garnishment, or execution or be transferable by operation of law in the event of bankruptcy or insolvency unless otherwise required by law. The preceding paragraph prohibiting the assignment or alienation of benefits shall not apply to Qualified Domestic Relations Orders as set forth in Section 5.09.090 which may be issued pursuant to a court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation which is determined by the Bureau of Human Resources Director or his or her designee to satisfy the requirements of ORS 243.507. The Bureau of Human Resources Director or his or her designee shall establish written procedures to determine whether the above described decrees or the property settlement agreements incident to such decrees satisfy ORS 243.507 and to administer distributions under such orders.

#### **5.09.140 Amendment and Termination.**

(Amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.)

- A.** The City may terminate the Plan provided for in this Chapter at any time. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination and their full Compensation on a non-deferred basis will be thereupon restored. In the event the City terminates the plan, the value of all Accounts shall be distributed to the Participants or their Beneficiaries in accordance with the method of payment designated by the Participant on a Withdrawal Agreement.
- B.** The City may amend the provisions of this Plan at any time, provided, however, that all amendments are in compliance with the IRC and that no amendment shall affect the rights of any Participant or Beneficiary to the receipt of benefits accrued under the Plan prior to such amendment.

#### **5.09.150 Transfers from other Code Section 457(b) Plans.**

(Amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.) This Plan shall accept for transfer those amounts of compensation previously deferred by a Participant pursuant to another eligible plan of deferred compensation maintained under IRC Section 457, by another employer.

**5.09.155      Rollovers to the Plan.**

(Replaced by Ordinance No. 182168; Amended by Ordinance Nos. 185726 and 186746, effective August 6, 2014.)

- A. Amounts that are considered Eligible Rollover Distributions as defined in IRC Section 402(c)(4) may be rolled over by a Participant, from an Eligible Retirement Plan. The amounts rolled over from an Eligible Retirement Plan other than an IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from amounts in the Participant 457 Rollover Account.
- B. For purposes of this Section, the term “Participant” means the Participant, the Participant’s surviving spouse beneficiary or an Alternate Payee (who is a spouse or former spouse). “Eligible Retirement Plan” means any other IRC Section 457(b) plan maintained by an employer, an IRC Section 403(b) program, a IRC Section 401(a) plan, an individual retirement account as described in IRC Section 408(a), and an individual retirement annuity as described in IRC Section 408(b), and a Roth individual retirement account under IRC Section 408(a). For purposes of this Section, the term “amounts rolled over from an Eligible Retirement Plan” means:
  - 1. amounts rolled to the Plan directly from another Eligible Retirement Plan on behalf of an Eligible Individual; and
  - 2. Eligible Rollover Distributions as defined in IRC Section 402(c)(4) received by an Eligible Individual from another Eligible Retirement Plan that are rolled over by the Eligible Individual to the Plan within sixty (60) days, following his or her receipt thereof.
- C. A Participant may choose to receive a distribution from his or her 457(b) Rollover Account and Participant Non-457(b) Rollover Account at any time, whether he or she is otherwise entitled to a distribution from the Plan.

**5.09.156      Rollovers From the Plan.**

(Added by Ordinance No. 182168, effective October 3, 2008.)

- A. Notwithstanding any provision of the Plan to the contrary, a Participant who is entitled to a distribution under the Plan shall be permitted to elect to have any Eligible Rollover Distribution (as defined in IRC Section 402(c)(4)) paid directly to an Eligible Retirement Plan (as defined in Subsection 5.09.155 B.) specified by the Participant. The Participant shall, in the time and manner prescribed by the Employer, specify the amount to be rolled over and the Eligible Retirement Plan to receive such rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

## **TITLE 5**

### **REVENUE AND FINANCE**

- B.** The election described in Subsection A. also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the Alternate Payee, provided that such spouse, former spouse or Alternate Payee directs the transfer of an Eligible Rollover Distribution (as defined in Subsection 5.09.155 B.) in which such spouse, former spouse or Alternate Payee is a participant. Effective for distributions made on or after May 16, 2008, a non-spouse beneficiary is permitted to make a direct rollover of death benefits to an inherited IRA.

#### **5.09.157 Purchase of Service Credits.**

(Added by Ordinance No. 179417; amended by Ordinance No. 182168, effective October 3, 2008.) Prior to Severance from Employment, a Participant may elect to allow the Plan to transfer assets from the Participant's account with the Plan to a designated government defined benefit plan for the purchase of permissible service credits pursuant to IRC Section 457(e) (17), provided, however, that the designated defined benefit plan will accept such a transfer of assets.

#### **5.09.160 Unclaimed Assets.**

In the event the Plan has assets of Participants or their Beneficiaries who, after the Participants' Severance from Employment, cannot be located so as to properly distribute assets to the Participant or Beneficiary under the terms of the Plan, the Plan Administrator shall make all reasonable efforts to locate said Participants and Beneficiaries. If after such efforts, the Participant or Beneficiary cannot be located, the Plan Administrator shall designate such assets as unclaimed property, and thereby abandoned, and shall transfer said assets to the State of Oregon according to the Uniform Disposition of Unclaimed Property pursuant to ORS 98.302, et seq., as amended, if such assets remain unclaimed for two years after said designation.

#### **5.09.170 Disclaimers.**

- A.** Neither the City nor the Committee shall be liable for the investment decisions made by Participants.
- B.** Neither the City nor the Committee manages the Participants' Accounts, and is therefore not responsible or liable for the performance and accuracy of Participant's Accounts.

**CHAPTER 5.10 - CITY CHARITABLE  
CAMPAIGN**

(Chapter replaced by Ordinance No. 185656,  
effective October 26, 2012.)

**Sections:**

- 5.10.010 Definitions.
- 5.10.020 Charitable Campaign.
- 5.10.030 Charitable Campaign Advisory Committee.
- 5.10.040 Eligibility for Participation in Charitable Campaign.
- 5.10.050 Administration of Charitable Campaign.

**5.10.010 Definitions.**

**A.** 'Charitable Organization' means:

1. An entity organized and operated exclusively for tax-exempt purposes under Section 501(c)(3) of the Internal Revenue Code and registered as a charitable organization with the Oregon Attorney General as required by ORS 128.610 to 128.995; or, an entity that is a State or City created nonprofit that receives donations which may be deducted from taxable income as "charitable contributions" under Section 170(a) and (c) of the Internal Revenue Code;
2. Charitable services must relate to the promotion of: public health, safety and welfare; public education and literacy; environmental and natural resource protection, restoration and conservation; prevention of cruelty to animals or children; civil or human rights; elimination of prejudice and discrimination; public arts and culture; relief of human suffering and poverty; public recreation; or providing community and civic improvement; and,
3. Must be directed by a board of directors or a governing body whose members serve without compensation and have no financial conflict of interest.

**B.** 'Umbrella Organization' means a Charitable Organization serving as an agent to at least nine member Charitable Organizations to which it disburses funds and has received authorization from these member Charitable Organizations to represent them in the annual Charitable Campaign, or any other Charitable Organization so designated by the City Council through a City ordinance.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.10.020 Charitable Campaign.**

The purpose of the Charitable Campaign is to encourage and support voluntary charitable contributions by employees, by providing a consolidated opportunity for workplace giving through the ease of payroll deductions benefiting a wide range of Charitable Organizations. The campaign minimizes workplace disruption and reduces the administrative costs to the City and Charitable Organizations in charitable solicitation efforts. Except as provided by City ordinance, only Umbrella Organizations may participate in the annual Charitable Campaign.

Except as otherwise permitted by City ordinance, no charitable solicitation of employees on City property or places of employment may occur without prior written approval of the Chief Administrative Officer (CAO) of the Office of Management and Finance (OMF) or CAO's designee.

Participation in the Charitable Campaign shall not be construed as endorsement, support or advocacy of the beliefs or viewpoints of the participating Charitable Organizations.

#### **5.10.030 Charitable Campaign Advisory Committee.**

The Charitable Campaign Advisory Committee ("the Committee") will consist of five members, each of whom will be a City employee serving without additional salary or compensation. Each City Council member shall appoint one of the five Committee members and any replacement members. The Committee shall report to the CAO, provide advice as needed and perform Charitable Campaign program tasks as may be assigned by the CAO, including but not limited to: developing and reviewing application forms for participation in each year's Charitable Campaign; identifying Umbrella Organizations or Charitable Organizations for invitation to participate in the Charitable Campaign; and, developing the annual Charitable Campaign marketing plan.

#### **5.10.040 Eligibility for Participation in Charitable Campaign.**

A. In addition to a timely completed application to the Committee, each Umbrella Organization seeking eligibility to participate must provide the following information for itself and its member Charitable Organizations:

1. Documentation of Charitable Organization status and valid registration with the State of Oregon.
2. Equal opportunity and nondiscrimination policy pertaining to:
  - a. Delivery of charitable services;
  - b. Employment opportunities, actions and benefits; and,
  - c. Membership on the organization's governing board; relating to race, color, religion, sex, age, disability, familial status, sexual orientation, national origin and other legally protected characteristics or status. The policy must certify that the Umbrella

## TITLE 5 REVENUE AND FINANCE

Organization and its member Charitable Organizations have procedures and practices regarding equal opportunity and nondiscrimination that comply with federal, state and local laws including Portland City Code Title 23.

3. Statement of the charitable work performed, describing solicitation activities, operational history, and the geographic region or location where the work is done. The Umbrella Organization and each of its Charitable Organizations must have at least one year of operational history.
  4. Copies of the most recent financial report or statement certified by an independent public accountant, including the source and use of charitable contributions and fundraising activities, Form 990 filed with the Internal Revenue Services for the most recent fiscal year, and certification that each entity accounts for funds in accordance with generally accepted accounting principles. Computation of the percentage of total support and revenue spent on fundraising and administrative expenses must not exceed 25 percent of its unrestricted income. Contributions by City employees shall not constitute restricted income and must be used for the Charitable Organization's mission purpose.
  5. Adopted budget for the current fiscal year.
  6. Current articles of incorporation and by-laws, or other governing instruments.
  7. Certification of compliance with provisions of this Code and all applicable laws.
- B. The CAO or CAO's designee will make the final eligibility determination for each annual Charitable Campaign and will prepare an ordinance for City Council authorizing campaign participants for each year.

### **5.10.050 Administration of Charitable Campaign.**

OMF has administrative responsibility for the Charitable Campaign and will provide administrative support to the Committee. City administrative costs associated with each annual Charitable Campaign will be paid by the participating Umbrella Organizations in proportion to the total contributions received in the Charitable Campaign. OMF will provide each Umbrella Organization with information on the total number of employees who pledged contributions and the total dollar amount of pledged contributions. The City will not be liable for any uncollectible pledges. Pledged contributions will be deducted as voluntary payroll deductions of the participating employees. Umbrella Organizations are responsible for allocating funds to the applicable Charitable Organizations identified in employee pledges and providing written acknowledgement for donors to meet the requirements of the Internal Revenue Code. The CAO or CAO's designee is authorized to

**TITLE 5**  
**REVENUE AND FINANCE**

formulate, approve and issue policies, administrative rules and supplemental regulations related to the management and administration of the Charitable Campaign.



**CHAPTER 5.12 - ASSIGNMENT OR  
GARNISHMENT OF SALARIES, WAGES OR  
CLAIMS**

**Sections:**

- 5.12.010      Unlawful to Assign Salary or Wages.
- 5.12.020      Auditor Not to Recognize Assignment.
- 5.12.030      Exceptions.
- 5.12.040      Penalty.
- 5.12.050      Garnishments.

**5.12.010      Unlawful to Assign Salary or Wages.**

It is unlawful for any person or employee rendering services to the City and having a salary or wage claim against the City to make an assignment of the claim for salary or wages, whether earned or unearned, except as provided in Section 5.12.030.

**5.12.020      Auditor Not to Recognize Assignment.**

The Auditor of the City is hereby directed not to recognize any assignment or attempted assignment of a salary or wage claim against the City, except as provided in Section 5.12.030.

**5.12.030      Exceptions.**

The provisions of this Chapter are subject to the following exceptions:

- A.      Any officer or employee may, with the approval of his Commissioner, assign his salary or wages to the Retail Credit Association of Portland, Oregon;
- B.      Nothing contained herein shall prohibit a City employee from executing a power of Attorney to Portland Employees' Credit Union, an Oregon corporation, whereby the salary or wages, or any part thereof, of the employee is assigned to the corporation. The Auditor and Treasurer are hereby authorized to recognize all of the powers of Attorney to make on the payrolls any deductions required thereby, and to pay the Portland Employees' Credit Union any sums authorized by the powers of Attorney.
- C.      Nothing contained herein shall prohibit a City employee from executing a power of Attorney to the Firemen's Relief Association of the Firemen's Beneficiary Association of Portland, an Oregon corporation, or to the Portland Police Beneficiary Association, an Oregon corporation, whereby the salary or wages, or any part thereof, of the employee is assigned to either of said corporations. The Auditor and Treasurer are hereby authorized to recognize all of the powers of Attorney.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.12.040      Penalty.**

Any officer or employee of the City who shall sell or assign, or attempt to sell or assign, any salary or wages in violation of the provisions of this Chapter shall thereby be deemed to have committed an act which is hereby declared sufficient cause for his removal.

#### **5.12.050      Garnishments.**

(Amended by Ordinance Nos. 146745, 154642, 155429 and 173369, effective May 12, 1999.) Whenever any salary, wage or credit in possession of the City, belonging or owed to any person, firm or corporation whatsoever is garnished or levied upon, subject to the City Attorney's approval of the original garnishment or levying documents, the Office of Fiscal Administration, Accounting Division, shall thereafter process such garnishments as follows:

- A.** With respect to the garnishment of City employees' salaries or wages, the amount of garnishment shall be deducted from the employees' salary or wages as a voluntary deduction through the computer process. The total amount of garnishment deducted for all employees whose wages are being garnished shall be transmitted to the Treasurer's Office account by an authorization notice accompanied by a Garnishment Report in the form of a deduction register. The Garnishment Report will document the name(s) of the payee(s) according to the Notice of Levies or Writs of Garnishment received. The Treasury Division will then draw one or more checks, depending on the number of levies or writs received for each employee, against such office account in favor of the payee designated on the Notice of Levy/Writ of Garnishment.
- B.** With respect to Notices of Levy or Writs of Garnishment not affecting the salary or wages of a City employee and any Notice of Levy or Writs of Garnishment received after the biweekly payroll cutoff, the procedure for processing such Notices of Levy/Writs of Garnishment shall be as stated in this Subsection. The Office of Fiscal Administration, Accounting Division, shall place upon any check issued for such salary, wages or credit and an endorsement:

  - 1.** Noting that such salary, wages or credit has been garnished or levied upon as the case may be, together with identification of such garnishment or levy;
  - 2.** Directing the payment of a certain sum upon such garnishment or levy;
  - 3.** Designating the person entitled to receive such sum; and
  - 4.** Directing the payment of the balance of money due on such warrant, if any, to the payee thereof.

The Office of Fiscal Administration, Accounting Division, shall then deliver such warrant to the Treasurer and the Treasurer shall deposit such warrant to the account of the City and draw one or more checks against such account in the amounts

**TITLE 5**  
**REVENUE AND FINANCE**

directed and in favor of the person or persons designated by the endorsement upon such warrant.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.16 - EMERGENCY CHECKS**

**Sections:**

5.16.010 Issued When.

5.16.020 Extraordinary Circumstances Requiring Emergency Checks.

**5.16.010 Issued When.**

(Amended by Ordinance Nos. 168313, 169321 and 173369, effective May 12, 1999.)  
Emergency checks are hereby authorized to be issued under special circumstances. Such emergency checks shall be for the following specified purposes:

- A.** In payment of salaries or wages of employees when discharged or laid off;
- B.** In payment of earned salaries or wages of employees compelled to leave the City by reason of death of a relative or other extraordinary circumstances;
- C.** In payment of loans or for the purchase of bonds by the City Treasurer where interest charges can be stopped or saved to the City, or for the purchase of postage;
- D.** In payment of commissions or assessments on property sold for the benefit of the Assessment Collection Fund;
- E.** In payment of any obligation where interest penalty charges or discounts on current expenses can be saved to the City.

Emergency checks may be authorized by the Bureau Manager or designee for any of the aforementioned purposes and no other authorization is needed.

**5.16.020 Extraordinary Circumstances Requiring Emergency Checks.**

(Amended by Ordinance Nos. 136544, 169321 and 173369, effective May 12, 1999.)  
Should an extraordinary condition arise not otherwise provided for by this Chapter, the Commissioner-In-Charge of the department requesting the issuance of an emergency check, or any person in such department so authorized by the Commissioner-In-Charge in writing filed with the City Auditor, shall present a signed requisition, accompanied by a statement in writing giving his/her reasons for so doing, which shall be authorization for issuance of an emergency check. The Commissioner-In-Charge, the Mayor and the City Auditor shall approve emergency checks for extraordinary circumstances provided for in this Section.

**CHAPTER 5.20 - BUDGET PROCEDURE**

**Sections:**

- 5.20.010      Budget Procedure.  
5.20.020      Reimbursable Expenditures Account.

**5.20.010      Budget Procedure.**

(Amended by Ordinance Nos. 168428 and 181483, January 18, 2008.)

- A.      The Commissioner of Finance and Administration is hereby designated to supervise the preparation of the budget document.
- B.      The preliminary budget estimates of expenditures for the departments and bureaus for the ensuing year shall be prepared and submitted by the department heads as directed by the Commissioner of Finance and Administration.
- C.      The Commissioner of Finance and Administration is hereby designated the Chair of the budget Committee.

**5.20.020      Reimbursable Expenditures Account.**

- A.      Reimbursable expenditures account budgeted in the General Fund is limited to reimbursable projects which were not anticipated when the budget was prepared. An estimate of revenue in an equal amount is also budgeted in the Reimbursable Revenues Account. Expenditures for such a reimbursable project shall be charged to the function which will execute the project, and the appropriation for reimbursable expenditures will be provided by transfer from the Reimbursable Expenditure Account. Receipts for reimbursements shall be credited to an appropriate revenue account other than the Reimbursement Revenues Account. A memorandum credit only will be made in the Reimbursement Revenues Account.
- B.      A transfer of appropriation shall not be made from the Reimbursable Expenditure Account if the proposed expenditure is already included in the budget of an appropriation other than reimbursable expenditures, either directly or indirectly, or if the reimbursement is already included in estimated revenues other than reimbursement revenues, either directly or indirectly. This appropriation shall not be used to increase the budget of a bureau or function when some item of estimated revenue is over-realized.
  - 1.      A transfer of appropriation shall not be made until it has been determined by the Commissioner In Charge of the bureau affected or by the Commissioner of Finance and Administration for other budgets that a deposit has been made to cover the estimated cost of the project or that payment is assured.

**TITLE 5**  
**REVENUE AND FINANCE**

- C.** Transfers of appropriation for reimbursable projects may be made without special ordinance upon written authorization by the Commissioner of Finance and Administration and the Commissioner In Charge of the bureau affected. If no bureau is affected, then such transfer may be made upon written authorization of the commissioner of Finance and Administration.
- D.** If a reimbursable project is completed during the same year in which the transfer was made to set up the project and if there is a remaining balance of the appropriation transferred, the unused appropriation may be transferred back to the Reimbursable Expenditures Account without special ordinance on written authorization of the Commissioner of Finance and Administration.

**CHAPTER 5.24 - AUDITOR'S RECORDS AND  
REPORTS**

**Sections:**

- 5.24.010      Permanent Records to be Kept by Auditor.
- 5.24.020      Auditor to Report on Balance in Appropriation.

**5.24.010      Permanent Records to be Kept by Auditor.**

The Auditor shall install and maintain suitable loose-leaf systems in keeping bonded lien accounts and other such bookkeeping accounts which are required to be kept by the provisions of the Charter. Such loose-leaf accounts shall be kept in lock binders and shall be placed in lock book form upon completion of the record of such account. Such loose-leaf system installed in binders shall be deemed a permanent record for all purposes required by the Charter of the City.

**5.24.020      Auditor to Report on Balance in Appropriation.**

Each month the Auditor shall transmit to the head of each department a statement showing the unencumbered balance in each appropriation.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.30 - COLLECTIONS AND  
FORECLOSURE PROCESS**

(Chapter replaced by Ordinance No. 177246,  
effective March 7, 2003.)

**Sections:**

- 5.30.010 Purpose.
- 5.30.020 Definitions.
- 5.30.030 Applicability and Foreclosure Options.
- 5.30.040 Authorities and Responsibilities.
- 5.30.050 Collection Process.
- 5.30.060 Adjustment of Open Lien Amounts.
- 5.30.070 Catch-up Payment Program.
- 5.30.080 Hardship Payment Program
- 5.30.090 Negotiation of Bonded Lien Payment Contracts.
- 5.30.100 Preparation of Foreclosure List.
- 5.30.110 Council Action on Foreclosure List.
- 5.30.120 Purchase of Property by the City.
- 5.30.130 Recording Notice of Foreclosure Sale.
- 5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.
- 5.30.150 Payment of Lien.
- 5.30.160 Presale and Sale Conditions.
- 5.30.170 Conduct of Foreclosure Sale.
- 5.30.180 Waste, Improvements to the Property, and Nuisance Abatement Procedures.
- 5.30.190 Certificate of Sale and Notice of Sale to Property Owner.
- 5.30.200 Entry of Collections and Sales.
- 5.30.210 Redemption.
- 5.30.220 Issuance of Deed.
- 5.30.230 Payment of Taxes.
- 5.30.240 Sale of Property Purchased by City.

**5.30.010 Purpose.**

This Chapter establishes a process for collecting delinquent liens and foreclosing delinquent liens on properties. The emphasis of the collection program will be to maintain good communication with property owners. However, the City bears responsibility for recovering its costs associated with collecting delinquent liens. Incentives and penalties are established to encourage payment. In addition, special payment plans are provided for persons having difficulties paying liens. Foreclosure should be used as a last resort in most circumstances, to protect the interests of bondholders and taxpayers of the City, and to recover costs incurred by the City in providing services.

**5.30.020 Definitions.**

(Amended by Ordinance No. 187833, effective June 15, 2016.) The terms used in this Chapter shall be defined as provided in this Section, unless the content requires otherwise.



**TITLE 5**  
**REVENUE AND FINANCE**

- A. “Adjusted Prime Rate”** means the interest rate as calculated by the higher of either the prime interest rate set by the City’s bank on December 31st of the previous year plus 300 basis points (3%), or twelve percent (12%) per annum.
- B. “Bonded lien”** means a lien which has been financed under the provisions of state law, City Code or City Charter.
- C. “City lien docket”** means the official City record maintained by the City Auditor for the entry of fees, charges, penalties or assessments as authorized by state law, City Code or City Charter. The fees, charges, penalties or assessments include, but are not limited to, costs related to the construction of economic or public improvements or for other improvements or purposes authorized by state law, systems development charges, costs of sidewalk repairs, costs of nuisance abatement, penalties assessed by the Code Hearings Office and fees associated with code enforcement.
- D. “Collection costs”** means the costs associated with the collection of liens, including but not limited to staff, mailing costs, billing and rebilling fees.
- E. “Delinquent lien”** means a bonded lien that is unpaid more than 30 days after the installment payment due date, or an unbonded lien which has not been paid within 30 days after entry upon the city lien docket.
- F. “Foreclosure list”** means a list of properties for foreclosure sale. The list contains, at a minimum, a description of each lien and a description of the property on which the lien is assessed.
- G. “Foreclosure sale”** means the legal process of selling real property, which allows the City to foreclose and to dispose of a delinquent lien through notice and sale.
- H. “Lien”** means an entry upon the city lien docket in favor of the City of fees, charges, penalties or assessments as authorized by state law, City Code or City Charter.
- I. “Open lien”** means a lien that has not been or cannot be financed, and that requires payment in full.
- J. “Redemption”** means the right of the property owner or any person with an interest in the property, excluding the purchaser in a foreclosure sale, to repurchase the foreclosed property by payment of the redemption price during the redemption period.
- K. “Redemption period”** means one year from the date of a foreclosure sale, commencing on the day after the sale and ending at 5:00 p.m. (PST) on the 365th day thereafter, unless the 365th day falls on a Saturday, Sunday or legal holiday

## **TITLE 5**

### **REVENUE AND FINANCE**

specified in ORS 187.010 (2001), in which case the last day for redemption shall be 5:00 p.m. (PST) on the next working day.

- L. “Redemption price”** means the sales price plus redemption interest and redemption penalties accrued during the redemption period.
- M. “Sales costs”** means all costs, direct and indirect, associated with a foreclosure sale by the City, including but not limited to: county recording fees, title reports or other means of identifying persons with interest in the property, title insurance, service and notification, publication and advertising, posting, sale, and staff salaries, including benefits and overhead.
- N. “Sales price”** means a sum equal to or exceeding the greater of:
  - 1.** The amount of the lien principal plus, interest and penalties, together with all collection costs and sales costs associated with the foreclosure sale; or
  - 2.** Seventy-five percent of the total assessed value of the real property, as determined by the assessor of the county in which the land and improvements are located.

#### **5.30.030 Applicability and Foreclosure Options.**

- A.** The provisions of this Chapter apply to delinquent liens. This Chapter shall not apply to delinquent Sewer Safety Net liens, which are governed by Chapter 5.31.
- B.** The City shall not be limited to the foreclosure process in this Chapter. The City may elect to use other methods for foreclosure or sale of properties as authorized by the Charter, City Code or state law.

#### **5.30.040 Authorities and Responsibilities.**

(Amended by Ordinance Nos. 181483 and 187833, effective June 15, 2016.)

- A.** The Auditor shall maintain the City lien docket; maintain the records related to liens; process bonding contracts; and bill and collect open and bonded liens. As set forth elsewhere in this Chapter, the Auditor is also responsible for processing and approving or denying applications for the Catch-up Payment Program and the Hardship Payment Program; administering the foreclosure process; preparing foreclosure lists; and transmitting the foreclosure lists to the City Council for its review and approval.
- B.** The Treasurer shall administer the foreclosure sale process; withhold or withdraw property from foreclosure sale for purchase by the City; administer the redemption process; and execute deeds conveying the property sold. As provided under Section 3.08.030, the Treasurer may delegate this authority or such other authority as may be assigned under this Chapter.

**TITLE 5**  
**REVENUE AND FINANCE**

- C. Unless otherwise specifically directed by Council, the Bureau of Internal Business Services shall manage, maintain, rent or market for sale properties purchased by the City under this Chapter.

**5.30.050 Collection Process.**

- A. The Auditor shall establish a collection process for delinquent liens and shall be authorized to:
1. Establish written rules and procedures to carry out the provisions of this Chapter;
  2. Establish fees, including a billing fee and rebilling fee, to recover billing costs and the costs of collecting delinquent lien amounts; and
  3. In addition to the penalties and interest otherwise provided in this Section, establish increases in penalty amounts and the interest rate to encourage early payment of delinquent liens.
- B. The Auditor shall impose a penalty each month until the delinquent lien is brought current, paid in full or the property owner signs a payment plan. The penalty will be calculated as follows:
1. Open delinquent liens shall be charged a penalty equal to one-quarter of one percent (.0025) of the total outstanding principal balance.
  2. Bonded delinquent liens shall be charged a penalty equal to five percent (5.00%) calculated on the total amount of the installment that is delinquent.
- C. The Auditor shall add interest to delinquent liens based on the following methods:
1. For a delinquent open lien, interest shall be assessed at the adjusted prime rate, calculated on the unpaid balance from the assessment date. The annual interest rate shall not be less than 12% for an open lien, except in the Hardship Payment Program. Lien payments made during the 30-day period following the assessment date shall not be charged this interest.
  2. For a delinquent bonded lien, interest shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment payment contract.
- D. As liens become delinquent, the Auditor shall provide notice of the delinquency to the property owner. Notice(s) shall be sent by registered or certified mail. Notice(s) shall identify the property, the amount owing (principal, interest, penalties and collection costs) and estimate the sales costs that will be charged to the account. In addition, the notices shall identify the type of the delinquent lien

## **TITLE 5**

### **REVENUE AND FINANCE**

account and the fact that the property will be placed on the foreclosure list unless the property owner elects to pay under the Catch-up Payment Program or brings the account current.

- E.** The Auditor may waive interest, penalties and collection costs on delinquent liens under the following conditions:
  - 1.** A delay in receiving payment or installment payment contract which is caused by a documented oversight, omission or error by City staff;
  - 2.** A one-time failure in making a payment by the property owner which is caused by a documented financial emergency; or
  - 3.** The sale or transfer of a property that is subject to a delinquent lien to a non-profit organization or government program satisfying the goals of an expressed public purpose.

#### **5.30.060 Adjustment of Open Lien Amounts.**

- A.** The Auditor may evaluate individual delinquent open liens to develop recommendations on revising the payment amount of the lien and the payment terms. The Auditor's recommendation shall be based upon the factors set forth in Subsection 5.30.060 D. Delinquent bonded liens may not be reviewed or adjusted.
- B.** The Collections Committee shall be comprised of four members, consisting of a representative from two members of the City Council, one representative from the Bureau of Development Services and one representative from the Office of Management and Finance. These four offices shall each designate their representative to the Committee.
- C.** The Committee shall meet from time to time, as necessary, to review and consider the Auditor's recommendations. The Collections Committee shall make a written determination accepting, revising or rejecting the Auditor's recommendations on adjusting the delinquent open lien payment amount and terms. The Collections Committee's written determination shall be based upon the factors listed in Subsection 5.30.060 D. The Auditor shall notify the property owner in writing of the Collections Committee's determination.
- D.** The factors to be considered when adjusting the payment amount and terms of delinquent open liens include, but are not limited to, the following:
  - 1.** Whether the property owner has committed any prior City Code violation, or has other delinquent liens, regardless of whether any administrative, civil, or criminal proceeding occurred;

**TITLE 5**  
**REVENUE AND FINANCE**

2. The history of the property owner in taking all feasible steps or procedures necessary or appropriate to correct the violation or resolve any delinquencies;
  3. The property owner's financial condition;
  4. The gravity and magnitude of the violation;
  5. Whether the violation was repeated or continuous;
  6. Whether the violation was due to unavoidable accident, other conditions or circumstances beyond the property owner's reasonable control, negligence, or an intentional act of the property owner;
  7. The opportunity and degree of difficulty to correct the violation or resolve any delinquencies;
  8. The economic or financial benefit accrued or likely to accrue to the property owner as a result of the violation;
  9. The property owner's cooperativeness and efforts to correct the violation for which the lien was assessed;
  10. The costs to the City of investigation, enforcement and correction or attempted correction of the violation;
  11. The total costs to the City for principal, penalty, billing, interest and collection charges; and
  12. Any other relevant factors.
- E.** If the property owner accepts the Collections Committee's determination on adjusting the delinquent open lien amount and payment terms, the owner shall enter into a written agreement prepared by the Auditor that contains the adjusted delinquent open lien amount and payment terms.
- F.** If the property owner rejects the Collection Committee's determination, the owner may appeal the determination on adjusting the delinquent open lien amount and payment terms to the Code Hearings Officer as provided for in Chapter 22.10. However, if the owner has previously appealed the lien or the related code violations to the Code Hearings Officer, there shall be no right of appeal.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.30.070 Catch-up Payment Program.**

(Amended by Ordinance No. 179361, effective July 1, 2005.)

- A.** Under the Catch-up Payment Program, a property owner is allowed to bring a delinquent bonded lien current or pay in full by the end of an established period by increasing the monthly amount, or to pay a delinquent open lien in full by the end of an established period.
- B.** Qualifications. Any property owner with a delinquent lien may participate in the Catch-up Payment Program.
- C.** Administration.

  - 1.** For a delinquent bonded lien, the minimum monthly payment must be equal to the scheduled regular payment, plus an amount necessary to repay the arrears by the end of the individual payment plan. At the conclusion of an individual payment plan, the Auditor shall bill any property owner who has a bonded lien and has complied with the individual payment plan, but has not paid the account in full, according to the Auditor's standard billing procedures. The maximum period under this Program shall not exceed five years.
  - 2.** For a delinquent open lien, the minimum monthly payment must be equal to an amount necessary to pay the account in full by the end of the term of the individual payment plan. The maximum payment period under this Program shall not exceed five years. Interest shall be calculated at the prime interest rate set by the City's bank on December 31st of the previous year plus 300 basis points (3%) per annum. The recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.
  - 3.** A payment for the specified amount in the Catch-up Payment Plan Agreement (CPPA) must be received in the Auditor's Office with the signed CPPA.
- D.** If a property owner fails to make any monthly payment before the completion of an individual catch-up plan, the Auditor may place the property on the foreclosure list in accordance with the priorities in Section 5.30.100.

**5.30.080 Hardship Payment Program.**

(Amended by Ordinance Nos. 178241 and 179361, effective July 1, 2005.)

- A.** Under the Hardship Payment Program, a property owner may pay only interest and billing charges for a period not to exceed 12 months.

**TITLE 5**  
**REVENUE AND FINANCE**

- B.** Qualifications. A property owner may qualify for the Hardship Payment Program if they meet all of the following criteria:
1. The property must be a single-family residence, occupied by the owner;
  2. The property must be subject to a delinquent lien; and
  3. The property owner is temporarily unable to make monthly payments due to catastrophic financial circumstances. These circumstances may include illness, loss of income or a temporary disability.
- C.** Administration.
1. The Auditor shall administer the Hardship Payment Program.
  2. Applicants must complete a written request form and provide sufficient written documentation to support a determination that the applicant is experiencing catastrophic financial circumstances. Documentation may consist of records such as a lay-off-notice, proof of unemployment or other evidence of loss of income.
  3. The Auditor shall review and approve or deny applications for individual payment plans under the Hardship Payment Program.
  4. If the Auditor determines that a property owner is qualified to participate in the Program, the Auditor shall allow the qualified property owner to make a minimum monthly payment equal to the monthly interest accruing to the delinquent lien, plus the monthly billing charge. Interest shall be calculated at the prime interest rate set by the City's bank on December 31st of the previous year plus 200 base points (2%) per annum. The recalculated interest rate shall be applied to each individual payment plan on the first billing date following December 31st of each year.
  5. The Auditor shall periodically review each individual payment plan to verify the qualifications of the participant.
  6. At the conclusion of an individual payment plan, the Auditor shall bill any property owner who has complied with the individual payment plan, but has not paid the account in full, according to the Auditor's standard billing procedures.
  7. A payment for the specified amount in the Hardship Payment Plan Agreement (HPPA) must be received in the Auditor's Office with the signed HPPA.

## **TITLE 5**

### **REVENUE AND FINANCE**

- D.** If the property owner fails to make a monthly payment before the completion of the plan, the Auditor may place the property on the foreclosure list, unless the Auditor finds there is an additional or continuing emergency. In that event the Auditor may authorize a new plan or reinstate the existing plan.

#### **5.30.090 Negotiation of Bonded Lien Payment Contracts.**

If the Auditor declares a bonded lien payment contract void prior to the property being placed on the foreclosure list, the property owner and the Auditor may negotiate new installment payment arrangements. If the Auditor offers a new installment payment contract, the terms and conditions must protect the City's financial condition and assure the repayment of associated municipal bonds. The Auditor shall set the interest rate on the negotiated contract at a rate greater than or equal to the interest rate of the original installment payment contract. The Auditor shall prepare a form of agreement for negotiated installment payment contracts.

#### **5.30.100 Preparation of Foreclosure List.**

- A.** The Auditor shall be responsible for preparing the proposed foreclosure list. No property shall be placed on the proposed foreclosure list unless:
  - 1.** It is an open lien which is at least 60 days past the due date; or
  - 2.** It is a bonded lien which is at least one year past the installment due date.
  - 3.** The City has provided the property owner or their predecessor in interest at least two written delinquency notices within a three-month period prior to the sale.
- B.** The Auditor shall prioritize which delinquent liens to include on the proposed foreclosure list. Priority shall be given to properties that have the potential to significantly reduce the delinquency rate or help to solve a City public health, safety or welfare objective. Priority may also be given based on factors including, but not limited to, the total amount of delinquency; property owners with multiple delinquencies for one or more properties; or multiple nuisance abatement action by the City.
- C.** The Auditor may determine the number of properties to be placed on the proposed foreclosure list based on current City staffing resources, complexity of accounts, and time and resources necessary to complete timely processing of foreclosing the delinquent liens.
- D.** The Auditor shall:
  - 1.** Submit the proposed foreclosure list to the Council for Council action;



**TITLE 5**  
**REVENUE AND FINANCE**

2. Submit a report to the Council that identifies the properties recommended for purchase by the City from the proposed foreclosure list. The report shall identify the property and the source of the funds to be used to purchase the property; and
3. Determine whether any properties on the proposed foreclosure list are also delinquent in the payment of property taxes. The Auditor shall identify those properties which are likely to be foreclosed upon by the County prior to the City's foreclosure sale and shall make a recommendation to the Council regarding whether any of these properties should be purchased and removed from the foreclosure list.

**5.30.110 Council Action on Foreclosure List.**

- A. The Council shall decide which properties to include on the foreclosure list and which properties should be purchased by the City. The Council shall approve the foreclosure list by ordinance. The ordinance shall state the provisions for redemption of properties by the prior owners, as provided by state law or City ordinance. After the foreclosure list is approved by Council, the only payment option is to make payment in full.
- B. The foreclosure list shall be transmitted to the Treasurer by the Council Clerk.

**5.30.120 Purchase of Property by the City.**

(Amended by Ordinance No. 187833, effective June 15, 2016.) Upon Council approval, the City may purchase any property on the foreclosure list for the amount of the lien principal plus interest and penalties, and may do so before, during, or after the sale subject to the following conditions:

- A. Money for purchase has been transferred to the proper City fund for payment of the delinquent lien amount;
- B. In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to pay the lien in full including collection and sales costs, and thereby remove the property from the foreclosure list as provided by Section 5.30.150; and
- C. Any person having an interest in the property may redeem the property as provided by Section 5.30.210.

**5.30.130 Recording Notice of Foreclosure Sale.**

(Amended by Ordinance Nos. 178241 and 188121, effective November 30, 2016.)

- A. The Treasurer shall record a notice of foreclosure sale for each property listed on the foreclosure list in the County records in which the property is located after

## **TITLE 5**

### **REVENUE AND FINANCE**

ordering a foreclosure report and before giving notice as required by Section 5.30.140. The recorded notice shall contain the ordinance number approving the foreclosure list; the address and legal description of the property; the time, date and place of the sale; the types and amounts of liens; and, that the property will be sold unless the account is paid in full including all interest, penalties, collection costs and sales costs to date. The recorded notice shall also state a contact name, address and phone number for obtaining additional information from the City.

- B.** Any property which is an asset of a bankruptcy estate shall either be removed from the sale or the City Attorney shall be requested to first seek relief from stay in the Bankruptcy Court.

#### **5.30.140 Notice to Persons on Foreclosure List of Foreclosure Action.**

(Amended by Ordinance No. 188121, effective November 30, 2016.) As provided below, the Treasurer shall provide notice to all persons known to have a recorded interest in the properties on the foreclosure list.

**A.** Individual Notice.

- 1.** The Treasurer shall mail a notice of foreclosure sale to all persons known to have a recorded interest in the property and to all persons having recorded a request for copy of notice of sale. Notice shall be sent at least 60 days prior to the sale by registered or certified mail.
- 2.** The mailed notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property; the legal description of the property; the street address; the amount of the delinquent lien stating both the principal and interest due as well as any penalties and collection costs; the type of the delinquent account; and, the name of the Treasurer and contact information. The notice shall also state that there shall be an additional charge for sales costs to date.

**B.** Newspaper Notice.

- 1.** The Treasurer shall have printed in a daily or weekly newspaper of general circulation a notice of foreclosure sale once a week for four successive weeks.
- 2.** The notice shall contain the information required in Subsection 5.30.140 A.2.
- 3.** A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by registered or certified mail.

**C.** Posted Notice.

**TITLE 5**  
**REVENUE AND FINANCE**

1. The Treasurer shall have notice of foreclosure sale posted on the property at least once, no less than four weeks before the sale.
  2. The posted notice shall contain the information required in Subsection 5.30.140 A.2.
- D.** Other notice. Notice shall be given to the Internal Revenue Service by registered or certified mail, at least 25 days prior to the sale if a federal tax lien was recorded more than 30 days of the scheduled date of the foreclosure sale.

**5.30.150 Payment of Lien.**

At any time prior to the foreclosure sale, a person with a recorded interest in the property may remove the property from the foreclosure list by paying in full the amount of the delinquent lien with penalties, interest, collection costs and sales costs incurred to date. If requested, notice that the property has been removed from the foreclosure sale shall be recorded in the County records in which the property is located.

**5.30.160 Presale and Sale Conditions.**

A bidder purchases the property “as is.” The City will not provide an opportunity for on-site inspection of the land or buildings.

**5.30.170 Conduct of Foreclosure Sale.**

(Amended by Ordinance No. 187833, effective June 15, 2016.)

- A.** The Treasurer shall prepare rules governing the conduct of the foreclosure sale. The rules shall be available at least 60 days prior to the foreclosure sale.
- B.** Each property shall be sold separately for its respective sales price.
- C.** Only bids in the amount of the sales price for a property are acceptable. If more than one bid equals or exceeds the sales price, the real property must be sold to the highest bidder.
- D.** If the sum received for the sale of the property under this Section exceeds the lien principal amount, plus interest, penalties and the cost of conducting the sale, the Treasurer shall apply the proceeds of the sale as follows:
  1. To the costs of conducting the sale.
  2. To the unpaid lien principal plus interest and penalties.
  3. To any persons with recorded interest in the property, in order of their priority.
  4. To the debtor or the debtor’s heirs or assigns.

**TITLE 5**  
**REVENUE AND FINANCE**

- E. Property which is not sold may again be offered for sale. The steps in Sections 5.30.130 through 5.30.240 shall be followed.

**5.30.180 Waste, Improvements to the Property and Nuisance Abatement Procedures.**  
(Amended by Ordinance No. 187983, effective September 14, 2016.)

- A. The City shall not bear any responsibility or liability for damage or waste to the property or to any structures or fixtures during the redemption period. The purchaser shall assume all risk of such damage or waste.
- B. Purchaser may make improvements to or perform maintenance on the property during the redemption period. If the purchaser incurs costs for maintaining or improving the property during the redemption period and if the property is redeemed, the City Treasurer may reimburse all or part of the redemption penalty paid by the person redeeming the property to the purchaser.
- C. In the event the property becomes a public nuisance, the City may enforce any applicable nuisance abatement regulations. Nuisance abatement may result in additional assessments against the property, which may become the liability of the purchaser.
- D. The property may also become subject to special assessments.

**5.30.190 Certificate of Sale and Notice of Sale to Property Owner.**  
(Amended by Ordinance Nos. 187833, 187983 and 188121, effective November 30, 2016.)

- A. After a foreclosure sale, the Treasurer shall promptly deliver a certificate of sale to the purchaser. The certificate of sale embodies the right to own the property at the end of the redemption period. The holder of a certificate of sale holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the right of the City to place additional liens on the property and the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until the City issues a deed at the end of the redemption period.
- B. The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold; a description of the property; a statement of the amount for which it was sold; the redemption interest rate and the amount of the redemption penalty; the name of the purchaser; and, a statement that the property is being sold subject to the right of redemption within one year from the date of the certificate of sale.
- C. The Treasurer shall send to the property owner and all persons known to have a recorded interest in the property a notice of the sale by registered or certified mail, within 10 business days after the sale. The notice shall contain the following information: the name of the purchaser; the right of redemption; the date the

redemption period expires; the redemption price; and, the basis for calculating interest and penalties during the redemption period.

- D.** It shall be the responsibility of the purchaser to maintain a current address on file with the Auditor.

**5.30.200 Entry of Collections and Sales.**

- A.** The Treasurer shall return to the Auditor the foreclosure list with all collections and sales noted on it within three business days after the sale.
- B.** The Auditor shall enter the collections and foreclosure sales in the City lien docket. Thereafter, no transfer or assignment of any certificate of sale is valid unless such transfer or assignment is reported to the Auditor and recorded in the City lien docket.

**5.30.210 Redemption.**

(Amended by Ordinance No. 187983, effective September 14, 2016.)

- A.** Only persons having a recorded interest in the property, or their legal representative, may redeem the property within the redemption period. Purchasers have no redemption rights.
- B.** Property which has been sold at a foreclosure sale is not eligible for installment payments or a payment plan. Property may be redeemed only by payment in full. Redemption shall be subject to the payment to the Treasurer of the redemption price. The only acceptable form of payment shall be United States legal currency or cashier's check.
- C.** The Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Auditor. Redemption discharges the property from the effect of the sale.
- D.** If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.
- E.** Upon receipt of the redemption price, the Treasurer shall issue a check for the sales price amount paid by the holder of the certificate of sale as shown on the lien docket plus any accrued redemption interest and all or a portion of the redemption penalty. The check shall be delivered to the address provided to the City by the purchaser or any transferee or assignee.
- F.** The interest charged during the redemption period shall be set by ordinance. The redemption interest rate shall be set at a level which attracts bidders. The penalty charged during the redemption period shall also be set by ordinance. The

## **TITLE 5**

### **REVENUE AND FINANCE**

redemption penalty shall be set at a rate to encourage payment by delinquent property owners.

- G.** If a property is redeemed at any time during the redemption period, the redemption period automatically terminates.

#### **5.30.220 Issuance of Deed.**

- A.** Upon expiration of the redemption period, the Treasurer shall execute a deed conveying the foreclosed property. The deed conveys to the grantee the legal and equitable title in fee simple excepting only the liens of the City or of other persons or entities which were not included in the foreclosure sale or other liens as provided by state law. The deed, however, shall not guarantee free or clear title.
- B.** The deed shall contain the following information: a description of the property; the date of sale; a statement of the amount of the delinquent account for which the property was sold; that the account was unpaid at the time of sale; and, that no redemption has been made.
- C.** The grantee shall be entitled to immediate possession upon delivery of the deed.

#### **5.30.230 Payment of Taxes.**

Property subject to delinquent property taxes may be sold by the County at a sheriff's sale. In the event the property is sold, the purchaser may lose all interest in the property. Any purchaser of property having delinquent property taxes may elect to pay the property taxes. There shall be no reimbursement from the City in the event of redemption by the property owner.

#### **5.30.240 Sale of Property Purchased by City.**

- A.** Any property purchased by the City from the foreclosure list may be sold as directed by the Council in the manner provided by Charter, Code or State law. Proceeds from the sale shall be used to reimburse the fund from which the property was purchased, any liens paid or other expenses incurred. Any remaining proceeds shall be placed in the assessment collection fund unless otherwise designated by Council.
- B.** In selling property as described in Subsection 5.30.240 A., except in situations where the purchaser agrees to accept a quit claim deed, the Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

**CHAPTER 5.31 - COLLECTIONS &  
FORECLOSURE PROCESS FOR  
DELINQUENT SEWER SAFETY NET LIENS**

(Chapter added by Ordinance No. 163063; amended  
by Ordinance No. 165798, effective September 2,  
1992.)

**Sections:**

5.31.005	Purpose.
5.31.010	Definitions.
5.31.015	Applicability and Foreclosure Options.
5.31.020	Authorities and Responsibilities.
5.31.025	Collection Process.
5.31.027	Renegotiation of Installment Payment Contracts.
5.31.030	Preforeclosure Process and Review for Delinquent Tax Accounts.
5.31.035	Preparation of Preforeclosure List.
5.31.045	Review of Final Foreclosure List.
5.31.050	Council Action on Final Foreclosure List; Recording of Notice.
5.31.055	Notice to Persons on Final Foreclosure List of Foreclosure Action.
5.31.060	Purchase of Property by the City.
5.31.065	Payment of Lien and Presale and Sale Conditions.
5.31.070	The Sale.
5.31.075	Certificate of Sale and Notice to Property Owner.
5.31.080	Lien Docket Entry.
5.31.085	Redemption.
5.31.090	Issuance of Deed.
5.31.095	Waste, Improvements to the Property, Nuisance Abatement.
5.31.100	Payment of Taxes.
5.31.105	Sale of Property.

**5.31.005 Purpose.**

The purpose of this Chapter is to establish a process for the collection of delinquent assessment liens and for the foreclosure of liens on properties which have delinquent Safety Net Loan Program accounts. The emphasis of the collections program will be to maintain good communication with property owners. Persons having an interest in the property may bring the account current until the time of the sale. After the sale, any person redeeming the property must pay the account in full. This Chapter provides the authority for the City to recover its costs associated with the collection of delinquent accounts and establishes penalties and other incentives to encourage payment. Foreclosure is viewed as a last resort. It is the intent of the City to use foreclosure to protect the interests of the State of Oregon.

**5.31.010 Definitions.**

A. As used in this Chapter only, the following terms shall mean:

## **TITLE 5**

### **REVENUE AND FINANCE**

1. **“Assessment lien”** means a lien placed upon certain real property for its proportionate share of costs incurred in the construction of the sewer system or for the connection of the property to the sewer system.
2. **“Collection costs”** means the costs associated with the collection of the assessment such as billing and rebilling charges.
3. **“Delinquent assessment lien”** means an assessment installment payment which has not been paid within 30 days after the installment payment due date.
4. **“Department of Environmental Quality”** means the State of Oregon, Department of Environmental Quality.
5. **“Foreclosure sale”** means a legal process which allows the City to foreclose and to sell property to liquidate a delinquent lien.
6. **“Foreclosure sale list”** means a list of properties with delinquent assessments which the City will see at a foreclosure sale.
7. **“Redemption period”** means the one-year period during which a person with an interest in the property may redeem the property which has been sold at a foreclosure sale to satisfy a delinquent assessment.
8. **“Redemption price”** means the sales price plus interest and penalties.
9. **“Sales costs”** means costs associated with the sale including the cost of advertising, sale direct and indirect costs related to notification such as the cost of any reports required to determine the names of persons having an interest in the property or the status of the property, printing, postage, advertising, posting of the property, title insurance and staff salaries, benefits and overhead costs directly expended to complete the sale.
10. **“Sale price”** means the amount owing on the principle, interest, penalties, collection costs and sales costs.
11. **“Sewer safety net participating property”**: A property on which the assessment or connection charge has been funded by the City of Portland, Sewer Safety Net Loan Program.

#### **5.31.015 Applicability and Foreclosure Options.**

- A. The provisions of this Chapter apply to delinquent assessment liens on Sewer Safety Net participating properties. The provisions of this Chapter do not apply to delinquent bonded liens or delinquent open liens. The foreclosure procedures applicable to these types of liens are set forth in Chapter 5.30.



- B.** The City shall not be limited to the foreclosure process in this Chapter. The City may elect to use a Judicial Foreclosure process or to sell the property as provided in the Charter, City Code or state law.

**5.31.020 Authorities and Responsibilities.**

(Amended by Ordinance No. 181483, effective January 18, 2008.)

- A.** The Auditor shall maintain the records related to Sewer Safety Net assessment liens, bill and collect lien accounts, administer the preforeclosure collection process, prepare a preforeclosure list, and transmit the preforeclosure list to the City's Bureau of Environmental Quality and the Commissioners for informal review and prepare a final foreclosure list for review by the Council. The Auditor shall also renegotiate loans, reduce amount of liens, terminate foreclosure proceedings or eliminate liens as directed by the Department of Environmental Quality.
- B.** The Council shall review the final foreclosure list and adopt an ordinance which lists the properties subject to foreclosure and subject to purchase.
- C.** The Treasurer shall administer the foreclosure sale process, purchase property identified by the Department of Environmental Quality and Council for purchase by the City, administer the redemption process and execute deeds conveying the property sold. There shall be at least one sale held annually.
- D.** The OMF Business Operations Division shall manage, maintain, rent or market for sale properties purchased by the Treasurer for collection of delinquent assessments.

**5.31.025 Collection Process.**

- A.** The Auditor shall establish a collections process and shall be authorized to:
- 1.** Establish in writing, rules and procedures to carry out provisions of this Section. Maintain a record of the rules and procedures and make the rules available to the public.
  - 2.** Establish fees including a billing and rebilling fee to recover the cost of collecting the delinquent lien amount;
  - 3.** Establish penalties and increases in the interest rate to encourage early payment of delinquent lien accounts; and
  - 4.** Report delinquent lien accounts to a credit rating bureau to encourage payment if directed by the Department of Environmental Quality and the Council.

## **TITLE 5**

### **REVENUE AND FINANCE**

- B.** The Auditor will notify the Bureau of Environmental Services when an account becomes 60 days past due. The collection process shall begin after the account becomes 90 days past due. The Bureau of Environmental Services may delay the collection process up to 12 months if it notifies in writing to the Auditor and the Department of Environmental Quality. Such notification will include the account number, the principal balance, the past due amount, and the extenuating circumstances that would justify a delay in the collection process. The collections process at a minimum shall include the following steps:
- 1.** The property owner and mortgage holder shall be notified of the delinquent assessment or connection charge for each of three months prior to the sale.
  - 2.** The notice shall state that if the account is not brought current, the property will be sold at a foreclosure sale.
  - 3.** The Department of Environmental Quality shall be given a copy of the foreclosure list at least three months before the sale.
- C.** A one-time penalty equal to one-half of one percent (.005) of the principal balance shall be added to the amount due at the date any assessment or installment payment becomes delinquent. The penalty accumulates with each installment payment until the lien is brought current or paid in full.
- D.** Interest shall be added to delinquent liens and shall be calculated daily based on the amount of the unpaid principal balance and the interest rate set by the installment contract.
- E.** The Auditor may waive delinquent interest, penalties and charges if a delay in receiving payment is caused by an oversight, omission or error by City staff.
- F.** The Auditor is authorized to void the installment payment provisions of a sewer safety net contract, as follows:
- 1.** After a sewer safety net assessment becomes delinquent and prior to the Auditor placing the property on the foreclosure list, the Auditor may void the installment payment provisions and require the property owner to renegotiate new installment payment arrangements.
  - 2.** After a sewer safety net assessment becomes delinquent and the Auditor has placed the property on the foreclosure list, the Auditor shall void the installment payment provisions and require the property owner to renegotiate new installment payment arrangements.

#### **5.31.027 Renegotiation of Installment Payment Contracts.**

(Added by Ordinance No. 167655, May 11, 1994.) When the Auditor declares the installment payment provisions of a sewer safety net contract void, the property owner may

renegotiate new provisions to pay in installments the unbilled principal portion of the sewer safety net account. The Auditor shall offer new installment contract terms and conditions which protect the City's financial condition and assure the repayment of the sewer safety net account. The Auditor shall set the interest rate on the renegotiated contract at a rate greater than or equal to the interest rate of the original installment payment contract. The renegotiated installment contract shall be in the same form as required by Chapter 17.12 of this Code for assessment installment payment contracts. The property owner or other interested party shall pay all delinquent assessment installments before the City will accept the renegotiated installment payment contract.

**5.31.030 Preforeclosure Process and Review for Delinquent Tax Accounts.**

- A.** At the conclusion of the collection process, the Auditor shall prepare a list of delinquent lien accounts. No property shall be placed on the list unless the payment is at least one year past due. There shall be a sale at least once a year.
- B.** The Auditor shall determine whether any properties on the delinquent accounts list are also delinquent in the payment of property taxes. The Auditor shall identify those properties which are likely to be foreclosed upon by the County prior to the City's foreclosure sale .
- C.** The Auditor shall review the list of properties to be foreclosed upon by the County and shall make a recommendation to the Bureau of Environmental Services and Department of Environmental Quality regarding any properties which should be purchased. The determination of whether to pay the taxes shall be based on whether the total amount of the liens and taxes on the property is less than the market value of the property or, if the property has been sold, whether the sale price received by the County was enough to pay the amount of the City liens upon resale. The Department of Environmental Quality by written letter shall direct the Treasurer on which properties shall be purchased by the City.
- D.** The Treasurer shall remove from the County foreclosure list and notify the Auditor to add the total amount paid to the County to the lien against the property. The Treasurer shall pay the County from funds designated and provided by the Department of Environmental Quality.

**5.31.035 Preparation of List.**

- A.** All delinquent properties satisfying the requirements of this Chapter shall be placed on the preforeclosure list, unless a delay in the collections process has been authorized pursuant to Section 5.31.025 B above.
- B.** No property on the preforeclosure list shall be placed on the final foreclosure list until the following steps have been taken:

**TITLE 5**  
**REVENUE AND FINANCE**

1. The current property owners have been determined. The record shall state how the property ownership status was determined.
2. The property owner has received at least two written delinquency notices within a three-month period prior to the sale. The notice shall be sent certified mail, return receipt requested and by first class mail. The notice shall identify the property, the amount owing (principal, interest, penalties, and collection costs) and state the costs of the sale that will be charged to the account. In addition, the notice shall identify the type of the delinquent lien account and the fact that the property will be placed on the foreclosure list unless the account is brought current. The record shall contain a copy of the notice and the returned receipts.

**5.31.045 Review of Final Foreclosure List.**

- A. The Auditor shall transmit a copy of the final foreclosure list to each Commissioner and to the Department of Environmental Quality for review. Any comments shall be transmitted to the Auditor within 15 working days from the date the Auditor sends the final foreclosure list to the Commissioners and Department.
- B. The Council shall:
  1. Review the final foreclosure list and shall make a report to the Auditor regarding whether each step in the preparation of the final foreclosure list, as set forth in City Code 5.31.025 B and 5.31.035 B has been applied correctly.
  2. Review the list of properties which have been on the final foreclosure list but for which no bids were received and make a recommendation on each property to the Department of Environmental Quality regarding how the property should be handled in order to liquidate the lien; and
  3. Transmit to the Auditor the instructions from the Department of Environmental Quality regarding how to handle each property which has been placed on the final foreclosure list but not sold.
- C. The Auditor shall:
  1. Prepare a report to the Council which identifies properties which have been deleted from the list based on the recommendations of the Commissioners;
  2. Transmit to the Council a list of properties which have twice been on final foreclosure lists and which have not sold together with the directions from the Department of Environmental Quality and Commissioners regarding how each property shall be handled; and

**TITLE 5**  
**REVENUE AND FINANCE**

3. Prepare a revised final foreclosure list for submission to the Council for Council action.

**5.31.050 Council Action on Final Foreclosure List; Recording of Notice.**

- A. The Council shall review the final foreclosure list and reports submitted by the Auditor to determine:
  1. Whether each step in the collection process as set forth in City Code 5.31.025 B and 5.31.035 B has been applied correctly; and
  2. The Council shall act by ordinance and shall identify for the Auditor and Treasurer which properties should be placed on the final foreclosure list and as directed by the Department of Environmental Quality and the Council which properties on the list should be purchased by the City in the event no bids are received on those properties, and the source of the funds to be used to purchase the property.
- B. The final foreclosure list shall be transmitted to the Treasurer by the Council Clerk. After list is submitted to the Treasurer, the only payment option is to bring the account current.
- C. The Treasurer shall record a Notice of Foreclosure and Sale for each property listed on the final foreclosure list in the County records in which the property is located before ordering a foreclosure report and before giving notice as required by City Code 5.30.065. The notice shall contain the ordinance number adopting the final foreclosure list; the address and legal description of the property, the time, date and place of the sale, the types and amounts of assessments and that the property will be sold unless the account is brought current and all interest, penalties, collection costs and sales costs to date are paid. It shall also state the name of the person and address and phone number where additional information is available.
- D. The Treasurer shall determine the names and addresses of all persons having an interest in the sale including lien holders and whether the property is part of a bankruptcy estate. This may be done by purchasing a report from a title company.
- E. Any property which is part of a bankruptcy estate shall be removed from the sale or the City Attorney should be requested to seek relief from the stay from the Bankruptcy Court.

**5.31.055 Notice to Persons on Final Foreclosure List of Foreclosure Action.**

- A. Individual notice.

**TITLE 5**  
**REVENUE AND FINANCE**

1. The Treasurer shall mail a “Notice of Foreclosure” to all persons having an interest in the property and to all persons requesting notice. It shall be sent at least 60 days prior to the sale by certified mail, return receipt requested.
  2. The notice shall state that a foreclosure sale will be held and it shall specify the date, time and place. It shall contain the following information: the names of the owners of the property, the legal description of the property, the street address, the amount of the delinquent account stating both the principal and interest due as well as any penalties and collection charges, the type of the delinquent account, and the name of the Treasurer. It shall also state that there shall be an additional charge.
  3. The Treasurer shall retain and file the returned mailing receipt.
- B.** Newspaper notice.
1. The Treasurer shall have printed in a daily newspaper of general circulation the notice of sale once a week for four successive weeks.
  2. The notice shall contain the information required in City Code 5.31.055 A 2.
  3. A copy of the first of the four published newspaper notices shall be sent to the owner and to the occupant by certified mail, return receipt requested and a copy of the notice shall be retained in the file.
- C.** Posted notice.
1. The Treasurer shall have notice posted on the property at least once, no less than four weeks before the sale. Proof of posting shall be maintained in the property foreclosure file.
  2. The notice shall contain the information required in City Code 5.31.055 A 2.
  3. The Treasurer shall prepare an affidavit of posting and a copy of the affidavit shall be retained in the file.
- D.** Other notice.
1. Notice shall be given to the Internal Revenue Service by certified mail, return receipt requested, at least 25 days prior to the sale.

**5.31.060 Purchase of Property by the City.**

- A.** The City may purchase property on the final foreclosure list for City properties before, during or after the sale subject to the following conditions:
- 1.** The Department of Environmental Quality and the Council have directed the purchase of the property in the ordinance adopted under City Code 5.31.050 B, and the money has been transferred to the proper assessment fund;
  - 2.** In the case of property purchased before the sale, any person having an interest in the property is given an opportunity to bring the account current and pay the collection and sales costs, and thereby remove the property from the list as provided by City Code 5.31.065 A; and
  - 3.** Any person having an interest in the property may redeem the property as provided by City Code 5.31.085.

**5.31.065 Payment of Lien and Presale and Sale Conditions.**

(Amended by Ordinance No. 167655, May 11, 1994.)

- A.** A person with an interest in the property may remove the property from the foreclosure list by paying the amount of the delinquent assessment with penalties, interest, collection costs and sales costs incurred to date any time prior to the sale. In addition, in the case of installment payments, the Auditor shall void the installment provision of the sewer safety net contracts and require the property owner or interested person to renegotiate new installment payment arrangements as provided the this Chapter. Payment plans as provided by PCC 5.30.035 may not be initiated as a means to bring the account current. If requested, notice that the property has been removed from the sale, shall be recorded in the County records in which the property is located.
- B.** A bidder purchases the property “as is.” There shall be no opportunity for an on site inspection of the land or buildings unless the bidder has permission from the owner.

**5.31.070 The Sale.**

- A.** The Treasurer shall prepare rules governing the conduct of the sale. The rules shall be available at least 60 days prior to the sale.
- B.** Each piece of property shall be sold separately . The sales price shall be the amount owing on the principle, interest, penalties, collections costs and sales.

## **TITLE 5**

### **REVENUE AND FINANCE**

- C.** The interest charged during the redemption period shall be set by ordinance. The interest rate shall be set at a level which attracts bidders, but shall be equal to or greater than the interest rate established for the Sewer Safety Net loans.
- D.** The penalty charged during the redemption period shall be set by ordinance. It shall be set at a rate to encourage payment by delinquent property owners.
- E.** In situations where there are two or more bids, the successful bidder shall be determined by lot.
- F.** Property which is not sold may again be offered for sale. The steps in City Code 5.31.050 (D) through City Code 5.31.105 shall be followed.
- G.** In the event there is more than one bidder and the successful bidder fails to pay, the property shall be sold to the other bidder or in the event there were more than two bidders, the successful bidder shall be determined by lot.

#### **5.31.075 Certificate of Sale and Notice of Sale to Property Owner.**

- A.** The Treasurer shall immediately deliver a certificate of sale to the purchaser. The certificate of sale is a right to own the property at the end of the redemption period. The holder of a certificate of sale has no ownership rights and no possessory interest in the property prior to the completion of the redemption period and holds the certificate of sale subject to the rights of all persons having an interest in the property to redeem it, the City to place additional liens on the property and the right of the right of another unit of government to foreclose upon the property. All liability remains with the persons having an interest in the property until a deed is given to the purchaser.
- B.** The certificate of sale shall include the following information: a description of the delinquent account for which the property was sold, a description of the property, a statement of the amount for which it was sold, the interest rate and the amount of the penalty, the name of the purchaser, and a statement that the property is being sold subject to the right of redemption within one year from the date of sale.
- C.** The Treasurer shall send to the property owner and all persons known to have an interest in the property a "Notice of the Sale" by certified mail, return receipt requested and by first class mail, within 10 working days after the sale. Notice shall be sent to any persons known to have acquired an interest in the property since initial notice was given unless a notice was recorded. The notice shall contain the following information: the name of the purchaser, the right of redemption, the date the redemption period expires, the redemption price, and the basis for calculating interest and penalties during the redemption period.
- D.** It shall be the responsibility of the purchaser to keep the purchaser's current address on file with the Treasurer.



**5.31.080      Lien Docket Entry.**

- A.**    The Treasurer shall return to the Auditor the final foreclosure list with all collections and sales noted on it within three business days after the sale.
- B.**    The Auditor shall make the proper entries of the collections and sales in the appropriate lien docket.

**5.31.085      Redemption.**

- A.**    Any person having an interest in the property, or their legal representative, may redeem the property within one year from the date of sale. The one-year period is computed as follows. The date of the sale shall not be counted. The period shall begin to run the day after the sale. The last day of the one-year period shall be the 365th day at 5 p.m. on the next working day. Purchasers have no redemption rights.
- B.**    Redemption shall be subject to the payment to the Treasurer of the amount of the property sale price, the interest to date and the penalty to date. Property which has been sold at a foreclosure sale is not eligible for installment payments. Property may be redeemed only by payment in full.
- C.**    The Treasurer shall issue a receipt to the person redeeming the property and shall report the redemption to the Auditor. Redemption discharges the property from the effect of the sale.
- D.**    If redemption is made by a lien creditor, the amount paid for redemption shall thereafter be deemed a part of the judgment, decree, mortgage or tax lien and shall bear like interest and may be enforced and collected as a part thereof.
- E.**    Upon deposit of the sum in redemption, the Treasurer shall issue a check or warrant for the amount paid to the holder of the certificate of sale shown on the lien docket for the amount of the delinquent account, costs and interest.

**5.31.090      Issuance of Deed.**

- A.**    Upon expiration of the redemption period, the Treasurer shall execute a deed conveying the property sold. The deed conveys to the grantee the legal and equitable title in fee simple.
- B.**    The deed shall contain the following information: a description of the property, the date of sale, a statement of the amount of the delinquent account for which the property was sold, that the account was unpaid at the time of sale and that no redemption has been made.

**TITLE 5**  
**REVENUE AND FINANCE**

- C. The deed conveys title in fee simple excepting only for the liens of the City which were not included in the foreclosure sale or other liens as provided by state law. The deed, however, does not guarantee clear title.
- D. The grantee shall be entitled to immediate possession upon delivery of the deed.

**5.31.095 Waste, Improvements to the Property, Nuisance Abatement Procedures.**

- A. The City shall not be responsible for damage to the property during the redemption period. The purchaser assumes all risk.
- B. Any improvements or maintenance to the property made by a purchaser during the redemption period shall be made by a contractual agreement with the owner. The contract shall specifically state the amount owing and the rate of interest, if any.
- C. In the event the property becomes a public nuisance, the City reserves the right to enforce its nuisance abatement code provisions which may result in additional assessments against the property and which may become the liability of the purchaser.
- D. The property may also become subject to special assessments.

**5.31.100 Payment of Taxes.**

- A. Property subject to delinquent property taxes may be sold by the County at a sheriff's sale. In the event the property is sold, the purchaser may lose all interest in the property. Any purchaser of property having delinquent property taxes may elect to pay the property taxes. There shall be no reimbursement from the City in the event of redemption by the property owner.

**5.31.105 Sale of Property.**

(Amended by Ordinance No. 181483, effective January 18, 2008.)

- A. Any property purchases by the City from the foreclosure list may be sold as directed by the Council by the OMF Business Operations Division in the manner provided by the Charter or state law. The proceeds from the sale shall be used to reimburse the fund from which the property was purchased, any liens paid or other expenses incurred. Any remaining proceeds shall be placed in the Assessment Referral Account unless otherwise designated by Council.
- B. Except in situations where the purchaser agrees to accept a quit claim deed, the Treasurer shall purchase title insurance as a precondition of sale and shall pay the cost of the policy.

**TITLE 5**  
**REVENUE AND FINANCE**

- C.** In cases where the title report shows a defect in title, the defect shall be referred to the City Attorney. The City Attorney shall take the steps necessary to clear the title.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.32 - PURCHASING AGENT AND  
PROCEDURES**

(Repealed by Ordinance Nos. 174509 and 174904,  
effective January 1, 2001.)

**CHAPTER 5.33 - GOODS AND SERVICES**

(Chapter replaced by Ordinance No. 180350,  
effective August 25, 2006.)

**Sections:**

5.33.010	Definitions.
5.33.020	City Council as Local Contract Review Board.
5.33.030	Application of Purchasing Code.
5.33.040	Authority of Chief Procurement Officer.
5.33.060	Authority of Directors.
5.33.065	Authority for Stormwater Improvements.
5.33.070	Purchasing Goods, Services and Public Improvements from City Employees.
5.33.075	Affirmative Action.
5.33.076	Equal Employment Opportunity.
5.33.077	Equal Benefits.
5.33.080	Environmentally Preferable Procurement.
5.33.085	Preference for Goods Fabricated or Processed within State or Services Performed Within State.
5.33.090	Use of Price Agreements.
5.33.100	Overview of Source Selection and Contractor Selection.
5.33.105	Feasibility and Cost Analysis.
5.33.110	Qualified Rehabilitation Facilities.
5.33.120	Sole-Source Procurements.
5.33.130	Emergency Procurements.
5.33.135	Declaration of State of Emergency or Disaster.
5.33.140	Cooperative Purchasing.
5.33.145	Rules on all types of Cooperative Procurements.
5.33.150	Joint Cooperative Procurements.
5.33.160	Permissive Cooperative Procurements.
5.33.170	Interstate Cooperative Procurements.
5.33.180	Small Procurements.
5.33.190	Intermediate Procurements.
5.33.200	Competitive Sealed Bidding.
5.33.205	Multi-Step Sealed Bids.
5.33.210	Competitive Sealed Proposals.
5.33.211	Procedures for Competitive Range, Multi-Tiered and Multi-Step Proposals.
5.33.220	Special Procurements.
5.33.300	Public Notice of Solicitation for Contracts over \$150,000.
5.33.310	Specifications and Brand Names.
5.33.320	Bids or Proposals are Offers.
5.33.330	Facsimile Bids and Proposals.
5.33.340	Electronic Procurement.
5.33.350	Reverse Auctions.

## **TITLE 5**

### **REVENUE AND FINANCE**

5.33.360	Contract Conditions.
5.33.400	Offer Preparation.
5.33.410	Bid or Proposal Security.
5.33.420	Pre-Offer Conferences.
5.33.430	Addenda to Solicitation Document.
5.33.440	Request for Clarification or Change.
5.33.450	Offeror Submission.
5.33.460	Pre-Closing Modification or Withdrawal of Offers.
5.33.470	Receipt, Opening and Recording of Offers.
5.33.480	Late Offers, Late Withdrawals and Late Modifications.
5.33.490	Mistakes.
5.33.495	Time for City Acceptance.
5.33.500	Responsibility of Offerors.
5.33.505	Qualified Products Lists.
5.33.510	Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions.
5.33.530	Debarment of Prospective Offerors.
5.33.540	Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
5.33.610	Offer Evaluation and Award.
5.33.620	Negotiation With Offerors Prohibited.
5.33.625	Contract Preferences.
5.33.630	Reciprocal Preferences.
5.33.635	Contract Preferences: Recycled Materials.
5.33.640	Rejection of All or Part of an Offer.
5.33.645	Rejection of All Offers.
5.33.650	Notice of Intent to Award.
5.33.660	Cancellation, Delay or Suspension of Solicitation.
5.33.670	Disposition of Offers if Solicitation Canceled.
5.33.675	Documentation of Award.
5.33.685	Availability of Award Decisions.
5.33.690	Performance and Payment Security; Waiver.
5.33.695	Notification to State of Nonresident Contractor.
5.33.700	Protests and Judicial Review of Special Procurements.
5.33.710	Protests and Judicial Review of Sole-Source Procurements.
5.33.720	Protests and Judicial Review of Multi-Tiered Solicitations.
5.33.730	Protests and Judicial Review of Solicitation Documents and the Procurement Process.
5.33.740	Protests and Judicial Review of Contract Award.
5.33.750	Protests of Other Violations.
5.33.760	Review of Prequalification and Debarment Decisions.
5.33.770	Procurement Board of Appeals.
5.33.780	Powers of the Board.
5.33.790	Appeal to Board.

**TITLE 5**  
**REVENUE AND FINANCE**

- 5.33.900 Social Equity Contracting and Employment Programs.
- 5.33.920 Records Maintenance; Right to Audit Records.
- 5.33.930 Right to Inspect Plant or Place of Business.
- 5.33.940 Contract Cancellation, Contractor Termination Procedures.

**5.33.010 Definitions.**

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 187974, effective September 7, 2016.)

- 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/Offeror:** A Person or Offeror whose ability to participate in a Procurement or Public Improvement Contract is adversely affected by the City.
  - 4. Amendment:** Additions or deletions to or material changes to a City Contract.
  - 5. 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.
  - 6. Award:** The decision of the City to enter into a Contract with an Offeror.
  - 7. Bid:** A response to an Invitation to Bid.
  - 8. Bid or Proposal Bond/Bid or Proposal Security/Offer Security:** A means of securing execution of an Awarded Contract.
  - 9. Bidder:** An Offeror who submits a Bid in response to the City's Invitation to Bid.
  - 10. Chief Procurement Officer:** The individual, of their designee, in charge of the Procurement Services Division of the Office of Management and Finance.
  - 11. City:** The City of Portland, Oregon or designee.

## TITLE 5

### REVENUE AND FINANCE

12. **Closing:** The date and time announced in the City’s Solicitation Document as the deadline for submitting Offers.
13. **Commercially Useful Function (CUF):** A function or service that the enterprise or business actually performs, for which a demand exists in the marketplace, and for which the enterprise or business receives payment that is proportionate to the work that the enterprise or business performs or that conforms with industry standards. CUF does not include acting as a broker to provide for other to perform work.
14. **Competitive 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 Procurement Services and publicly opened at a designated time and place.
15. **Competitive 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.
16. **Competitive Range:** The number of Proposers the City will conduct discussions or negotiate with if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
17. **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.
18. **Contract:** See definition for “Public Contract.”
19. **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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 20. **Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, or using Electronic means by an Authorized Representative of an Offeror and the City.
- 21. **Contractor:** The Person with whom the City executes a Contract.
- 22. **Cost Estimate:** The City's most recent pre-solicitation, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect, engineer or other qualified professional, formal planning budgetary, or confidential cost calculation documents, where available.
- 23. **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.
- 24. **Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.
- 25. **Domestic Partner:** Any person who is registered with his or her employer as a domestic partner, or, in the absence of an employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration and who is in fact a current domestic partner with the person with whom that person was registered. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Bureau.
- 26. **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.
- 27. **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.
- 28. **Electronic Offer:** A response to the City's Solicitation Document or request for price quotations submitted to the City via

**TITLE 5**  
**REVENUE AND FINANCE**

- a. the World Wide Web or some other Internet Protocol; or
  - b. the City's Electronic Procurement System.
- 29. **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.
- 30. **Emergency:** Circumstances that:
  - a. could not have been reasonably foreseen;
  - b. create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
  - c. require prompt execution of a Contract to remedy the condition.
- 31. **Equal Employment Opportunity (EEO):** An "Equal Employment Opportunity" Employer is one who does not engage in the discrimination prohibited by Federal law and who is registered as an EEO employer with the City of Portland.
- 32. **Equal Benefits (EB):** means the provision of the same or equivalent benefits to employees with spouses and employees with domestic partners, to spouses of employees and domestic partners of employees, and to dependents and family members of spouses and dependents and family members of domestic partners.
- 33. **Facsimile:** 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.
- 34. **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.
- 35. **Goods and Services/Goods or Services:** Any combination of any of the items identified in the definitions of "goods" and "services".

**TITLE 5**  
**REVENUE AND FINANCE**

- 36. **Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 37. **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.
- 38. **Local Contract Review Board:** The Portland City Council, or designee.
- 39. **Nonresident Bidder:** A Bidder who is not a Resident Bidder.
- 40. **Offer:** A Written response to a Solicitation Document.
- 41. **Offeror:** A Person that submits an Offer.
- 42. **Opening:** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.
- 43. **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.
- 44. **Personal Services:** as used in these rules, means services performed under a Professional, Technical or Expert Services Contract governed by Chapter 5.68 or pursuant to ORS 279A.055.
- 45. **Prequalification:** 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.
- 46. **Price 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.
- 47. **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.

## TITLE 5

### REVENUE AND FINANCE

- 48. **Procurement Services:** A division of the Bureau of Revenue and Financial Services in the City of Portland.
- 49. **Product Sample:** The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.
- 50. **Proposal:** A Written response to a Request for Proposals.
- 51. **Proposer:** A Person who submits a Proposal in response to the City's Request for Proposals.
- 52. **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."
- 53. **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.
- 54. **Qualified 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.
- 55. **Repair and Maintenance:** Ordinary repairs and maintenance necessary to preserve a public improvement. Typically such repairs and maintenance do

**TITLE 5**  
**REVENUE AND FINANCE**

not prolong the lifespan of a public improvement nor increase its value beyond what was originally constructed.

- 56. Request for Proposals (RFP):** All documents used for soliciting Proposals. In accordance with these rules, or when permitted by Chapter 5.34.
- 57. 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.
- 58. 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.
- 59. Responsible Offeror, Bidder or Proposer:** A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in Sections 5.33.500 or 5.34.500, as applicable, and who has not been debarred, disqualified, or who has not failed to prequalify when Prequalification is required by the Solicitation Document.
- 60. 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.
- 61. Scope:** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 62. Services:** Services other than “personal” or “PTE” services covered by Chapter 5.68.
- 63. Signature:** Any Written or Electronic mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 64. 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.
- 65. Solicitation:** A request by the City for prospective Contractors to submit Offers.
- 66. 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

## TITLE 5

### REVENUE AND FINANCE

Solicitation Document are included in, and part of, the Solicitation Document.

- 67. **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.
- 68. **Subcontractor:** A Person, other than the Contractor's employee, hired by the Contractor to perform a portion of the Work required by the Contract.
- 69. **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.
- 70. **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.
- 71. **Written:** Existing in Writing.

#### 5.33.020 City Council as Local Contract Review Board.

(Amended by Ordinance Nos. 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A. Pursuant to ORS 279A.060, 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, Chapter 5.33, and 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 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 Chapter 5.33 apply to those Procurements. Similarly, the Attorney

**TITLE 5**  
**REVENUE AND FINANCE**

General Model Public Contracting rules for Construction do not apply, except with respect to CM/GC Procurements. Notwithstanding CM/GC Procurements, the Rules contained in Chapter 5.34 apply to the City's 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 rules adopted in 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 percent 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, except those to whom authority has been delegated pursuant to Subsection 5.33.040 C.

**5.33.030 Application of Purchasing Code.**

(Amended by Ordinance Nos. 181547, 183445, 185065 and 185898, effective February 20, 2013.)

- A.** The procurement methods stated in Chapter 5.33 are applicable to the purchase of Goods or Services, or both, but 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.

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 Sections 5.33.100 through 5.33.225;
5. Professional, technical and expert Contracts governed by 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;



**TITLE 5**  
**REVENUE AND FINANCE**

- (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 Chief Procurement Officer's authority as stated in 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;

**TITLE 5**  
**REVENUE AND FINANCE**

11. Contracts for Public Improvements, which are governed by Chapter 5.34, unless expressly referenced in Chapter 5.33.

**5.33.040 Authority of Chief Procurement Officer.**

(Amended by Ordinance Nos. 181547, 183445, 184403, 185065, 185898, 187373 and 187974, effective September 7, 2016.)

- A. For Contracts covered by Chapters 5.33 and 5.34, the Chief Procurement Officer is authorized to:
  1. Advertise for Bids or Proposals for Goods and Services without specific authorization from City Council, when the anticipated amount is included within the current fiscal year budget and is \$500,000 or less.
  2. Award and execute Contracts for the purchase or lease of Goods and 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 and the anticipated Contract Amount exceeds \$500,000 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.
  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 Chapters 5.33 and 5.34 as follows:
    - a. Amendments not exceeding 25 percent of the original Contract Amount.
    - b. Amendments exceeding 25 percent of the original Contract Amount, provided that the amended Contract Amount does not exceed

## TITLE 5

# REVENUE AND FINANCE

\$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.

- c. Execute amendments to Price Agreements if the yearly estimated cost to the City is \$500,000 or less.
    - d. Amendments whenever an ordinance approved by the City Council grants additional authority to the Chief Procurement Officer beyond that stated in these rules.
  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 percent of the original Contract Amount; or
    - b. Whenever the final Contract Amount exceeds 25 percent 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.
  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.
  9. Establish a procedure providing appropriate financial control over the authorization provided by Sections 5.33.055 and 5.33.060.
  10. Revoke or place conditions on the authority of directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$10,000, in the event of violations of these rules.
  11. Perform such other duties as directed by the Portland City Code, City Council or the Commissioner-in-Charge of Procurement Services.
  12. Delegate the Chief Procurement Officer's authority under this Chapter in accordance with City practices.
  13. Resolve protests of Contract Award decisions and other matters as required by City Code.
- B.** The 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, Chapters 5.33 and 5.34.

## **TITLE 5**

### **REVENUE AND FINANCE**

- C.** In addition to the delegation of authority provided in Paragraph A. above, the Chief Procurement Officer is authorized to:
  - 1.** Award, execute and amend Intergovernmental Agreements as (IGAs), provided the cost to the City does not exceed \$5,000;
  - 2.** Award, execute and amend Revenue Generating Contracts; and
  - 3.** Award, execute and amend any other Contracts, Price Agreements and IGAs when authorized by an ordinance adopted by City Council.
- D.** Notwithstanding the grant of authority above, the Chief Procurement Officer may forward any contract or agreement to the City Council for approval.

#### **5.33.050 Authority for Golf Concession Contracts.**

(Repealed by Ordinance No. 187373, effective October 14, 2015.)

#### **5.33.055 Authority of Appropriation Unit Managers.**

(Repealed by Ordinance No. 187373, effective October 14, 2015.)

#### **5.33.060 Authority of Directors.**

(Amended by Ordinance Nos. 183445, 185898, 187373 and 187974, effective September 7, 2016.) Directors of Bureaus or Offices are authorized to:

- A.** Execute Contracts obligating the City for purchases of Goods and Services for use by their bureau in an amount not to exceed \$10,000 for a single transaction as specified in Section 5.33.180. Procurements shall not be artificially divided or fragmented so as to constitute Procurements under \$10,000.
- B.** Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- C.** 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.

#### **5.33.065 Authority for Stormwater Improvements.**

(Added by Ordinance No. 184403, effective February 2, 2011.) The Director of the Bureau of Environmental Services is authorized to execute contracts for stormwater improvements not to exceed \$200,000 for stormwater management improvement projects on private property when such projects are authorized as a Special Procurement. The Director of the Bureau of Environmental Services is also authorized to execute amendments to these agreements, provided the amendments do not cause the contract amount to exceed \$200,000.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.**  
(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A.** Purchasing From City Employees. The Chief Procurement Officer, City Official or City employee 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 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 or owner.
- C.** In any situation in which the Chief Procurement Officer believes that a purchase would cause an appearance of impropriety, regardless of whether the purchase is authorized by this or any other code provision, the Chief Procurement Officer may condition the proposed purchase on approval by Council.

**5.33.075 Affirmative Action.**  
(Amended by Ordinance Nos. 184403 and 187974, effective September 7, 2016.)

- 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.
- 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 (OECD); or

**TITLE 5**  
**REVENUE AND FINANCE**

- c. Owned or controlled by a disabled veteran, as defined in ORS 408.225.
- 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 sanction a Person from consideration of Award of the City's Contracts under ORS 200.065 or ORS 200.075 in accordance with these rules.

**5.33.076 Equal Employment Opportunity.**

(Added by Ordinance No. 187373, effective October 14, 2015.)

- A. It is unlawful to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation or source of income in programs, activities, services, benefits, and employment whether carried out by the City of Portland, directly or through a contractor or any other entity with whom the City of Portland arranges to carry out its programs and activities except as allowed by federal law, rules and regulations.
- B. Any person, vendor, contractor, or entity of any type must be registered with the City of Portland as an EEO Employer in order to be eligible to be awarded any Contract.
- C. Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program

- D.** Contractors and Subcontractors shall provide all information requested by the City to assist it in performing its duties.
- E.** If the City receives a complaint filed by any person or entity that alleges prohibited discrimination by a Contractor or Subcontractor, or when information comes into its possession indicating that a Contractor or Subcontractor may have engaged in prohibited discrimination, the City may conduct an investigation to determine whether the complaint or the information is correct.

**5.33.077 Equal Benefits.**

(Added by Ordinance No. 187373, effective October 14, 2015.)

- A.** No contractor on a City Contract shall discriminate by policy or practice in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse, subject to the following exceptions:
- B.** Procurement Services has the authority to adopt rules, establish standards and procedures it deems necessary to effectively carry out this program in a manner, but not limited to the following:
  - 1.** Examine contractor's benefit programs;
  - 2.** Allow for remedial action after a finding of non-compliance;
  - 3.** Determine and impose appropriate sanctions or remedies by contractors including, but are not limited to:
    - a.** Disqualification of the contractor from bidding on or being awarded a City Contract for a period of up to 3 years; and
    - b.** Contractual remedies, including, but not limited to, termination of the Contract.
    - c.** Impose other appropriate contractual and civil remedies and sanctions for violations.
  - 4.** Impose other appropriate contractual and civil remedies and sanctions for violations.
- C.** The City shall not execute or award a Contract with a contractor unless such contractor has agreed not to discriminate in the provision of employee benefits as provided for in this Chapter.

**5.33.080 Environmentally Preferable Procurement.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **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 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



**TITLE 5**  
**REVENUE AND FINANCE**

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 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.
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

## **TITLE 5**

### **REVENUE AND FINANCE**

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. "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.
  20. "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.
  21. "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.
  22. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
  23. "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 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. In doing so, 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. Furthermore, the City shall first seek to reuse, repair, or refurbish existing equipment and products prior to purchasing new, to the extent reuse is fiscally sound and complements other City safety and sustainability policies.
- C.** Recycled Materials and Products Price Preference.

**TITLE 5**  
**REVENUE AND FINANCE**

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 Subsection 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 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.**
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.** 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

## **TITLE 5**

### **REVENUE AND FINANCE**

exclude recycled oils and do not require oils to be manufactured from virgin materials.

- F.** Procurement practices regarding recyclable and reusable goods. The City shall ensure, to the maximum extent economically feasible, the procurement of goods that may be recycled or reused when discarded.
- 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 Subsection 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 10 years or less shall be encouraged. Where the price premium payback period is longer than 10 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.
  - 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

**TITLE 5**  
**REVENUE AND FINANCE**

not exceed the five percent price preference set forth in Subsection 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.

**5.33.085 Preference for Goods Fabricated or Processed Within State or Services Performed Within State.**

(Added by Ordinance No. 185898, effective February 20, 2013.) Notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procurement goods or services for a public use under ORS Chapter 279B may give preference to procuring goods that are fabricated or processed entirely within this state, or services that are performed entirely within this state.

- A. If the goods or services cost is not more than 10 percent more than goods that are not fabricated or processed entirely within this state a preference may be given. If more than one bidder or proposer qualifies for the preference described in this Subsection, the City may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.
- B. The City may set a higher percentage than the percentage set forth above if the City, in a written determination to support the order, finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.
- C. This Section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts as described in ORS 279C.

**5.33.090 Use of Price Agreements.**

(Amended by Ordinance Nos. 183445 and 187373, effective October 14, 2015.) 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 Chief Procurement Officer grants an exemption to that requirement. Price Agreements resulting from a participating agreement utilizing a cooperative agreement through another agency are exempt from this requirement.

**5.33.100 Overview of Source Selection and Contractor Selection.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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 Subsection 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;
  - 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 Subsections 5.33.100 D.1. - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in Subsection 5.33.100 D. shall conform to the procedures identified in these rules.

- F.** The Chief Procurement Officer is authorized, but not required, to waive any nonconformity with the rules of Contractor selection if the 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.**

(Added by Ordinance No. 183445; Amended by Ordinance No. 185065, effective January 1, 2012.)

- 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 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;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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. – F. below.
- D. The bureau shall first estimate the bureau's cost of performing the services, 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



**TITLE 5**  
**REVENUE AND FINANCE**

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
  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.
  4. Profit Included. Contracting Costs include the Authorized Agency's estimate of Contractor's profit in addition to the estimate of Contractor's costs under Subsection 5.33.105 E. If the Authorized Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Authorized Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Authorized Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Authorized Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.
- 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

##### **A. As used in Section 5.33.110:**

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

**TITLE 5**  
**REVENUE AND FINANCE**

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.
  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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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.
  - d.** After selection of a QRF the price will be determined in accordance with Subsection 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.

## REVENUE AND FINANCE

- 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Generally. The City may Award a Contract without competition as a Sole Source Procurement if the 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;
  - 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 Procurement Services' website at least seven (7) Days before the Contract is Awarded.

#### **5.33.130 Emergency Procurements.**

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.)

- 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

**TITLE 5**  
**REVENUE AND FINANCE**

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 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 Chief Procurement Officer or person to whom the powers of the 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 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 Chief Procurement Officer for record keeping purposes.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 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.**

(Added by Ordinance No. 181547; amended by Ordinance No. 183345, effective January 6, 2010.)

- 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.



**TITLE 5**  
**REVENUE AND FINANCE**

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.
- F.** All documentation of Emergency Contracts shall be sent to the 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.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- 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 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 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 Sections 5.33.200 or 5.33.210.

## **TITLE 5**

### **REVENUE AND FINANCE**

- D.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in Sections 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
  - 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 Sections 5.33.200, 5.33.210 or 5.33.220 in accordance with Section 5.33.140.
- F.** Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of Section 5.33.700 et seq.
- G.** For purposes of Sections 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.

**TITLE 5**  
**REVENUE AND FINANCE**

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.
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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- C. Cooperative procurements are subject to the requirements of Section 5.33.105 in regard to service contracts in excess of \$250,000.

**5.33.150 Joint Cooperative Procurements.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- 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:
  - 1. The conditions of Subsection 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.**

(Amended by Ordinance Nos. 185065, 185898 and 187373, effective October 14, 2015.)

- 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 Subsection 5.33.140 B. are met;
  - 2. The Administering Contracting Agency's Solicitation and Award process for the original Contract allows other governmental bodies 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

**TITLE 5**  
**REVENUE AND FINANCE**

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.
- 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 Subsection 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 Subsection 5.33.160 D., in the 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.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- 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 Subsection 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

## TITLE 5 REVENUE AND FINANCE

the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or

- 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 Subsection 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.**

(Amended by Ordinance Nos. 183445 and 187974, effective September 7, 2016.)

- A.** For Procurements of Goods and Services not exceeding \$10,000 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

- B.** State law prohibits a Procurement from being artificially divided or fragmented so as to constitute a small Procurement under this section.
- C.** Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$10,000 without prior approval of the 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 Subsection 5.33.200 B. Public Notice of the Competitive Sealed Bidding Solicitation shall be provided as required by Section 5.33.300.
- B.** Invitation to Bid. The ITB shall include the following:
  - 1.** General Information.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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 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;
- 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 Subsection 5.33.010 A.55.;

**TITLE 5**  
**REVENUE AND FINANCE**

- m. Bidder's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4). (See Section 5.33.075); and
  - n. How the City will notify Offerors of Addenda and how the City will make Addenda available. See 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;
  - 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;
  - 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

## TITLE 5

# REVENUE AND FINANCE

- 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 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 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 185065 and 185898, effective February 20, 2013.)

- A. General. The City may use multi-step Competitive Sealed Bidding pursuant to ORS 279B.055(12).
- B. Phased Process. Multi-step Bidding is a phased Procurement process which seeks necessary information or un-priced submittals in phase one combined with regular competitive sealed Bidding, inviting Offerors who submitted technically eligible submittals in phase one, to submit competitive sealed price Bids in phase two. The Contract must be Awarded to the lowest Responsible Bidder.
- C. Public Notice. When the City uses multi-step sealed Bids for Contracts over \$150,000, Public Notice for phase one shall be given in accordance with 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 the initial Closing pursuant to Section 5.33.430 and inform

**TITLE 5**  
**REVENUE AND FINANCE**

Bidders excluded from the subsequent phases of the right, if any, to protest their exclusion pursuant to Section 5.33.720.

- D.** Procedures Generally. In addition to the procedures set forth in Sections 5.33.300 through 5.33.340, the City shall use the procedures set forth in this rule for multi-step Bidding and in the Invitation to Bid.
- E.** Procedure for Phase One of Multi-Step Sealed Bidding.
  - 1.** Form. The City shall initiate multi-step sealed Bidding by issuing an Invitation to Bid in the form required for competitive sealed Bids except as provided in this rule. In addition to the requirements of Subsection 5.33.200 B., the multi-step Invitation to Bid must state:
    - a.** That the solicitation is a multi-step sealed Bid Procurement and describe the process the City will use to conduct the Procurement;
    - b.** That the City requests un-priced submittals and that the City will consider priced Bids only in phase two and only from those Bidders whose un-priced submittals are found eligible in phase one;
    - c.** Whether Bidders must submit priced Bids at the same time as un-priced submittals and, if so, that Bidders must submit the priced Bids in a separate sealed envelope; and
    - d.** The criteria to be used in the evaluation of un-priced submittals;
  - 2.** Evaluation. The City shall evaluate un-priced submittals in accordance with the criteria set forth in the Invitation to Bid.
- 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.** After the completion of Phase One, if the City does not cancel the Solicitation, the City shall 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 or the Invitation to Bid; and

**TITLE 5**  
**REVENUE AND FINANCE**

- b.** no public notice need be given of the invitation to submit priced Bids because such notice was previously given.

**5.33.210 Competitive Sealed Proposals.**

(Amended by Ordinance Nos. 183445, 185065 and 185898, effective February 20, 2013.)

- A.** The City may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060 and this rule. The City shall use a Request for Proposal to initiate a competitive sealed Proposal Solicitation. The Request for Proposal must contain the information required by ORS 279B.060(2) and Paragraph B. of this rule. The City shall provide Public Notice of the Competitive Sealed Proposal Solicitation as provided in Section 5.33.300.
- B.** Mandatory provisions in RFP Solicitation Documents. The RFP must include the following:
  - 1.** General Information.
    - 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 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 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;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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;
  - 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 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. As required by ORS 279B.060(2)(c) 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 contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation, planning or land surveying services, or related services that are subject to ORS 289C.100 to 279C.125, or the City for Good Cause specifies otherwise, the scope of work must require

## **TITLE 5**

### **REVENUE AND FINANCE**

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.** The City shall set forth selection criteria in the Solicitation Document in accordance with the requirements of Section 5.33.210. 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;
  - c.** If the City's solicitation process calls for the City to establish a Competitive Range, the City shall generally describe, in the Solicitation Document, the criteria or parameters the City will apply to determine the Competitive Range. The City may increase or decrease the number of Proposers in the Competitive Range in accordance with Subsection 5.33.211 F.1.b.
- 4.** Applicable preferences, including those described in ORS 279A.120, ORS 279A.125(2) and ORS 279A.128 and Sections 5.33.080 and 5.33.085.
- 5.** All Contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. The City's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the City will not include in the Request for Proposal because the City either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions.
- 6.** As required by ORS 279B.060(2)(h), 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 established by the resulting Contract; and



**TITLE 5**  
**REVENUE AND FINANCE**

- 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. The City may include the applicable contract terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposers' terms and conditions that have been pre-negotiated, but the City may only include those terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
- 8. For multiple Award Contracts the City may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest filed by the Proposer.
- C. Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, 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 specifying otherwise. The City will have Good Cause to specify otherwise when the City determines:
  - 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

**TITLE 5**  
**REVENUE AND FINANCE**

products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed.

4. That other circumstances exist 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.**  
(Amended by Ordinance Nos. 183445, 185065 and 185898, effective February 20, 2013.)

- A. Generally. The City may use any combination of the methods of Contractor selection as set forth in ORS 279B.060 and this rule to procure Goods and Services. In addition to the procedures set forth in Sections 5.33.210 through 5.33.211 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 the establishment of a Competitive Range or permits either serial or competitive simultaneous discussions with one or more Proposers. The City may use one or more or any combination of the procedures set forth in this rule for Competitive Range, multi-tiered and multi-step Proposals.
- B. ORS 279B.060(3)(d), (e) and (8) authorize the City to use methods of Contractor selection that include, but are not limited to multi-tiered or multi-step processes that embrace:
  1. The evaluation of Proposals only, including the evaluations of serial Proposals (a series of more than one Proposal from each Proposer that remains eligible in the competition at the particular tier of the competition;
  2. The use of Proposals in connection with discussions with Proposers that lead to best and final Offers;
  3. The use of Proposals in connection with serial negotiations with Proposers that lead to best and final Offers or to the Award of a Contract.
  4. The use of Proposals in connection with competitive negotiations with Proposers that lead to best and final Offers or to the Award of a Contract; and
  5. The use of Proposals in multi-tiered competition designed to identify, at each stage of the competition, a class of Proposers that fall within a Competitive Range of Proposers that have a reasonable chance of being determined the most Advantageous Proposer or, in multiple-award situations, a reasonable chance of being determined an awardee of a Public

**TITLE 5**  
**REVENUE AND FINANCE**

Contract. Multi-tiered and multistep competitions may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bear on the selection of a Contractor or Contractors. In multi-tiered and multi-step competitions, the City may use these means of soliciting information from prospective Proposers in any sequence or order, as determined in the discretion of the City.

- C. When the City's Request for Proposals prescribes a multi-tiered or multi-step Contractor selection process, the City nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposers (or, in multiple-award situations, on determining the awardees of the public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The City also may, at any time, cancel the Procurement pursuant to ORS 279B.100 and these Rules.
- 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 Section 5.33.720.
- E. Award Protest. A City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Section 5.33.740. An Affected Offeror may protest, for any of the bases set forth in Section 5.33.720, its exclusion from the Competitive Range or any phase of a multi-tiered from any stage of multi-tiered or multi-step sealed Proposal process, or may protest an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.
- F. Competitive Range. When the City's Solicitation process conducted pursuant to Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, the City may do so as follows:
  - 1. Determining Competitive Range.
    - a. The City may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the City may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the City determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the City need

**TITLE 5**  
**REVENUE AND FINANCE**

not determine or rank Proposers in the Competitive Range. In addition, the City may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

- b.** The City may establish the number of Proposers in the Competitive Range in light of whether the City's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive, or have a reasonable chance of being determined 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 Section 5.33.720.

**G.** Discussions.

- 1.** The City may initiate oral or Written discussions with all "eligible Proposers" on the subject matter within the general scope of the Request for Proposals.
  - a.** In conducting discussions, the City:
    - (1)** Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
    - (2)** May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);
    - (3)** May adjust the evaluation of a Proposal as a result of a discussion under this section discussions. 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:
    - (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 to the then-eligible Proposers, notice pursuant to Subsection 5.33.211 J. requesting best and final Offers.

**H.** Negotiations.

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

- a. The City may negotiate:

- (1) The statement of work;
    - (2) The Contract Price as it is affected by negotiating the statement of work other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and
    - (3) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and the City shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals.

**I.** Terminating Negotiations. At any time during discussions or negotiations that the City conducts under this rule the City may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible 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 an eligible Proposer, the City may then commence negotiations with the next highest scoring eligible Proposer in the Competitive Range, and continue the sequential process described in Subsection 5.33.211 H. until the City has either:

**TITLE 5**  
**REVENUE AND FINANCE**

- a. Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
        - b. Decided to cancel the Procurement pursuant to ORS 279B.100.
  - 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 must be reduced to Writing by the Proposer.
- J.** 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. If the City is dissatisfied with the best and final Offers 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. The City shall inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offers. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct the evaluations as described in Section 5.33.610. The City may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.
- K.** Multi-step Sealed Proposals. The City may procure Goods and Services by using multi-step Competitive Sealed Proposals pursuant to ORS 279B.060 (8)(b)(g).

The use of multi-step Proposals is a phased process that seeks necessary information, or un-priced technical Proposals, in phase one and in the second phase, invites Proposers who submitted technically qualified Proposals, to submit competitive sealed price Proposals on the technical Proposals. The City must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

**TITLE 5**  
**REVENUE AND FINANCE**

1. Public Notice. Whenever the City uses multi-step sealed Proposals, the City shall give public notice for phase one in accordance with 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 Section 5.33.720.
2. Procedure for Phase One of Multi-Step Sealed Proposals. The City must initiate a multi-step sealed Proposals procurement by issuing 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 Section 5.33.210, the multi-step Request for Proposal must state:
  - a. that un-priced technical Proposals are requested;
  - b. that the Solicitation is a multi-step sealed Proposal Procurement, and that, in the second phase, priced Proposals will be accepted only from those Proposers whose un-priced technical Proposals are found qualified in phase one;
  - c. the criteria for the evaluation of un-priced technical Proposals; and
  - d. 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.
3. Addenda to the Request for Proposals. 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.
4. Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
5. 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 Proposals.
6. 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.

**TITLE 5**  
**REVENUE AND FINANCE**

7. 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 this rule Section 5.33.211.
8. Procedure for Phase Two. On the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.
  - a. Phase two shall be conducted as any other competitive sealed Procurement except as set forth in this rule.

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

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

**5.33.217 Multi-Step Sealed Proposals.**

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

**5.33.220 Special Procurements.**

(Amended by Ordinance Nos. 181547, 183445, 184403, 184404, 185065, 185898 and 187373, effective October 14, 2015.)

- 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 Section 5.33.220 the following definitions are applicable:
  1. “Class Special Procurement” means a contracting procedure that differs from the procedures described in 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 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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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 excepted 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 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 the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s).
  - 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, workbooks, periodicals, subscriptions, 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. The City may pay fees associated with such transactions, including, but not limited to, registrar, paying agent, and escrow agent fees and fees associated with outstanding debt issues.
  - 5.** Employee Benefit Contracts: Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to 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 available to provide the Work and the consultant is authorized to solicit

## **TITLE 5**

### **REVENUE AND FINANCE**

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, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to 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 Procurement Services together with a requisition authorizing the Contract.
  - c. 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

## TITLE 5

# REVENUE AND FINANCE

- 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 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 and has the approval of the Chief Procurement Officer prior to negotiation.
  - 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-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

## **TITLE 5**

### **REVENUE AND FINANCE**

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, 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 Section 5.33.350.

**TITLE 5**  
**REVENUE AND FINANCE**

12. Software and Hardware Maintenance, Licenses, Subscriptions and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance, licenses, subscriptions and upgrades without Competitive Solicitation where the maintenance, upgrades, subscriptions and licenses 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, license(s), subscriptions 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.
14. Price-regulated goods and services, utilities and utility related services. The City may directly purchase, without a competitive solicitation process, utility services, repair, equipment and/or maintenance work, where the rate or price for such goods and services is established by federal, state, or local regulatory authority or when the services can be provided only by a specific utility.
15. Goods, Services or Equipment Required by a Federal Grant Agreements. The City may directly purchase, without a competitive solicitation process, goods, services or equipment when they are required to be purchased from a specific source or when a specific brand name is required and no competition is otherwise available.
16. Membership Dues. The City may directly purchase, without a competitive solicitation process, dues or memberships in professional or community organizations for the benefit of the City.
17. US Postal Service. The City may directly purchase without a competitive solicitation process, permits and postage meters, pre-stamped postcards, establish on-going postage accounts, etc. from the US Postal Service.
18. Services related to Legal Advice. The City may directly purchase, without a competitive solicitation process, services related to the provision of legal advice to the City:

**TITLE 5**  
**REVENUE AND FINANCE**

- a. When a contractor, such as a court reporter or copy service, has been selected by another person and the City must bear a portion of the cost in order to receive the benefit of the contractor's work, such as deposition transcripts or photocopies; or
        - b. When the contractor, including, but not limited to a mediator, arbitrator, referee or court appointed individual, is selected either by a court, or by joint agreement between the City and another person or persons, in an effort to resolve a claim or dispute that has been or will be asserted by or against the City, regardless of whether litigation has been filed.
  - 19. Seminar, Training Registration and Conference Fees. The City may directly purchase, without a competitive solicitation process, seminar registrations and training session fees for attendance at seminars, conferences and training courses hosted by outside entities.
  - 20. Event Sponsorship Agreements. The City may directly pay to sponsor an event, whether or not the City receives goods or services in return for its payment.
  - 21. Stormwater Improvements. The City may enter into a Contract for stormwater improvements or watershed restoration, or both, without obtaining competitive solicitations if all or a significant portion of the improvements or restoration that the City is funding will be performed
    - a. on private property; and
    - b. by the property owner or a contractor hired by the property owner.
  - 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 Subsection 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 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.**

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

**TITLE 5**  
**REVENUE AND FINANCE**

- A.** Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with Subsection 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 279B.055(4)(a) and (b) and 279B.060(5); 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 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 Subsection 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 Subsection 5.33.300 B. and Closing be less than seven (7) Days as set forth in Section 5.33.200. The City shall document the specific reasons for the shorter public notice period in the Procurement file;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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 Section 5.33.430.

**5.33.310 Specifications and Brand Names.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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.”
- D.** A “brand name” Specification may be used requiring a Contractor to provide a specific brand only if the Chief Procurement Officer, or designee, makes a Written



**TITLE 5**  
**REVENUE AND FINANCE**

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 Section 5.33.730.

**5.33.320 Bids or Proposals are Offers.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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 Section 5.33.211 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 Section 5.33.215, the Proposal 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.

**5.33.330 Facsimile Bids and Proposals.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

## **TITLE 5**

### **REVENUE AND FINANCE**

- A.** City Authorization. The 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;
    - 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 Chief Procurement Officer will not authorize Electronic Offers unless the City has another method for receipt of such security.
- 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 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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 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 Subsection 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 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 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. 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.** Offer Security, not to exceed 10 percent of the Offer, is not required for Contracts other than Public Improvement Contracts unless the 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 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 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

**TITLE 5**  
**REVENUE AND FINANCE**

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

**5.33.420 Pre-Offer Conferences.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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 Section 5.33.300.

**5.33.430     Addenda to Solicitation Document.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 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 Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the 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 Subsection 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



**TITLE 5**  
**REVENUE AND FINANCE**

sealed Proposal issued in accordance with Sections 5.33.205 and 5.33.210 through 5.33.211 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 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 multi-step Procurement process conducted pursuant to Sections 5.33.200 or 5.33.210.

**5.33.440 Request for Clarification or Change.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 Subsection 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 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.33.211 H.
- 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 Addendum.

**5.33.450 Offeror Submission.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 Section 5.33.480 and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided

by 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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
  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 Procurement Services if no location is specified, and received by the specific location or to 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 Subsection 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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. Receipt. 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 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 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 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 Section 5.33.650.

**5.33.480 Late Offers, Late Withdrawals and Late Modifications.**  
(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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, 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.

**5.33.490 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.
- 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,

**TITLE 5**  
**REVENUE AND FINANCE**

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.
  - 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.**

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, the City shall consider whether the Offeror has:

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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 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 subcontract 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 non-Responsible under this Paragraph;
4. Qualified legally to Contract with the City. Procurement Services may determine that such an Offeror is not legally qualified if:
  - a. The Offeror does not have a business license tax account 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 Revenue Division of the Bureau of Revenue and Financial



## TITLE 5

# REVENUE AND FINANCE

Services 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; or

- c. The Offeror failed to submit a signed affidavit that attests, under penalty of perjury, that the Offeror has complied with the tax laws of the State of Oregon and the City of Portland.
  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 non-Responsible;
  6. Not been debarred by the City under ORS 279B.130, Sections 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 Chief Procurement Officer shall give public notice in accordance with 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 Chief Procurement Officer may also solicit in Writing representative groups of potential Contractors, sellers or suppliers to submit goods for the testing and examination.

**TITLE 5**  
**REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. The City may Prequalify prospective Offerors as follows:
  1. The 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 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 Chief Procurement Officer shall notify prospective Offerors whether or not they have been prequalified. If a prospective Offeror is not prequalified, the Chief Procurement Officer shall specify which of the standards of responsibility listed in Section 5.33.500 the prospective Offeror failed to meet.
- B. If the City determines that a prequalified Offeror is no longer qualified the 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 Subsection 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.

**5.33.530 Debarment of Prospective Offerors.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- 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:

## **TITLE 5**

### **REVENUE AND FINANCE**

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 Section 5.33.760; and
  2. Mail or immediately furnish a copy of the decision to the debarred Offeror.
- 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 Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.**

(Replaced by Ordinance No. 187974, effective September 7, 2016.)

- A. If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer certified, the City may:
  1. Terminate the contract;
  2. Require the contractor to terminate the subcontract; or
  3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B. Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C. The City may investigate complaints alleging one or more of the following violations of ORS 200.065:

**TITLE 5**  
**REVENUE AND FINANCE**

1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
  2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
  3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
  4. Aiding another person to attempt to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
  5. Knowingly making a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of gaining a contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withholding payment;
  2. Suspending or terminating a public contract;
  3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
  4. Disqualifying for up to 3 years from submitting a bid or proposal for, or receiving an award of, a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years;

**TITLE 5**  
**REVENUE AND FINANCE**

1. Who under oath during the course of an investigation admits to violating ORS 200.065(1) or (2); or
  2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply material under a public improvement contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
  2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
  3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise does not perform a Commercially Useful Function in carrying out its responsibilities and obligations under the public contract.
  4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be one year for a first violation, 3 years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.

**TITLE 5**  
**REVENUE AND FINANCE**

- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
- 1.** That the City intends to sanction;
  - 2.** The effective date and period of the sanction, if applicable;
  - 3.** The reason(s) for the sanction; and
  - 4.** That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J.** The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

**5.33.610 Offer Evaluation and Award.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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,

## **TITLE 5**

### **REVENUE AND FINANCE**

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:

  - 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 Sections 5.33.625 through 5.33.635.
  - 2. Low, Tied Offers. Low, tied Offers shall be resolved pursuant to Section 5.33.625.



**TITLE 5**  
**REVENUE AND FINANCE**

- J.** Evaluation of Proposals. The City shall evaluate Proposals as set forth in 279B.060(6) and Section 5.33.210 and in the event of low, tied Proposals, in accordance with 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 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.**

(Amended by Ordinance Nos. 185065 and 185898, effective February 20, 2013.)

- A.** Award When Offers Identical. Under ORS 279A.120, 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, are manufactured, produced or to be performed in Oregon.
  - 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 are manufactured, produced or to be performed 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 are manufactured, produced or to be performed 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:

## **TITLE 5**

### **REVENUE AND FINANCE**

1. Bids received in response to an Invitation to Bid issued under 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 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 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. In applying Subsection 5.33.625 A., the City shall determine whether a Contract is predominantly for Goods or Services are manufactured, produced or performed 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.
- E.** Discretionary Preference and Award. Under ORS 279A.128, the City may provide, in a Solicitation Document for Goods or Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services performed entirely in Oregon. When the City provides for a preference under this Section, and more than one Offeror qualifies for the preference, the City may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The City may establish a preference percentage higher than ten percent if the Chief Procurement Officer makes a written determination

that good cause exists to establish the higher percentage and explains the City's reasons and evidence of good cause. The City may not apply the preferences described in this Paragraph in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 279C.320.

**5.33.630 Reciprocal Preferences.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- A.** When evaluating Bids pursuant to 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 Subsection 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;
  - 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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.
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:

**TITLE 5**  
**REVENUE AND FINANCE**

- 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;
  - 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 Subsection 5.33.640 D.; or
  - f.** Is not a Responsible contractor pursuant to Section 5.33.500 and state law.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.33.075 B.3.

**5.33.645 Rejection of All Offers.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** Applicability: This section applies to Awards of a Contract, except for small Procurements pursuant to Section 5.33.180, intermediate Procurements pursuant to Section 5.33.190, sole source Procurements pursuant to Section 5.33.120,

**TITLE 5**  
**REVENUE AND FINANCE**

Emergency Procurements pursuant to Section 5.33.130 or a Special Procurement pursuant to 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.
- 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 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

**TITLE 5**  
**REVENUE AND FINANCE**

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.**

(Amended by Ordinance No. 184403, effective February 2, 2011.)

- 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 Solicitation file.

**5.33.675 Documentation of Award.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 Section 5.33.211, 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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 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 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.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Public Contracts. The 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 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.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- 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 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 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.33.700 B.2. and the reasons for that failure;
  3. If the protest was timely filed and provides the information required by Subsection 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time 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 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 Subsection 5.33.700 C., the 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 Chief Procurement Officer.

**5.33.710 Protests and Judicial Review of Sole-Source Procurements.**  
(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 Chief Procurement Officer's Determination shall be provided to the Chief Procurement Officer within seven (7) Days whenever the City posts a notice that it will make a sole source purchase. The 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 Subsection 5.33.710 B.2. and the reasons for that failure;
  - 3.** If the protest was timely filed and provides the information required by Subsection 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time 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 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 Subsection 5.33.710 C., the 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.**

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- A.** Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to 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 Section 5.33.740 if they meet the requirements of Subsection 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.
- 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

3. In the case of a competitive request for proposal, the exercise of judgment used by the Evaluation Committee members in scoring written proposals and oral interviews, including the use of outside expertise, if that judgment was biased or not exercised in good faith. The unbiased, good faith judgment of Evaluation is not grounds for protest. The unbiased, good faith judgment of Evaluation Committee members will not be a basis for sustaining a protest.

#### **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 Subsection 5.33.720 D.2. and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.33.720 D.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

**TITLE 5**  
**REVENUE AND FINANCE**

4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the 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 Subsection 5.33.720 E., the 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.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Procurement process or the Solicitation Document for Offers solicited pursuant to Competitive Sealed Bidding pursuant to Section 5.33.200, Competitive Sealed Proposals pursuant to Section 5.33.210, a Special Procurement, or a Class Special Procurement pursuant to Section 5.33.220. 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 Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised. The 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

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 Subsection 5.33.730 B.2. and the reasons for that failure;
  3. If the protest was timely filed and provides the information required by Subsection 5.33.730 B.2. above, the 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 Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the 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 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 Subsection 5.33.730 C. above, the 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;



**TITLE 5**  
**REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Award of a Contract, or the intent to Award a Contract resulting from a Competitive Sealed Bid or Competitive Sealed Proposal, 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;
    - 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 Chief Procurement Officer's Award shall be provided to the 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 Chief Procurement Officer shall not

## **TITLE 5**

### **REVENUE AND FINANCE**

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 Subsections 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;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.33.740 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by Subsection 5.33.740 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
- 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the 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 Subsection 5.33.740 C. above, the 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.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.) 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:

- 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 Chief Procurement Officer's Award shall be provided to the Chief Procurement Officer no later than ten (10) Days

## **TITLE 5**

### **REVENUE AND FINANCE**

after the date on which the alleged violation occurred and in no event later than ten (10) Days after the date of the execution of the Contract. The 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;
  - 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 Subsection 5.33.750 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by Subsection 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable period of time 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 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 Subsection 5.33.750 C., the Chief Procurement Officer may do any of the following:

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

**TITLE 5**  
**REVENUE AND FINANCE**

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'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.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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 Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the 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 Chief Procurement Officer. The Chief Procurement Officer may subdelegate the authority to conduct a hearing to any person the Chief Procurement Officer deems appropriate, including the Board of Appeals.

**5.33.770 Procurement Board of Appeals.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 Procurement Board of Appeals for the purposes described above.
- C. Jurisdiction of Board. The Procurement 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 Chief Procurement Officer.

**TITLE 5**  
**REVENUE AND FINANCE**

**D. Composition of Board.**

- 1.** The Procurement 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 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 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. Procurement Services shall provide staff and appropriate assistance for the Board.

**5.33.780 Powers of the Board.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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 Chief Procurement Officer.
- C.** The Board shall not consider the appeal of any Affected Person who did not file a timely appeal.

**TITLE 5**  
**REVENUE AND FINANCE**

- D.** The Board shall hear appeals based on administrative rules of procedure established by the 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.

**5.33.790 Appeal to Board.**

(Amended by Ordinance Nos.183445 and 185898, effective February 20, 2013.)

- A.** Time. Any request for hearing by the Board shall be received by the Chief Procurement Officer no more than seven (7) Days from the date of the Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by the Procurement 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 Chief Procurement Officer and the Procurement Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The 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 Chief Procurement Officer. If not permitted by the Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the 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 Procurement Services, Attn: 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 Chapter 3.02 shall be the rules for any hearing on appeal.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 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 Social Equity Contracting and Employment Programs.**

(Amended by Ordinance No. 185898, effective February 20, 2013.) 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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.
- 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



**TITLE 5**  
**REVENUE AND FINANCE**

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 Subsection 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.
- 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:

**TITLE 5**  
**REVENUE AND FINANCE**

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;
  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.**  
(Amended by Ordinance No. 185898, effective February 20, 2013.)

**TITLE 5**  
**REVENUE AND FINANCE**

- 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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. 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
    - b.** If the Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor; or
    - c.** 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.

**TITLE 5**  
**REVENUE AND FINANCE**

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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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.

**CHAPTER 5.34 - PUBLIC IMPROVEMENTS  
AND CONSTRUCTION SERVICES**

(Chapter replaced by Ordinance No. 180350,  
effective August 25, 2006.)

**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 Selection and Contractor Selection.
5.34.110	Emergency Contracts; Bidding and Bonding 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	Intermediate Procurements; 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.
5.34.535	Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.
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 Preference; Resident Bidders.
5.34.630	Reciprocal Preferences.

## **TITLE 5**

### **REVENUE AND FINANCE**

5.34.640	Negotiation When Bids Exceed Cost Estimate.
5.34.645	Rejection of Offers.
5.34.650	Notice of Intent to Award.
5.34.660	Cancellation, Delay or Suspension of Solicitation.
5.34.670	Disposition of Offers if Solicitation Canceled.
5.34.675	Documentation of Award.
5.34.680	Time for City Acceptance; Extension.
5.34.685	Availability of Award Decisions.
5.34.690	Performance and Payment Security; Waiver.
5.34.695	Notification to State of Nonresident Contractor.
5.34.700	Protests and Judicial Review of Individual and Class Exemptions.
5.34.710	Protests and Judicial Review of Multi-Tiered Solicitations.
5.34.720	Protests and Judicial Review of Solicitation Documents and the Solicitation Processes other than Multi-Tier Processes.
5.34.725	Administrative Reconsideration as a Result of Rejection for Failure to Meet DBE Requirements.
5.34.730	Protest of Contractor Selection, Contract Award.
5.34.740	Protests of Other Violations.
5.34.750	Review of Prequalification and Disqualification Decisions.
5.34.760	Procurement Board of Appeals.
5.34.770	Powers of the Board.
5.34.780	Appeal to Board.
5.34.800	Purpose.
5.34.810	Definitions for Alternative Contracting Methods.
5.34.820	Use of Alternative Contracting Methods.
5.34.830	Findings, Notice and Hearing.
5.34.840	Competitive Proposals; General Procedures.
5.34.845	Requests for Qualifications (RFQ)
5.34.850	Requests for Proposals (RFP).
5.34.860	RFP Pricing Mechanisms.
5.34.870	Design-Build Contracts.
5.34.880	Energy Savings Performance Contracts (ESPC).
5.34.890	Construction Manager/General Contractor Services (CM/GC Services).
5.34.900	Required Contract Clauses.
5.34.910	Waiver of Delay Damages Against Public Policy.
5.34.915	BOLI Public Works Bond.
5.34.920	Retainage.
5.34.930	Social Equity Contracting and Employment Programs.
5.34.940	Public Works Contracts.
5.34.950	City Payment for Unpaid Labor or Supplies.
5.34.960	Records Maintenance; Right to Audit Records.
5.34.970	Right to Inspect Plant or Place of Business.
5.34.980	Contract Cancellation, Contractor Termination Procedures.



**5.34.010 Definitions.**

(Amended by Ordinance Nos. 185898, 187373 and 187974, effective September 7, 2016.)

- A. The definitions contained in Sections 5.33.010 and 5.33.140 are applicable to Chapter 5.34.
1. **“Change Order”** means a written agreement between the City and Contractor that alters the specifications of the Contract.
  2. **“Conduct Disqualification”** means a Disqualification pursuant to ORS 279C.440.
  3. **“Disqualification”** means the preclusion, suspending or sanctioning of a Person from contracting with the City for a period of time in accordance with Section 5.34.530 or Section 5.34.535. Disqualification may be a Conduct Disqualification, DBE Disqualification or MWESB Disqualification.
  4. **“Foreign Contractor”** means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
  5. **“Notice”** means any of the alternative forms of public announcement of Procurements, as described in Section 5.34.310.
  6. **“Work”** means all services, 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.**

(Amended by Ordinance Nos. 181547, 183445, 185898, 187373 and 187974, effective September 7, 2016.)

- 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 Chapter 5.33 and ORS 279B.080.
- B. Contracts for minor alteration, ordinary repair or maintenance of public improvements or Price Agreements, as well as other Contracts for construction services that are not defined as a public improvement under Section 5.33.010 shall be Awarded and executed pursuant to Chapter 5.33 and ORS 279B and not this

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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 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 Section 5.33.070 regarding the purchase of Goods and Services from City employees shall also apply to Public Improvements covered by Chapter 5.34.

#### **5.34.040 Affirmative Action.**

(Amended by Ordinance Nos. 184403, 185065 and 187974, effective September 7, 2016.)

- A.** Pursuant to ORS 279A.100, the City may limit competition on Contracts 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 (OECD); or
    - c.** Owned or controlled by a disabled veteran, as defined in ORS 408.225.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 sanction a Person from consideration of Award of the City's Contracts under ORS 200.065 or ORS 200.075 in accordance with Section 5.34.535 and these rules.

**5.34.060 Contracts for Construction Other than Public Improvements.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.) 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 Chapter 5.34.

**5.34.100 Overview of Source Selection and Contractor Selection.**

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.) 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;

**TITLE 5**  
**REVENUE AND FINANCE**

- D.** Competitive Quotations;
- E.** Competitive Bidding; and
- F.** Alternative Contracting Methods found in Section 5.34.800 et seq. Class exemptions are located in Subsection 5.34.830 H. while individual Contracts must be authorized by the City Council by ordinance.

**5.34.110 Emergency Contracts; Bidding and Bonding Exemptions.**

(Amended by Ordinance Nos. 181547, 183445 and 184403, effective February 2, 2011.)

- 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 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.
- 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 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 Chief Procurement Officer or Person to whom the powers of the 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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.

  - a.** 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.
  - 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.
- E.** Any Contract Awarded under this section shall be Awarded within 60 Days, unless the City Council authorizes a longer period of time.
- F.** All documentation of Emergency Contracts shall be sent to the 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.** After the Award of an Emergency Contract, the City shall execute a Written Contract with the Contractor as soon as possible.
- I.** 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.
- J.** 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

- K.** 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 Chapter 5.34.
- B.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in ORS 279C and 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 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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Chapter 5.34.
- D. Protests. Protests regarding the use of all types of cooperative Procurements shall be governed by the applicable provisions of Section 5.34.700 et seq.

**5.34.140 General Rules for Joint Cooperative Procurements; Fees.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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 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.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.) 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 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 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 Section 5.34.160;

## **TITLE 5**

### **REVENUE AND FINANCE**

- E.** Public improvement contracts Awarded as Emergency Contracts;
- F.** Energy Savings performance contracts entered into in accordance with Chapter 5.34;
- G.** Contracts where federal law overrides this Chapter;
- H.** Contracts governed by ORS 279A.100 and Section 5.34.040 regarding affirmative action, and contracts identified in the Prime Contractor Development Program;
- 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 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.**

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- A.** Public Improvement Contracts estimated by the City not to exceed \$100,000, 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.
  - 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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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.** 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 Subsection 5.34.020 C.3.

**5.34.300 Solicitation Documents; Required Provisions; Assignment or Transfer.**

(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- 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 Section 5.34.330 regarding Facsimile Bids or Proposals and Section 5.34.340 regarding Electronic Procurement);
  - 6.** The time, date and place of Opening;

**TITLE 5**  
**REVENUE AND FINANCE**

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 Section 5.34.493. For timing issues relating to Addenda, see 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 Subsection 5.33.010 A.55.;
  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";
  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 Section 5.34.040;
  14. How the City will notify Offerors of Addenda and how the City will make Addenda available (see Section 5.34.430); and
  15. When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in 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:

**TITLE 5**  
**REVENUE AND FINANCE**

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 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));

**TITLE 5**  
**REVENUE AND FINANCE**

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;
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);

**TITLE 5**  
**REVENUE AND FINANCE**

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(5) will be registered with the Construction Contractors Board. or licensed by the State Landscape Contractors Board in accordance with the Construction Contractor's Licensing Act 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.**

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- A.** The City shall furnish "Notice" as set forth in Subsections 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

**TITLE 5**  
**REVENUE AND FINANCE**

**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 Section 5.34.820.

**1.** Unless the City publishes by Electronic Advertisement as permitted by Subsection 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:

**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 Subsection 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;

**TITLE 5**  
**REVENUE AND FINANCE**

- (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;
  - (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 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.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- 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”.

**TITLE 5**  
**REVENUE AND FINANCE**

- D.** A “brand name” Specification may be used requiring a Contractor to provide a specific brand when the 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
  - 4.** Efficient utilization of existing equipment, or supplies requires the acquisition of compatible equipment or supplies
- E.** The City's use of a brand name specification is subject to protest and review only as provided in Section 5.34.720.

**5.34.330 Facsimile Bids and Proposals.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- A.** Authorization. The Chief Procurement Officer may authorize Offerors to submit Facsimile Offers. If the 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.



**TITLE 5**  
**REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. General. 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, except in circumstances where the Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective.
- 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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;
  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.

**TITLE 5**  
**REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- A. **Security Amount.** If The City requires Bid or Proposal Security, it shall be not more than 10 percent 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(5) and ORS 279C.385. See also, Section 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 \$150,000. The 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 Chief Procurement Officer believes it necessary to secure payment and performance. The 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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

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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 Section 5.34.300.

#### **5.34.430 Addenda to Solicitation Documents.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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, 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 Chief Procurement Officer determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the 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 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 Section 5.34.850.

**5.34.440 Request for Clarification or Change.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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

## **TITLE 5**

### **REVENUE AND FINANCE**

regard to Addenda shall be submitted in accordance within the time permitted by Subsection 5.34.430 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 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 Subsections 5.34.840 E. and 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.**

(Amended by Ordinance Nos. 181547 and 185898, effective February 20, 2013.)

- 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

**TITLE 5**  
**REVENUE AND FINANCE**

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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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 Section 5.34.470 shall apply except the submission shall be returned to the sender.

**5.34.470 Receipt, Opening and Recording of Offers.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

**A. Receipt.** Each Offer, and modifications to Offers, shall, upon receipt, be Electronically or mechanically time-stamped by 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 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 Sections 5.34.490 (Mistakes) or 5.33.610 (Offer Evaluation and Award).
- B. For manual submissions of Offers, 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.
- 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;

## **TITLE 5**

### **REVENUE AND FINANCE**

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.
    - 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.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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:

  - 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 (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:

    - a.** 5 percent of the project Bid, but at least \$15,000; or

**TITLE 5**  
**REVENUE AND FINANCE**

**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:

- (1)** The Subcontractor's name,
- (2)** The category of Work that the Subcontractor would be performing, and
- (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.**

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

**TITLE 5**  
**REVENUE AND FINANCE**

- 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. 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 non-Responsible under this Paragraph;
  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 non-Responsible under this Paragraph;
  4. Is legally qualified to Contract with the City, including, but not limited to, an EEO Certification and a current, valid, business license from the City. 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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Revenue Bureau 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 non-Responsible;
  6. Not been disqualified by the City pursuant to ORS 279C.440 and 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.**

(Amended by Ordinance Nos. 183445, 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A.** The City of Portland requires prequalification of all prime construction contractors on public improvement contracts with an estimated value of \$250,000 or greater, per ORS 279C.430(1) which allows public agencies the option to adopt their own rules for mandatory prequalification of contractors desiring to bid for public improvement contracts let by that agency. The Chief Procurement Officer has the authority to require Prequalification for public improvement contracts \$250,000 or less. The City shall not consider a Bid from a Bidder that is not prequalified, if the City required Prequalification.
- B.** Prequalification Application Forms. Contractors seeking to prequalify shall submit a City of Portland Prequalification application to Procurement Services. Within 30 days after receipt of a fully completed prequalification application, the City will evaluate the application as necessary to determine if the contractor is qualified in the classes of work requested. The determination shall be made in less than 30 days, if practicable, if the contractor requests an early decision to allow the contractor as much time as possible to prepare a bid on a contract that has been advertised.
- C.** Standards for Prequalification. To qualify, a Bidder must demonstrate to the City's satisfaction, that they are a Responsible Bidder based on criteria set forth in ORS 279C.375 (3)(b) and Section 5.34.500. If the City determines the Bidder is qualified, notification shall be sent stating the Bidder's qualified bidding limits, classes of work and the validity period of the Bidder's prequalification.



**TITLE 5**  
**REVENUE AND FINANCE**

- D.** Special Prequalification. A separate special Prequalification may be required for a specific project, as contained in the Solicitation Document, 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 is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder shall be rebuttably presumed qualified to perform the same Work for the City upon submission of proof of such Prequalification. If a Bidder submits proof of Prequalification, then the Bidder is rebuttably presumed qualified under ORS 279C.435. 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.** Scope of Prequalification. The Chief Procurement Officer shall determine whether the applicant for Prequalification shall be considered Prequalified for City Bids, and the extent of Prequalification if approved or impose any other restrictions which the Chief Procurement finds appropriate under the circumstances. Thereafter, if the Bidder has Prequalified, Bids may be received from the Bidder only within the limitations and restrictions imposed by the Prequalification decision.
- 1.** Unless otherwise specified by the Chief Procurement Officer, any Bidder whose application for Prequalification has been wholly disapproved may resubmit an application for a Prequalification no sooner than three months after the Chief Procurement Officer's notice of disapproval. A Bidder, 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 submits new information to support its re-application.
  - 2.** With or without a request from the Prequalified Bidder, the Prequalification standing and any limitation on class of Work or size of project may be reviewed further by the Chief Procurement Officer and broadened or restricted as determined by the Chief Procurement Officer to be appropriate.
- G.** Notice. If the City determines a Bidder's Prequalification is not approved in whole or in part, or is restricted or revoked, the City shall notify the Bidder, specify the reasons found under ORS 279C.375(3)(b) and Section 5.34.500, and inform the Bidder of the right to a hearing before the Chief Procurement Officer, per ORS

## **TITLE 5**

### **REVENUE AND FINANCE**

279C.450. The Chief Procurement Officer may exercise the powers of the City Council for this purpose., or may refer this matter to the Board of Appeals, per Subsection 5.34.750 C.

- H.** If the City has reasonable cause to believe there has been a substantial change in the conditions of a prequalified Bidder and that the Bidder is no longer qualified or is less qualified, the City may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified contractor, per ORS 279C.430(4). The notice shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequalification of the Bidder and inform the Bidder of the right to a hearing under ORS 279C.450.
- I.** Appeal. The 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 or a date mutually agreed upon by both parties.
- J.** Clarification. A Bidder may seek clarification of a Prequalification decision by Written request received by the Chief Procurement Officer no later than 10 Days following issuance of a determination by the 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.**

(Amended by Ordinance Nos. 183445, 185898 and 187974, effective September 7, 2016.)

- 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:

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.34.530 A.1.d. may include but is not limited to 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. 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 the 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 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

**TITLE 5**  
**REVENUE AND FINANCE**

7. State that the Person may be represented by legal counsel.
- C. Hearing. The Chief Procurement Officer shall schedule a hearing upon the receipt of the Person's timely request. The 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 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 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.

**5.34.535 Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.**

(Added by Ordinance No. 187974, effective September 7, 2016.)

- A. If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer certified, the City may:
  1. Terminate the contract;
  2. Require the contractor to terminate the subcontract; or
  3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B. Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 or 5.34.535 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C. The City may investigate complaints alleging one or more of the following violations of ORS 200.065:

**TITLE 5**  
**REVENUE AND FINANCE**

1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
  2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
  3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
  4. Knowingly make a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of obtaining a public contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions, and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withhold payment;
  2. Suspend or terminate a public contract;
  3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
  4. Disqualify for up to 3 years from submitting a bid or proposal for, or receiving an award of a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years:
1. Who under oath during the course of an investigation admits to violating ORS 200.065 (1) or (2); or

## **TITLE 5**

### **REVENUE AND FINANCE**

2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
  2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
  3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise does not perform a Commercially Useful Function in carrying out responsibilities and obligations under the public contract.
  4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract or subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be 1 year for a first violation, three years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540 or 5.34.535, the City shall provide written notice to the person of a

proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:

1. That the City intends to sanction;
  2. The effective date and period of the sanction, if applicable;
  3. The reason(s) for the sanction; and
  4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J.** The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.

**5.34.600 Bid or Proposal Evaluation Criteria.**

(Amended by Ordinance No. 187373, effective October 14, 2015.)

- 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), and has directed the use of an Alternative Contracting Method under ORS

## **TITLE 5**

### **REVENUE AND FINANCE**

279C.335(3) and ORS 279C.337, evaluation criteria shall be set forth in the Solicitation Documents.

#### **5.34.610 Offer Evaluation and Award; Determination of Responsibility.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- 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



**TITLE 5**  
**REVENUE AND FINANCE**

successor Person). The standards for Conduct Disqualification under 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 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 Revenue Division of the Bureau of Revenue and Financial Services 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;
    - b. Examination of such elements as appearance or finish; or

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A. Bids. Except as permitted by ORS 279C.340 and 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 Section 5.34.850.

#### **5.34.625 Contract Preferences; Resident Bidders.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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:

**TITLE 5**  
**REVENUE AND FINANCE**

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 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 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 Subsection 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 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.**

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A.** When evaluating Bids pursuant to 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
  - 1.** whether the Nonresident Bidder's state gives preference to in-state Bidders, and
  - 2.** 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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.
  - 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 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.
- 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.**  
(Amended by Ordinance Nos. 185065, 185898 and 187974, effective September 7, 2016.)
- A. **Rejection of an Offer.**

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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. An example of rejection in the public interest is the City's determination that any of the unit Bid prices are significantly unbalanced to the City's potential detriment.
- 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 Subcontractor Equity Program 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 or suspended;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 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 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 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;

**TITLE 5**  
**REVENUE AND FINANCE**

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 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.**

(Amended by Ordinance Nos. 181547, 183445 and 185898, effective February 20, 2013.)

- 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 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 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 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:



**TITLE 5**  
**REVENUE AND FINANCE**

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 Chief Procurement Officer determined that a shorter period of time was necessary pursuant to Subsection 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 Section 5.34.740 if the Chief Procurement Officer decides to permit an appeal.

**5.34.660 Cancellation, Delay or Suspension of Solicitation.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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.
- 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 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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 Subsection 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.
- 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.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187974, effective September 7, 2016.)

- 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 payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. Price Agreements with specific Work/Task Orders forming Contracts at a value under \$150,000 are exempted from performance and/or payment bonds. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$150,000. Notwithstanding any exemption, the Chief Procurement Officer may require a performance bond, or payment bond, or both, in the Chief Procurement Officer's sole discretion (see also, Section 5.34.915 regarding the separate public works bond).

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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;
  - 2.** The City shall inform the Affected Person if it failed to meet the requirements of Subsection 5.34.700 B.2. and the reasons for that failure;
  - 3.** If the protest was timely filed and provides the information required by Subsection 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 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 Subsection 5.34.700 C., the 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

**TITLE 5**  
**REVENUE AND FINANCE**

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 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 Chief Procurement Officer.

**5.34.710 Protests and Judicial Review of Multi-Tiered Solicitations.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A. An Affected Person may protest their exclusion from multi-tiered Solicitations. Protest of Contract terms and conditions, however, shall be made pursuant to 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 Subsection 5.34.710 C., pursuant to Section 5.34.730 [Protests of Contractor Selection, 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

**TITLE 5**  
**REVENUE AND FINANCE**

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;
  - 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 Subsection 5.34.710 D.2., and the reasons for that failure;
3. If the protest was timely filed and provides the information required by Subsection 5.34.710 D.2., the 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 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 Subsection 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;

**TITLE 5**  
**REVENUE AND FINANCE**

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 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 Chief Procurement Officer.

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

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 Section 5.34.700 and not this rule. The exclusive process of protesting a multi-tiered Solicitation process is pursuant to 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 Chief Procurement Officer within seven (7) Days after a Solicitation Document is advertised unless the Solicitation Document requires a shorter period of time. The 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:



**TITLE 5**  
**REVENUE AND FINANCE**

- 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;
- 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 Subsection 5.34.720 B.2. and the reasons for that failure;
- 3.** If the protest was timely filed and provides the information required by Subsection 5.34.720 B.2., the 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 Chief Procurement Officer that circumstances exist that require a shorter time limit.
- 4.** The Chief Procurement Officer's response shall inform the Affected Person if the decision is final or whether the 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 Chief Procurement Officer receives protest from an Affected Person in accordance with this rule, the 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 Subsection 5.34.720 C., the 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;

**TITLE 5**  
**REVENUE AND FINANCE**

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 Chief Procurement Officer.

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

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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 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 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 rejection regarding DBE requirements and shall file a protest with the 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.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)

- A.** An Affected Person may protest the Award or the intent to Award a Contract resulting from a Competitive Sealed Bid or Competitive Sealed Proposal, 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 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 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:

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.34.730 B.2, and the reasons for that failure;
  - 3.** If the protest was timely filed and provides the information required by Subsection 5.34.730 B.2., the Chief Procurement Officer shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
  - 4.** If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the 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 Subsection 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;
  - 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

**TITLE 5**  
**REVENUE AND FINANCE**

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 Chief Procurement Officer.

**5.34.740 Protests of Other Violations.**

(Amended by Ordinance Nos. 183445, 184403 and 185898, effective February 20, 2013.)  
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 Chapter 5.34.
- B. Method of Protest.
  1. Time: The 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;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 5.34.740 B.2. and the reasons for that failure;
  - 3. If the protest was timely filed and provides the information required by Subsection 5.34.740 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within a reasonable time of the receipt of the protest.
  - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the 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 Subsection 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;
  - 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 Chief Procurement Officer.

**5.34.750      Review of Prequalification and Disqualification Decisions.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- A.**     A Bidder who has received notification of a Prequalification denial, revocation or revision and wishes to appeal the decision 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 Chief Procurement Officer for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the 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 Chief Procurement Officer. The Chief Procurement Officer may subdelegate the authority to conduct a hearing to any Person(s) the Chief Procurement Officer deems appropriate, including the Board of Appeals.

**5.34.760      Procurement Board of Appeals.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)

- 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 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 Procurement Board of Appeals for the purposes described above.
- C.**     Jurisdiction of Board. The Procurement 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 Chief Procurement Officer.
- D.**     Composition of Board.
  - 1.**     The Procurement 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

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 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 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. Procurement Services shall provide staff and appropriate assistance for the Board.

#### **5.34.770 Powers of the Board.**

(Amended by Ordinance No. 183445, effective January 6, 2010.)

- 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 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 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.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.)



**TITLE 5**  
**REVENUE AND FINANCE**

- A.** Time. Any request for hearing by the Board shall be received by the Chief Procurement Officer no more than seven (7) Days from the date of the Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to Procurement Services, Attn: 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 Chief Procurement Officer and the Procurement Board of Appeals shall be stated as grounds for appeal.
- C.** Time of Hearing. The 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 Chief Procurement Officer. If not permitted by the Chief Procurement Officer, the Affected Person has exhausted its administrative appeals. Any request for further appeal shall be received by the 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 Procurement Services, Attn: 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 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.

## TITLE 5 REVENUE AND FINANCE

### **5.34.800 Purpose.**

(Amended by Ordinance Nos. 183445 and 185898, effective February 20, 2013.) 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 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, 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.**

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.) The following definitions shall apply to Sections 5.34.800 through 5.34.890, unless the context requires otherwise:

- A. Alternative Contracting Methods.** Innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method involved in the design-Bid-build with Award of a Public Improvement Contract 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 Section 5.34.880. These methods also include other developing techniques including, but not limited to, general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under Sections 5.34.800 through 5.34.890.
- B. Construction Manager/General Contractor (or "CM/GC").** A CM/GC Contractor means a person who provides Construction Manager/General Contractor services to the City under a Public Improvement Contract.
- C. Construction Manager/General Contractor Method (or "CM/GC Method")** means the Alternative Contracting Method which involves the City's section of a CM/GC to perform CM/GC Services for a project or projects.
- D. Construction Manager/General Contractor Services (or "CM/GC Services")** means construction-related services the City procures by means of an Alternative Contracting Method under ORS 279C.335 and the at:
  - 1.** Include a Construction Manager/General Contractor's:
    - a.** Functioning as a member of a project team that includes the City, the architect or engineer that designs the Public Improvement under

**TITLE 5**  
**REVENUE AND FINANCE**

a separate contract with the City and other contractors and consultants; and

- b.** Reviewing and analyzing a design for a Public Improvement in order to:
  - (1)** Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;
  - (2)** Recommend means by which the City may achieve the functions of the Public Improvement or a component of the Public Improvement safely, reliably, efficiently and at the lowest overall cost;
  - (3)** Improve the value and quality of the Public Improvement; and
  - (4)** Reduce the time necessary to complete the Public Improvement.

- 2.** May include, depending on the specific terms of the Public Improvement Contract and on whether the City decides to proceed with construction, a Construction Manager/General Contractor's:

- a.** Devising a schedule for constructing the Public improvement;
- b.** Estimating construction, materials, labor and other costs for the Public Improvement;
- c.** Establishing a fixed price, a Guaranteed Maximum Price or other maximum price;
- d.** Constructing portions of the Public improvement and subcontracting portions to other contractors;
- e.** Coordinating and overseeing the construction process; or
- f.** Performing other services related to constructing a Public Improvement in accordance with the terms of the Public Improvement Contract.

- E. 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 Contractor provides the

## TITLE 5

### REVENUE AND FINANCE

City with all of the Professional, Technical and Expert Services and Work necessary to both design and construct the project.

- F. Early Work.** Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of Bid or Proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.
- G. Guaranteed Maximum Price (or "GMP").** GMP means the total price at which the Construction Manager/General Contractor agrees to provide Construction Manager/General Contractor services to the City in accordance with the terms and conditions and scope of work for a specific Public Improvement Contract and within which are:
1. All costs the City agrees to reimburse and all fees the City agrees to pay for completing the Work; and
  2. Any contingent costs, fees, or other charges specifically identified in the Public Improvement Contract. For Alternative Contracting Methods other than the CM/GC method, "Guaranteed Maximum Price: ("GMP") means 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 and any particularly identified contingency amounts, as defined by the Public Improvement Contract.
- H. Project Development Plan.** A secondary phase of Personal Services and Work.
- I. Savings Pertaining to CM/GC (or "Savings").** CM/GC Savings means a positive difference between a fixed price, Guaranteed Maximum Price, or other maximum price set forth in the Contract and the actual cost of the Work, including costs for which the City reimburses a Construction Manager/General Contractor and fees or profits the Construction Manager/General Contractor earns. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual costs of the Contractor's performance of the Work payable by the City under the terms of the Contract, including costs for which the City reimburses the Contractor and fees, profits, or other payments the Contractor earns.

**5.34.820 Use of Alternative Contracting Methods.**

(Amended by Ordinance Nos. 183445, 185898 and 187373, effective October 14, 2015.)

- 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 from Competitive Bidding, or an individual Contract has been exempted from Competitive Bidding, in accordance with ORS 279C.335 and Section 5.34.830. Use of Alternative Contracting Methods may be directed by the City's 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. 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 when the City does not use Competitive Bidding. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method instead of Competitive Bidding. The evaluation must be delivered to City Council on behalf of the City's Chief Procurement Officer within 30 Days after the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. 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.**

(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- A.** The City Council may by ordinance exempt a Contract from the requirements of Competitive Bidding 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 Subsection 5.34.830 F.; and

## **TITLE 5**

### **REVENUE AND FINANCE**

2. The exemption will likely result in substantial costs savings and other substantial benefits to the City in accordance with ORS 279C.335(2)(b). As set forth in ORS 279C.335(2)(b)A-N and Subsection 5.34.830 D. below, if a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts then it is not required to address the factor other than to state that the factor has no application; 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 Method actually results in substantial cost savings to the City, or, if it is for a Public Improvement described in Subsection 5.34.830 A.3. above, to the public, provided the City has not previously used the proposed Alternate Contracting Method. Nevertheless, findings are still required in accordance with ORS 279C.335(2)(a).
- 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.
- 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:

**TITLE 5**  
**REVENUE AND FINANCE**

1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed Public Improvement;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the Public Improvement;
5. The cost and availability of specialized expertise that is necessary for the Public Improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the City or the public that are related to the Public Improvement
8. Whether granting the exemption will affect the sources of funding for the Public Improvement;
9. Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the Public Improvement;
10. Whether granting the exemption will better enable the City to address the size and technical complexity of the Public Improvement;
11. Whether the Public Improvement involves new construction or renovates or remodels an existing structure;
12. Whether the Public Improvement will be occupied or unoccupied during construction;
13. Whether the Public Improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the City has, or has retained under contract, and will use City personnel, consultants and legal counsel that have necessary expertise and substantial experience in Alternative Contracting Methods to assist in developing the Alternative Contracting Methods that the City will use to award the Public Improvement contract and to help negotiate, administer and enforce the terms of the Public Improvement Contract.

## **TITLE 5**

### **REVENUE AND FINANCE**

To the extent applicable, if a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the City does not need to consider that factor, and the City is not required to address the factor, other than to state why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

- 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;

  - 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 Competitive Bidding. 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 and other substantial benefits" requirement may be addressed by a combination of:

  - 1.** Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; 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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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.
- 1.** In making the findings supporting a class exemption the City shall clearly identify "class" with respect to its defining characteristics pursuant to the requirements of ORS 279C.335(3) as indicated below:
    - a.** The class cannot be based on a single characteristic or factor, so that the City directly or indirectly creates a class (e.g., using the CM/GC Method for all City construction projects, unidentified future construction projects of a particular work category, or all construction projects from a particular funding source such as the sale of bonds); and
    - b.** The class must include a combination of factors to be defined by the City through characteristics that reasonably relate to the exemption criteria, and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the City's objectives while allowing for impartial and open competition and protecting the integrity of the exemption process (i.e., a series of renovation projects that involve renovations for a common purpose, require completion on a related schedule to avoid unnecessary disruption of operations, share common characteristics such as historic building considerations, presence of asbestos or other hazardous substances, or the presence of staff during construction, or otherwise possess characteristics that meet the requirements).
  - 2.** The following classes of Contracts are hereby exempt from the Competitive low Bidding requirements of this Chapter:
    - a.** Contract Amendments. Contract amendments, pursuant to the authority granted by Subsection 5.34.020 C., and provided that the original Contract was executed in accordance with this chapter;
    - b.** 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:

**TITLE 5**  
**REVENUE AND FINANCE**

- (1) The improvements are paid for in part, or in whole, by the tenant;
    - (2) The improvements are primarily for the tenant's benefit; and
    - (3) The tenant hires the Contractor to perform the Work, whether or not a competitive process is used by the tenant.
  - c. Deficiency Corrections/Contractor on site. The City may hire a private Contractor to perform Work if:
    - (1) 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
    - (2) The City finds that a Contractor hired by the City is at or near the site where City Work needs to be performed; and
      - (a) 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
      - (b) 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
      - (c) 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.**

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A. General Application: The City may utilize the RFP outlined in Subsections 5.34.840 C. through D. below for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to ORS 279C.337, ORS 279C.400 to 279C.410 and 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. 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

**TITLE 5**  
**REVENUE AND FINANCE**

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).

**C. 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 could affect the cost or quality of the Work.
2. In CM/GC contracting, in addition to Subsection 5.33.840 D.1., those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose value engineering options, analyze energy efficiency measure or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.
3. In Design-Build contracting, in addition to Subsections 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.

**D. Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and 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. See 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. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the

## **TITLE 5**

### **REVENUE AND FINANCE**

work to be performed by the CM/GC, and any other term that the City has identified as being subject to negotiation.

#### **5.34.845 Requests for Qualifications (RFQ).**

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.) 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 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).**

(Amended by Ordinance Nos. 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A.** Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding exception and exemption requirements of ORS 279C.335, Section 5.34.150 and Sections 5.34.800 to 5.34.890. Also see ORS 279C.337, ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and Section 5.34.840 regarding competitive Proposal procedures.
- B.** Solicitation Documents. In addition to the Solicitation Document requirements of 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, references and warranty provisions. See 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. Subject to ORS 279C.410(4) the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

**TITLE 5**  
**REVENUE AND FINANCE**

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 Subsection 5.34.850 D.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.

**TITLE 5**  
**REVENUE AND FINANCE**

- (3) The process for discussions or negotiations that is outlined and explained in Subsections 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, auditing 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 rank the Proposers based on the City's scoring and determine 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.
  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 Section 5.34.710.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Section 5.34.740.
    - (2)** After the protest period provided in accordance with 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 Subsection 5.34.850 F. below; or
  - c.** Engage in discussions with Proposers in the Competitive Range, as provided in Subsection 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

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 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
    - (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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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 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;
  - b. The Contract Price as it is affected by negotiating the statement of Work; and
  - c. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and 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.
- 3. Continuing Negotiations. If the City terminates discussions or negotiations with a Proposer, the City may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the City has either:

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.
- 4. Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this Rule, the City may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the City reasonably believes that;
  - a. The Proposer is not discussing or negotiating in good faith; or
  - b. Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner that will be in the best interests of the City. The determination of a timely manner and the best interests of the City are matters solely within the discretion of the City.

**5.34.860 RFP Pricing Mechanisms.**

(Amended by Ordinance Nos. 184403 and 187373, effective October 14, 2015.)

- A. A Request for Proposals may result in a Contract with a lump sum Contract Price or a fixed Contract Price, as in the case of Competitive Bidding. Alternatively, a Request for Proposals may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.
- B. Economic incentives or disincentives may be included to reflect stated City purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to, total least cost mechanisms such as Life Cycle Costing.
- C. A Guaranteed Maximum Price (GMP) may be used as the pricing mechanism for Contracts for CM/GC Services 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 services have 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- A.** General. The Design-Build form of contracting, as defined in Subsection 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 Sections 5.34.800 to 5.34.890 of these

## **TITLE 5**

### **REVENUE AND FINANCE**

rules. See particularly Section 5.34.820 on "Use of Alternative Contracting Methods" and Section 5.34.880 pertaining to ESPCs.

- C.** Selection. Design-Build selection criteria may include those factors set forth above in Subsections 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:
  - 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

**TITLE 5**  
**REVENUE AND FINANCE**

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).**

(Amended by Ordinance Nos. 185898 and 187373, effective October 14, 2015.)

- A. Generally. 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. The following definitions shall apply specifically to Energy Savings Performance Contracts (or "ESPC"), unless the context requires otherwise.
  1. 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 this Section.
  2. 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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.

- 3.** 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.
  - a.** 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.
  - b.** 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.
- B.** Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by 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 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.** ESPC Contracting Method. The ESPC form of contracting, as defined in herein, has unique technical complexities associated with the determination of what ECMs are feasible for the City, as well as the additional technical complexities associated with a Design-Build Contract. For ESPC's the RFP outlined in Subsections

**TITLE 5**  
**REVENUE AND FINANCE**

5.34.840 B. through D. shall be utilized if the City desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. 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.
- D.** In ESPC contracting, terms that may be negotiated also include the Scope of preliminary design of DCMs 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

## **TITLE 5**

### **REVENUE AND FINANCE**

during the design and construction phase and M & V phase of the Work, consistent with the requirements of this Section.

- E.** In Energy Savings Performance Contracting (ESPC), in addition to the factors set forth in Subsections 5.33.840 C.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.
- F.** 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 Sections 5.34.800 through 5.34.890.
- G.** No Findings. The City is only required to comply with the ESPC contracting procedures set forth in Sections 5.34.800 through 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.



**TITLE 5**  
**REVENUE AND FINANCE**

- H.** Selection. ESPC selection criteria may include those factors set forth above in Subsections 5.34.840 C.1., 2., and 3. 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.
- I.** 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.
- J.** 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.
- K.** 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 percent 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.
- L.** 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

## **TITLE 5**

### **REVENUE AND FINANCE**

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 contracting practices to the Design-Build contracting requirements set forth in Subsection 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 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 Services (CM/GC Services).**  
(Amended by Ordinance Nos. 181547, 185898 and 187373, effective October 14, 2015.)

- A. **General.** The CM/GC Method is a technically complex project delivery system. City bureaus shall use this contracting method only with the assistance of legal counsel, as well as knowledgeable staff, consultants or both staff and consultants who have a demonstrated capability of managing the CM/GC Method, in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build Method, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC 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 with the CM/GC Method there is a separate Contract between the City and the design professional(s). In order to utilize the CM/GC Method, the City must be able to reasonably anticipate the following types of benefits:
  1. Time Savings. With the CM/GC Method, 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

## TITLE 5 REVENUE AND FINANCE

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.** With the CM/GC Method, early CM/GC 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.** With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the City, design professionals, City project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction services. The City may consider the need for CM/GC 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 Method only in accordance with the requirements of ORS 279C.337, when an exemption from Competitive Bidding is approved by Council. See particularly, Section 5.34.820 on "Use of Alternative Contracting Methods".

**C. Selection.** CM/GC selection criteria may include those factors set forth above in Subsection 5.34.840 C. The City shall, in documents the City uses to procure CM/GC Services.

1. Describe the selection criteria and the weight of each criterion in the evaluation process;
2. Describe how interviews will be used and evaluated, if interviews are to be used in the selection;
3. Describe any other criteria that may be considered in selecting a CM/GC;
4. Describe how scoring from the evaluation of the written proposals and interviews will be combined to arrive at a Proposer's final score and ranking;
5. State that any Savings the CM/GC realizes in performing the Contract will accrue to the City, unless the Contract provides otherwise;

**TITLE 5**  
**REVENUE AND FINANCE**

6. Specify terms and conditions that govern how the fixed price, GMP or other maximum price set forth in the Contract will be determined and whether the price includes or is based on unit pricing or allows for Work that is constructed in phases;
  7. State that the City will not pay any amount that exceeds a fixed price, GMP or other maximum price specified in the Contract unless the amount results from material changes to the scope of work set forth in the Contract and the parties to the Contract agree in writing to the material changes;
  8. State that the City will conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065 (3); and
  9. Specify deadlines and time periods for the selection that allow prospective Proposers a reasonable opportunity to submit proposals, including but not limited to:
    - a. The date and time by which the City must receive proposals;
    - b. The time periods during which the City will conduct interviews, if the City will conduct interviews;
    - c. The date by which the City plans to indicate an intent to award the Contract; and
    - d. The time period during which the City will meet with Proposers that the City did not select for the Contract, if a Proposer requests a meeting to discuss the procurement.
- D. Basis for Payment.** The CM/GC process adds specified Construction Manager Professional, Technical and Expert Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Professional, Technical and Expert Services rendered, which together shall not exceed the GMP. See GMP definition at Subsection 5.34.810 E. and Pricing Mechanisms in Section 5.34.860.
- E. Contract Requirements.** The City shall conform its CM/GC Services contracting practices to the following requirements:
1. Nature of the Contracts for CM/GC Services. Since the scope of CM/GC Services includes a pre-construction phase of Professional, Technical and Expert Services and a construction phase Work to be performed by the CM/GC, the City may award one or more Contracts for CM/GC Services.

## **TITLE 5**

### **REVENUE AND FINANCE**

In general, Contracts for CM/GC Services will include contract provisions that will not only govern the relationship between the City and the CM/GC for the pre-construction Professional, Technical and Expert Services, but will also include provisions that will govern the CM/GC's providing of the Work necessary to complete the Public Improvement. The City will only authorize the construction phase or phases of a portion of the project or the entire project upon successful negotiation of the GMP. For purposes of paying BOLI prevailing wages, a CM/GC Services Contract becomes a public works Contract at the time covered Work activities commence, through authorized Early Work during the pre-construction phase or construction phase Work.

2. Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed. The supporting information for the GMP must define with particularity both what Professional, Technical and Expert Services and Work is included and/or excluded from the GMP, fixed Contract price or other maximum Contracts Price. A set of project drawings and Specifications shall be produced establishing the scope of Work contemplated by the GMP, fixed Contract price or other maximum Contract Price.
3. Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price. 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, fixed Contract price or other maximum Contract Price as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract price or other maximum Contract Price.
4. Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the City's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the City .)

**TITLE 5**  
**REVENUE AND FINANCE**

5. Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price.
6. 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.
7. Fee. Compensation for the CM/GC's Personal Services and construction Work where the Contract uses a GMP, 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 shall be expressly defined in the Contract terms and conditions at the time the City selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or 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 for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.
8. 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, fixed Contract price or other maximum Contract Price).
9. Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted, 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, incentives or both safety responsibilities and incentives.
10. Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price or other maximum Contract price.

**TITLE 5**  
**REVENUE AND FINANCE**

- 11.** Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other City requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:
- a.** Absent a written justification prepared by the CM/GC and approved by the City as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the City, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;
  - b.** When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
    - (1)** The CM/GC must prepare and submit a written justification to the City, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
    - (2)** For a "sole source" selection of a subcontractor to proceed, the City must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the



## TITLE 5 REVENUE AND FINANCE

labor, services or materials are available from only one subcontractor:

- (3) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the City;
    - (4) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the City; and
    - (5) The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
  - c. A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
  - d. If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the City or another independent third party.
- 12. 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 or be involved in the resolution of protests of the CM/GC's selection of Subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of Subcontractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the City must retain the right to monitor the subcontracting process in order to protect City's interests and to confirm the CM/GC's compliance with the contract and with applicable statutes, administrative rules and other legal requirements.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 13.** CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.3337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the Work without competition from subcontractors. In order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the City, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.
- 14.** Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the City and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the City and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

  - a.** Allowing a Subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
  - b.** Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the Subcontractor's written request.
- 15.** Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is

required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the City to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the amount of the GMP, fixed price or other maximum Contract Amount, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum Contract Amount must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum Contract Amount.

16. Independent Review of CM/GC Performance: Conflicts of Interest. If the City requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Professional, Technical and Expert Services, construction Work or both pre-construction and construction Work, the City must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:
  - a. The CM/GC's performance of both pre-construction Professional, Technical and Expert Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or
  - b. The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.
17. Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs, 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.) 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 Section 5.34.300 regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **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.**

(Amended by Ordinance No. 184403, effective February 2, 2011.) Pursuant to ORS 279C.830(2), 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.**

(Amended by Ordinance Nos. 181547, 183445, 185898 and 187373, effective October 14, 2015.)

- 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.

**TITLE 5**  
**REVENUE AND FINANCE**

- 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.
- 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:
    - a.** The Contractor may deposit bonds, securities or other instruments with the City as set forth in Section 5.34.920 or in any bank or trust company to be held for the benefit of the City. If the City accepts the deposit, 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 Subsection 5.34.920 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 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:

**TITLE 5**  
**REVENUE AND FINANCE**

- (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 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.

**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.

**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 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 Social Equity Contracting and Employment Programs.**

(Amended by Ordinance No. 185898, effective February 20, 2013.) 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.**

(Amended by Ordinance Nos. 181547, 183445 and 185065, effective January 1, 2012.)

**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).

**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 state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
  - a. physically contained within or attached to hard copies of Procurement Specifications;

**TITLE 5**  
**REVENUE AND FINANCE**

- 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 both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers.

**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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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;
  - 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.



**TITLE 5**  
**REVENUE AND FINANCE**

- 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 Subsection 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 Subsection 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 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.**

(Amended by Ordinance No. 185898, effective February 20, 2013.)

- 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.

## **TITLE 5**

### **REVENUE AND FINANCE**

- 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 Subsections 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
    - 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

## TITLE 5 REVENUE AND FINANCE

- If the Contractor should disregard laws, rules, or the instructions of the City or its Authorized Representative.
  - 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;
  - Expense of Completion. The expense incurred by the City shall be as determined and certified by the City;
- 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;
- 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;
- 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:
- The effective date of the intended cancellation or termination,

**TITLE 5**  
**REVENUE AND FINANCE**

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 Section 5.34.980. If a Contract contains a cancellation or termination clause, that clause rather than Section 5.34.980 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

**CHAPTER 5.36 - PROPERTY CONTROL**

**Sections:**

- 5.36.001 Surplus Property Policy.
- 5.36.010 Disposition of Surplus Property.
- 5.36.015 Disposition of Unclaimed Found Personal Property.
- 5.36.020 Sale of Buildings for Removal from City Property.
- 5.25.025 Purchase and Resale by the City of Tax-Foreclosed Property.
- 5.36.030 Loans of Personal Property Owned by City.
- 5.36.035 Lost or Stolen City Property.
- 5.36.040 Parking Meter Fund Equipment.
- 5.36.050 Use of City Automobiles for Transporting Firing Squads.
- 5.36.060 Use of Water Bureau Property by Bureau of Shops.
- 5.36.080 Zoological Specimens.
- 5.36.090 Gifts and Loans of Property.
- 5.36.100 Use of City Property for Elections.
- 5.36.110 Use of City Property for Air Quality Measuring Stations.
- 5.36.115 Designation of "Persons In Charge."

**5.36.001 Surplus Property Policy.**

(Replaced by Ordinance No. 179813, effective January 6, 2006.) It is the policy of the City to dispose of surplus property in the most efficient and cost-effective manner possible in accordance with the guidelines in this Chapter and any related administrative rules or policies. Temporary, full-time and part-time City employees, persons acting on the employee's behalf, and any business with which a City employee is associated, as defined by Chapter 5.33, may not purchase or receive surplus property unless offered for public sale.

**5.36.010 Disposition of Surplus Property.**

(Replaced by Ordinance No. 179813; Amended by Ordinance Nos. 181483 and 187165, effective July 10, 2015.)

**A. Definition:**

- 1.** "Surplus Property" means: tangible personal property owned by the City, including equipment and materials, which is no longer needed by the City Bureau or Office that owns it. Examples include inventoried and non-inventoried office furniture, specialized equipment, and items that are obsolete or overstocked.

- B.** City Capital Asset Disposal Documentation: The bureau initiating the transfer, donation, sale, or disposal of surplus property that has been inventoried as a capital asset, shall comply with City Accounting Administrative Rules regarding disposal of capital assets, which establish minimum standards for the disposal of capital assets and subsequent reporting in the financial records.

## **TITLE 5**

### **REVENUE AND FINANCE**

- C.** City Assets Procured with the Proceeds of Tax-Exempt Bonds: The bureau initiating the transfer, donation, sale, or disposal of surplus property that was procured with the proceeds of tax-exempt bonds should contact the City's debt management office prior to disposal of the property to determine what, if any, limitations exist on the disposal of such property and the use of any revenue derived from such disposal.
- D.** Usable Surplus Property: Whenever a Commissioner-In-Charge, or designee, determines that surplus property exists, the property may be disposed of in one of the following ways:

  - 1.** Inter-Bureau Transfer or Sale - Surplus property may be transferred or sold to another City bureau upon written request from the director of the bureau that has a use for it.
  - 2.** Negotiated Direct Sale - Surplus property with an individual or aggregate current market value under \$5,000 may be sold as follows:

    - a.** The bureau obtains three written or verbal price quotations prior to final sale;
    - b.** The bureau negotiating the sale keeps written records of the price quotations, the amounts, and if necessary, the reason why three quotations could not be obtained;
    - c.** The bureau sells the surplus property to the highest bidder meeting all conditions of the sale; and
    - d.** The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
  - 3.** Public Sale - The City Council may authorize the sale of surplus property through an external auction service. If the City does not have a contract with an external auction service, the bureau may conduct a public auction subject to the following conditions:

    - a.** The bureau shall give notice of such public auction at least once within ten days prior to the date of the auction in a newspaper of general circulation published in the City; such notice shall give the time and place of the auction;
    - b.** The bureau shall sell the surplus property to the highest bidder meeting all conditions of the sale; and



## TITLE 5

# REVENUE AND FINANCE

- c. The bureau applies the proceeds of the sale to its property disposition expenses in the following order: storage, transportation, publication fees and other costs of safekeeping and sale, and then to the City fund owning the property at the time of sale unless otherwise directed by the City Council.
- Public Sale through State - Surplus property may be sold pursuant to an established intergovernmental agreement with the State of Oregon Surplus Property Program. When surplus property is sent to the State Surplus Program for sale on behalf of the City, a minimum sale price shall first be established when appropriate. Any revenue received from the sale of surplus property through the State Surplus Program shall be credited to the bureau that owned the surplus property.
- Donation - Surplus property may be donated to the State of Oregon Surplus Property Program, other public agencies, or to charitable organizations certified under the Internal Revenue Code Section 501(c)(3) as follows:
- a. Donations with an individual or aggregate current market value of \$5,000 or less must be approved by the Commissioner-In-Charge, or designee, of the bureau that owns the property.
  - b. Donations with an individual or aggregate current market value of more than \$5,000 must be approved by the City Council, by ordinance.
  - c. The City shall provide the recipient of donated property with appropriate documentation transferring ownership of the property to the recipient. The recipient shall agree to hold harmless, defend and indemnify the City of Portland, its officers, agents and employees from any claims, demands, actions and suits (including attorney fees) arising from its use or receipt of the surplus property.
  - d. The Director of the Bureau or Office that owned the surplus property shall complete and retain a donation form for each donation made during the fiscal year and submit all forms to the City Auditor at the end of the fiscal year. The donation form shall contain:
    - (1) A description of the surplus property donated; and,
    - (2) The name of the recipient of the surplus property; and,
    - (3) The originating bureau; and,

## **TITLE 5**

### **REVENUE AND FINANCE**

- (4) The estimated market value of the surplus property at the time of donation.

- E.** Unusable Surplus Property: A Commissioner-In-Charge, or designee, may dispose of surplus property if it is determined that the surplus property is unusable, inoperable or not reasonably repairable, hazardous, or is of insufficient value to warrant a transfer, sale, or donation as prescribed in this Section. In addition to disposing of unusable property in accordance with existing federal, state, or local disposal regulations, every effort shall be made to recycle or otherwise dispose of property in an environmentally sound manner.
- F.** Exempt Property. The following surplus property, whether usable or unusable, shall not be transferred, donated, sold, or otherwise disposed of without Council approval or as otherwise provided by City code, policy, or procedure.
1. Vehicles or Vehicle Equipment.
  2. Corporately-Owned Communications Equipment.
  3. Contraband.
  4. Firearms.
  5. Intangibles.
  6. Hazardous items.
  7. Items of historical value.
  8. Any other item deemed appropriate for exemption from this Section by the Commissioner-In-Charge of the bureau that controls the property.
- G.** Vehicles and Vehicle Equipment: The Manager of OMF Business Operations Division is authorized to dispose of vehicles and related equipment when the vehicle is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Manager. This includes, but is not limited to, competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of City-owned vehicles or vehicular equipment shall be credited to the replacement account for the originating bureau.
- H.** Corporately-Owned Communications Equipment: The Chief Technology Officer is authorized to dispose of corporately-owned communications equipment maintained by the Bureau of Technology Services when such equipment is no longer needed by the City. The manner of disposal shall be the most efficient and cost-effective as determined by the Director. This includes, but is not limited to,

competitive written bids, public auction, negotiated sales, or exchange. Any and all revenue, less costs of sale, received from the sale of corporately-owned communications equipment shall be credited to the replacement account for the originating bureau.

- I.** Artificial Turf: The Chief Administrative Officer (CAO) is authorized to donate or arrange for recycling of artificial turf from City-owned spectator facilities when such turf no longer meets venue performance standards. The CAO shall comply with the provisions of this Section for all other means of disposing of the artificial turf.

**5.36.011 Donations of Surplus Personal Property.**

(Repealed by Ordinance No. 179813, effective January 6, 2006.)

**5.36.015 Disposition of Unclaimed and Found Personal Property.**

(Added by Ordinance No. 153293; amended by Ordinance No. 167825, effective June 22, 1994.)

- A.** Unclaimed Property: Unless directed otherwise by State law or a specific provision of this Code, all tangible personal property not owned by the City, that is under the control of a bureau and not reclaimed after notice has been sent, by the bureau in possession, to all parties who reasonably appear to have an interest in such property, of their right to claim such property within a specified period of time, shall become the property of the City, designated as surplus property, and, shall be disposed of as provided by this Chapter.
- B.** Found Property: All tangible personal property not owned by the City that is found by a bureau member and turned into the bureau, shall not become the property of the City until the requirements of the state law regarding the rights and duties of finders and owners of lost property are satisfied. After the requirements of State law are satisfied, found property shall be retained by the bureau which found it if the property is usable by the bureau. If the property is not usable by the bureau which found it, the bureau shall dispose of the property as surplus property as provided by this Chapter.

**5.36.020 Sale of Buildings for Removal from City Property.**

Whenever a Commissioner determines that a building or other structure assigned to a bureau under his control must be removed, he may authorize the Purchasing Agent to sell such building or other structure for removal by the purchaser. The Purchasing Agent shall use the method of sale which he finds most in the public interest. The Purchasing Agent shall specify terms and conditions of sale, except that such terms shall not include credit, and he shall fix the amount of bond or cash deposit to be given by the purchaser to guarantee removal of the building or structure and clearance of debris from the premises.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.36.025 Purchase and Resale by the City of Tax-Foreclosed Property.**

(Added by Ordinance No. 162023; Amended by Ordinance Nos. 179813 and 181483, effective January 18, 2008.)

- A.** The provisions of this Section apply to property which meets each of the following conditions:
  - 1.** Property that has outstanding City liens;
  - 2.** Property that has been foreclosed by a county for collection of delinquent taxes; and
  - 3.** Property that has been purchased by a bidder at a county sheriff's sale.
- B.** The OMF Business Operations Division may purchase and sell property described in this Section without public notice or sale provided:
  - 1.** The Council adopts an ordinance authorizing the OMF Business Operations Division to purchase property. The ordinance shall include a legal property description; the total amount of outstanding taxes and costs; the total amount of outstanding city liens, accrued interest, penalties and costs; and the source of funds to be used to purchase the property;
  - 2.** Property will be sold to the successful bidder at a county sheriff's sale; and
  - 3.** The Council adopts an ordinance authorizing the property sale and setting forth sale terms. The ordinance shall include the name and address of the successful bidder at the county sheriff's sale and the terms of the City sale. The Council may adopt sale terms and provisions as a part of the ordinance authorizing the purchase of property.
- C.** Sale contracts and other legal documents related to the sale shall be reviewed and approved by the City Attorney prior to the sale. Upon approval as to form by the City Attorney, the Mayor and City Auditor shall be authorized to sign a deed transferring title to the property.
- D.** Proceeds from the sale shall be deposited in the City fund which incurred the expense of purchasing the property from the county unless otherwise directed by the Council in the ordinance authorizing the purchase and sale of the property.
- E.** The OMF Business Operations Division is authorized to adopt administrative rules and procedures necessary to carry out the provisions of this Section.

**5.36.030 Loans of Personal Property Owned by the City.**

(Amended by Ordinance No. 180917, effective May 26, 2007.) Each Commissioner and each officer or employee of the City is and shall be hereby prohibited from loaning any

**TITLE 5**  
**REVENUE AND FINANCE**

personal property owned by the City to any other person either gratuitously or for a consideration, without the consent of the Council expressed by ordinance. However, in the event of extraordinary circumstances involving hazard to the general public occasioned by fire, flood, earthquake, or other public disaster, the Commissioner of any department may permit equipment in his department to be used without the consent of the Council during such extraordinary circumstances upon the written order of the Commissioner; provided that the Chief of Portland Fire & Rescue may lend or rent to the owner or operator of property damaged by fire, flood, earthquake or other public disaster such equipment of Portland Fire & Rescue as may be temporarily needed to prevent further damage to such property, and such owner or operator so borrowing or renting such equipment, shall agree with the City:

- A. To hold the City, its officers, agents and employees harmless for any loss or damage caused to the person or property of third persons while such equipment is in the possession of such owner or operator;
- B. To waive any claim for damage to the person or property of such owner or operator arising in whole or in part from the use of such equipment; and
- C. To return such equipment to Portland Fire & Rescue in as good condition as when received, reasonable wear and tear excepted. Such agreement shall be in writing on forms approved by the City Attorney and shall be filed with the Auditor of the City. Any rentals collected by Portland Fire & Rescue under such agreements shall be transmitted by Portland Fire & Rescue to the City Treasurer within 24 hours after receipt by the Bureau, the rentals to be credited to the General Fund.

**5.36.035 Lost or Stolen City Property.**

(Added by Ordinance No. 151849; effective June 25, 1981.) Any City employee charged with the care or having custody of any City property which is lost or stolen shall immediately, upon discovery that such property has been lost or stolen, report such loss or theft in writing to his bureau or division head. The bureau or division head shall upon receipt of such report, immediately notify the Accounting Division in writing of such loss or theft. The Accounting Division shall make such investigation and report and recommendation as may be deemed appropriate.

**5.36.040 Parking Meter Fund Equipment.**

All vehicles, equipment, and other things heretofore purchased or which may be purchased in the future from the Parking Meter Fund for the use of any bureau having service to perform in connection therewith, are and shall be assigned to the bureau where used. They shall be inventoried in connection with and as a part of the vehicles, articles, and equipment of such bureau.

**TITLE 5**  
**REVENUE AND FINANCE**

**5.36.050 Use of City Automobiles for Transporting Firing Squads.**

The Commissioner In Charge of any bureau or department having an automobile available shall have the authority to make use of the same in transporting firing squads for veteran's funerals.

**5.36.060 Use of Water Bureau Property by Bureau of Shops.**

The Bureau of Shops shall have the use of the following described property owned by the Bureau of Water:

Lots 1, 2, 3, 4, 10, 11, and the west 40.92 feet of Lot 14; also that portion of Lot 5 lying west of a line drawn from the southeast corner to the northwest corner of said Lot 5; also a portion of Woodward Avenue now vacated, more particularly described as follows:

Beginning at a point in the north line of Lot 14, Water Bureau Addition, said point being north 73 degrees 35'45" west a distance of 26.19 feet from the southeast corner of said Lot 5; thence north 73 degrees 35'45" west 29.91 feet; thence south 89 degrees 44'30" west 92.29 feet to the northwest corner of Lot 10; thence north 0 degrees 15'30" west 50 feet to the southwest corner of Lot 4; thence north 89 degrees 44'30" east 80 feet to the southeast corner of Lot 4; thence south 73 degrees 35'45" east 40 feet to the southeast corner of Lot 5; thence to the point of beginning, all in Water Bureau Addition, in the City of Portland, Multnomah County, State of Oregon, according to the duly recorded plat thereof on file in the office of the clerk of said county and state.

The General Fund shall pay to the Bureau of Water the sum of \$1 per year for the use of such property and the Bureau of Shops shall have the right to construct a building on such real property and maintain the same.

**5.36.070 Equipment Pool Rotary Account.**

(Repealed by Ordinance No. 182389, effective January 2, 2009.)

**5.36.080 Zoological Specimens.**

The Director of the City Zoo be, and he hereby is, invested with the authority to accept for and on behalf of the City such gifts and donations of zoological specimens hereafter tendered as in his judgment will be beneficial to the Zoo and of interest to the public; all such gifts and donations and the acceptance thereof to be in writing, signed by the giver or donor and by the Director of the Zoo, substantially as shown in Exhibit "A" hereto attached and by reference made a part hereof. The past actions of the Director as respects the authority herein given, are hereby ratified and adopted.

Exhibit "A"  
PORTLAND ZOOLOGICAL PARK  
Zoological Specimen Release

IN CONSIDERATION OF THE CITY'S ACCEPTANCE OF THE SPECIMEN HEREIN DESCRIBED, I HEREBY GIVE AND DONATE TO THE CITY OF PORTLAND, FOR THE PURPOSES OF THE MUNICIPAL ZOO, THE FOLLOWING ANIMAL:

Species. . . . . Sex. . . . . Age. . . . .  
Physical Condition . . . . .

How Long in Possession . . . . .  
Where Obtained . . . . .  
. . . . .  
Special Remarks. . . . .  
. . . . .  
. . . . .  
AND I HEREBY RELINQUISH ALL CLAIM TO SAID SPECIMEN AND/OR ITS  
PROGENY:  
Signed . . . . .  
Address . . . . .  
Date . . . . .  
Accepted for the Zoo by:  
Signed . . . . .  
Date . . . . .  
Object Number . . . . .

**5.36.090        Gifts and Loans of Property.**

- A.     Whenever any real or personal property or the use thereof shall be offered to the City by way of donation, gift, grant, lease, loan or any other manner made available to the City by any person, firm, or corporation for the purpose of bestowing a gift or benefit upon the City, the Mayor hereby is authorized to accept any and all such real or personal property or the use thereof. The Mayor also hereby is authorized to execute any necessary agreement or document and to agree to any reasonable terms and conditions for the gift, grant, lease, loan or other use of such real or personal property. Provided, however, that any such grant, lease or loan by which the City shall be obligated in an amount exceeding \$250 shall first be approved by the Council by special ordinance.
  
- B.     It shall be the duty of all bureau chiefs to promptly report to the Commissioner In Charge, the receipt of any gift, contribution, donation or other use of personal property from any person, firm or corporation for and on behalf of the City so that the Commissioner may cause such property to be promptly included in the City inventory.

**5.36.100        Use of City Property for Elections.**

The Commissioner In Charge of any property or premises of the City hereby is authorized to permit the use of such premises or facilities as polling places for any election held by the State, county or any municipal corporation.

**5.36.110        Use of City Property for Air Quality Measuring Stations.**

The Commissioner In Charge of any particular parcel of real property owned by the City is hereby authorized to grant permission in writing to any governmental body to install on said real property on a temporary basis an air quality measuring station; provided, however,

**TITLE 5**  
**REVENUE AND FINANCE**

that no such written permission shall be granted unless and until the requesting governmental body has stated in writing that the temporary installation will be accomplished without injury or damage to the City property and that said governmental body will reimburse City for all costs or expenses to City incident to the installation.

**5.36.115      Designation of “Persons In Charge” for Purposes of Excluding Persons From City Property.**

(Added by Ordinance No. 161538, effective February 4, 1989.)

- A.** For purposes of ordering persons to leave City property, each Commissioner In Charge is authorized to designate persons in charge of City property within that Commissioner’s assigned bureaus and departments or to which that Commissioner otherwise has authority. The designation shall be made in writing, and any person so designated shall be a “person in charge” as that term is defined in ORS 164.205(5) until the designation is removed by the Commissioner In Charge or the designated person ceases to be an employee or officer of the City of Portland.
- B.** City elected officials and the administrator of each City bureau shall advise the Commissioner In Charge on the selection of individuals to be designated as “persons in charge” of City property, and shall advise the Commissioner In Charge of the City property over which such individuals exercise control. They shall also advise the Commissioner In Charge when the list of designated “persons in charge” is in need of amendment.
- C.** The Commissioner In Charge shall maintain a list of all persons who have been designated as “persons in charge” of City property. Upon request, the City shall provide a copy of the list to the District Attorneys of Multnomah, Clackamas and Washington counties.
- D.** For purposes of this Section, “City property” shall include all real property either owned by the City or in which the City has a property interest.



**CHAPTER 5.40 - DEMANDS AND  
DISBURSEMENTS**

**Sections:**

- 5.40.010 Drawing Checks in Payments of Claims.
- 5.40.020 Certain Demands to be Submitted to Council.
- 5.40.030 Appropriation to be Charged for All Demands.
- 5.40.040 Requisitions Required.
- 5.40.070 Funds Held for Benefit of Police Contributions Committee.
- 5.40.080 Requisition of Funds for Purchasing Police Evidence.

**5.40.010 Drawing Checks in Payments of Claims.**

(Amended by Ordinance Nos. 139226 and 173369, effective May 12, 1999.) The Mayor and the Auditor shall have the authority to draw checks on City funds upon approved requisition, duly executed contract, or order of the Council when the Auditor has determined that payment is legally due and payable.

**5.40.020 Certain Demands to be Submitted to Council.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) All demands for expenses of litigation, damages, relief and other demands of like character, except as hereinafter provided, shall be examined by the Auditor and submitted to the Council by him with any recommendations, explanations or information he may deem pertinent thereto. When the demands are approved by the Council, checks shall be drawn in payment thereof.

**5.40.030 Appropriation to be Charged for All Demands.**

The Auditor hereby is directed to charge all demands for the furnishing of supplies, materials, equipment, etc. to appropriations therefor.

**5.40.040 Requisitions Required.**

Before any obligation is incurred under the provisions of this Chapter, except emergency purchases as provided in Section 5.32.030 and except specific payments directed by the Council, a requisition properly signed shall be presented to the Auditor in order that he may determine that the proposed expenditure is budgeted and that appropriation is available therefor. Each requisition shall state in detail the articles or services to be purchased and appropriation accounts proposed to be charged.

**5.40.050 Payment of the City's Contribution to the Public Employees Retirement Board and the State Industrial Accident Commission.**

(Repealed by Ordinance No. 139226, effective January 20, 1975.)

**5.40.070 Funds Held for Benefit of Police Contributions Committee.**

No money held by the City Treasurer in the Trustee Fund for the benefit of Police Contributions Committee shall be disbursed by him except on written request of the Chief of Police who shall first be advised in writing by the Secretary of the Affirmative Action of the above-named Committee to pay a sum certain to a particular named donee. The

## **TITLE 5**

### **REVENUE AND FINANCE**

Treasurer shall, not later than January 15th of each year, furnish to the Chief of Police a statement showing the amounts received by him for the benefit of the Police Contributions Committee and the amounts paid out by him, if any, and to whom paid. The Chief of Police shall immediately advise the Committee of the contents of the report of the City Treasurer. The Committee shall, not later than January 31st of each year, advise each donor as to the portion of his donation that is tax deductible.

#### **5.40.080      Requisition of Funds for Purchasing Police Evidence.**

The Chief of Police is hereby authorized to requisition funds in advance of expenditure for the purchase of evidence against the illegal sale of liquor, gambling or other violations of laws. Each advancement shall be on a memorandum requisition approved by the Commissioner In Charge of the Bureau of Police and charged to the appropriation of the Bureau of Police for evidence procurement. The requisition shall be accompanied by an affidavit signed by the Chief of Police which shall state that the amount of cash to be advanced will be used only for the purpose of evidence against the illegal sale of liquor, gambling or other violations of laws. There shall be no further formal accountability for such funds beyond the affidavit. However, the Chief of Police shall maintain sufficient confidential records to be able to provide a confidential accounting to the Commissioner In Charge on his request.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.44 - EXECUTION OF  
CONTRACTS AND BONDS**

(Repealed by Ordinance Nos. 174509 and 174904,  
effective January 1, 2001.)

**TITLE 5  
REVENUE AND FINANCE**

**CHAPTER 5.48 - CHARGES FOR SERVICES  
PERFORMED**

**Sections:**

- 5.48.010 Authorization.
- 5.48.020 Application and Deposit.
- 5.48.030 Accounting Procedure.
- 5.48.035 Bureau of Emergency Communications - Recordings - Rates.
- 5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.
- 5.48.040 Collection of Money Due the City.
- 5.48.050 Improvements Without Assessment.
- 5.48.060 Interdepartmental Services Authorized.
- 5.48.070 Accounting Procedure for Interdepartmental Services.

**5.48.010 Authorization.**

Each Commissioner shall have authority to direct his subordinate employees to perform duly authorized services for private persons or other governmental agencies for all of which services a reasonable charge shall be made as provided in Section 5.48.030.

**5.48.020 Application and Deposit.**

Before any department or bureau of the City shall perform any service for a private person or other governmental agency, it shall be the duty of the department or bureau to obtain wherever practicable an application in writing requesting such service. A deposit may be required when in the judgment of the head of the department or bureau it shall be deemed necessary to guarantee the payment of the service to be performed. The application shall be retained by the department or bureau performing such services.

**5.48.030 Accounting Procedure.**

(Amended by Ordinance Nos. 132116, 137528, 138042 and 182377, effective December 26, 2008.) Unless the charge for services performed for private persons or governmental agencies other than the City is specifically fixed by the Charter or by action of the Council, all such services shall be charged for on the basis of actual costs, which shall be computed as follows:

**A. Labor.**

**1. The amount for salaries and wages shall be either:**

- a.** Actual time computed at the applicable hourly payroll rate when the services being provided require less than the full time of an employee on an annual basis, or
- b.** Annual salary including vacation, sick leave, holiday and other leave with pay when the services being provided require the full time of an employee on an annual basis.

**TITLE 5**  
**REVENUE AND FINANCE**

2. To the amount for salaries and wages computed under paragraph A.1.a. above, add for the indirect cost of vacation, sick leave, holiday and other leave with pay and for the cost of disability, retirement and insurance as follows:
  - a. For other than sworn police personnel add 39 percent of salaries and wages.
  - b. For sworn police personnel add 42 percent of salaries and wages for labor provided at straight time. Add only 15 percent for labor provided at overtime rates.
3. To the amount for salaries and wages computed under paragraph A.1.b. above, add only for disability, retirement and insurance as follows:
  - a. For other than sworn police personnel add 21 percent of salaries and wages.
  - b. For sworn police personnel add 23 percent of salaries and wages provided at straight time only.
- B. Materials consumed shall be at actual cost including delivery to the City. The Bureau of Water Works shall charge an additional 5 percent for stock handling.
- C. Services from other City bureaus shall be at actual cost determined in accordance with Section 5.48.070.
- D. Services provided from non-City sources shall be at actual cost to the City.
- E. Motorized equipment, trailers, etc., shall be actual time at rates for each particular class of equipment established by the Commissioner In Charge.

**5.48.035 Bureau of Emergency Communications-Recordings-Rates.**

(Added by Ordinance No. 143377; effective March 30, 1977.) The Bureau of Emergency Communications is authorized to charge the following rates or the rate established by a court in a particular case for services rendered in locating and delivering particular segments of tape recordings for court use:

- A. Labor.
  1. Ten dollars per hour (straight time) for staff time expended for salaries and wages. After FY 1976-77 this rate shall be set equal to the 4-year rate for a police sergeant as approved in the official compensation plan of the City of Portland.

## **TITLE 5**

### **REVENUE AND FINANCE**

2. Plus 42 percent of the foregoing straight time amount or 15 percent of the foregoing for labor provided at overtime rates for indirect costs for the vacation, sick leave, holiday and leave with pay, and for the cost of disability, retirement and insurance.

#### **B. Material Costs.**

1. In addition to the foregoing amount, there shall be charged for material costs, \$6.22 per hour for the time City's recording equipment is in use.

#### **C. General Overhead.**

1. To the total of the above there shall be added 10 percent for general overhead.

#### **5.48.036 Office of City Attorney and OMF Risk Management Division - Records - Rates.**

(Added by Ordinance No. 151447; Amended by Ordinance No. 181483, effective January 18, 2008.) In making public records available for inspection by members of the public and in providing the members of the public with copies thereof, the office of City Attorney and the OMF Risk Management Division shall charge therefor on the basis of actual costs of making available and copying the records, as set out in Section 5.48.030. This Section shall not apply to those cases in which the charge would be \$5 or less, in which cases the charge shall be the amount set out in Section 5.60.020.

#### **5.48.040 Collection of Money Due the City.**

(Amended by Ordinance Nos. 147159, 149198, 165955 and 181483; effective January 18, 2008.) The Office of Management and Finance of the City shall bill for all services performed for other persons by the City and for all City accounts receivable, contracts receivable and grants receivable except for bills and statements regularly sent by the Bureau of Water Works, the City Treasurer, the OMF Risk Management Division, the Assessment Division of the City Auditor's Office and payments made under leases managed by the OMF Business Operations Division.

It shall be the duty of the officers of various departments, bureaus and divisions of the City to furnish the Office of Management and Finance, daily, a list or journal of all charges that are to be billed, together with supporting data.

If payment of a City bill sent by the Office of Management and Finance is not received within 30 days after the date of billing, it shall be delinquent. It shall be the duty of the Office of Management and Finance to pursue collection of these delinquent accounts using appropriate collection methods. When collection efforts do not result in payment, invoices will be forwarded to the City Attorney for collection, or in appropriate cases to the City Auditor's Office to submit to the Council an ordinance assessing the unpaid bill upon property chargeable therewith. The Director of the Bureau of Administrative Services may select delinquent accounts to refer to a collection agency if the director deems such referral appropriate.

**TITLE 5**  
**REVENUE AND FINANCE**

Interest of 1 percent per month shall be charged on all bills which remain unpaid for 30 days or more after the invoice billing date. Interest shall be computed from the invoice date and compounded monthly.

The Director of the Bureau of Administrative Services may add a rebill charge to delinquent accounts. The rebill charge shall be the greater of \$5.00 or 25 percent of the amount which is delinquent, up to a maximum charge of \$25.00. The rebill charge may be reassessed every 60 days, until the account is paid, assessed, canceled or waived.

The Director of the Bureau of Administrative Services may offer an early payment incentive discount of up to 2 percent on any or all invoices paid within 10 days of the billing date.

**5.48.050 Improvements Without Assessment.**

(Amended by Ordinance No. 144020; effective July 11, 1977.)

A. Whenever the City is requested to construct an improvement without using assessment procedures, and the improvement is to be constructed under contract in the name of the City, the person or agency submitting the request shall make an advance deposit into the Trustee Fund to protect the City against loss on account of obligations to be assumed in connection with the improvement. The advance deposit shall cover the following items:

1. Estimated amount of the contract for the improvement;
2. A fee for engineering and superintending equal to the engineer's estimate of the cost of providing such services. Use accounting procedure 5.48.030.
3. Overhead of City in advertising for bids, preparing the contract, disbursing funds, etc., at 1/2 percent of the estimated contract amount with a minimum of \$100.

Additional deposits may be required by the Commissioner In Charge at any time he may deem necessary to protect the City.

B. Advertising for bids and executing contract shall be authorized only by the City Council. In no event shall a contract be awarded for more than 93 percent of the funds on deposit.

C. The deposited funds shall be disbursed by the City Treasurer on order of the Commissioner In Charge of the improvement project and after approval by the City Auditor. Disbursements shall be made as follows:

1. Contract payments shall be paid directly to the contractor;
2. Engineering fees and overhead shall be paid to the appropriate fund as revenue after the final cost of the contract has been determined.

## **TITLE 5**

### **REVENUE AND FINANCE**

3. Prior to the issuance of the certificate of completion by the City Engineer the fees charged to the permittee will be adjusted to agree with the actual costs of services as recorded by the City Engineer. The remaining balance, if any, after payment of all costs shall be returned to the permittee. If additional funds are required of the permittee, they shall be paid prior to the issuance of the certificate of completion.

#### **5.48.060 Interdepartmental Services Authorized.**

(Amended by Ordinance No. 182377, effective December 26, 2008.) Each Commissioner shall have power and authority, in the direction of activities of their department, to use the officers, employees, material, and equipment in different bureaus or divisions of such department whenever in their judgment the most efficient and economical administration of the affairs of their department requires. Each Commissioner shall also have authority to direct their subordinate employees to perform duly authorized services for other bureaus or departments. The appropriations carrying the cost of such services shall be reimbursed by calculating the cost of such services.

#### **5.48.070 Accounting Procedure for Interdepartmental Services.**

(Amended by Ordinance No. 182377, effective December 26, 2008.) Unless a specific charge for interdepartmental services is fixed, reduced or waived by the Council, through ordinance or policy, all such services shall be charged on the same basis as work performed for private persons as provided in Section 5.48.030, except that stock handling costs under Subsection 5.48.030 B. shall not be added.



**CHAPTER 5.50 - COLLECTIONS SECTION**

(Chapter added by Ordinance No. 147159, effective  
February 1, 1979.)

**Sections:**

- 5.50.010 Collections Section.
- 5.50.020 Compromise Authorization.
- 5.50.030 Money Collected.

**5.50.010 Collections Section.**

(Amended by Ordinance No. 181483, effective January 18, 2008.)

- A.** A Collections Section shall be established within the OMF Risk Management Division. This Section shall be responsible for the investigation, billing, collection and compromise of accounts receivable generated by losses suffered by the City including, but not limited to, vehicle accidents, street light and traffic accidents, property damage for vandalism or negligence and theft, and claims by the City for services rendered without a formal contract including, but not limited to property board ups, but not any claim for which the City may impose a lien. If necessary, the Collections Section may assign individual accounts to outside collection agencies. This Section shall also be responsible for gathering cumulative data necessary for establishing methods to remove or reduce the causes of such losses in the future.
- B.** The bureau sustaining the loss or damage shall send a report to the Collections Section within 2 working days from the date of loss or damage. The bureau shall supply all information relating to the loss to the Collections Section and shall cooperate with and assist the Collections Section in the investigation and collection of such loss or damage.
- C.** The Collections Section shall recommend that the City Attorney institute suit in appropriate cases. The City Attorney shall institute legal proceedings for the City in any court or tribunal upon direction of the Council or with the approval of the Commissioner of Finance and Administration and for good cause shown.
- D.** Nothing in this Chapter shall be applicable to accounts receivable arising under any contract.

**5.50.020 Compromise Authorization.**

The Collections Section with the approval of the Commissioner of Finance and Administration is authorized and directed to effect compromises in all cases where in the judgment of the collections Section, substantial justice can thus be achieved. These compromises are authorized in all cases involving an original claim of \$5,000 or less.

## **TITLE 5**

### **REVENUE AND FINANCE**

Where the amount of the original claim is greater than \$5,000 but less than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to accept compromises which provide for payment to the City of not less than 50 percent of the amount of the original claim. Where the amount of the original claim is greater than \$10,000, the Collections Section with the approval of the Commissioner of Finance and Administration is authorized to effect compromises which provide for payment to the City of not less than 75 percent of the original claim. Where the amount of the original claim is greater than \$5,000, lesser amounts than herein specified may be accepted in compromise only with Council approval. The Collections Section with the approval of the Commissioner of Finance and Administration is authorized to cancel accounts receivable invoices of under \$5,000 in amount or accept promissory notes or confessions of judgment where in the judgment of the Collections Section, substantial justice can thus be achieved.

All compromises shall be in writing utilizing forms approved by the City Attorney.

#### **5.50.030 Money Collected.**

All monies collected by the Collections Section will be credited to the appropriate City fund less a service charge of 15 percent for all claims for damages to its property against any third party tort-feasors arising out of an accident or incident. A 25 percent service charge will be required if necessary to assign to an outside collection agency. This service charge will be credited to the Insurance and Claims Fund. Financial records of amounts recovered will be cumulated and maintained by the Collections Section indicating the bureau and fund for which such amounts are recovered.

**CHAPTER 5.52 - PETTY CASH AND CHECKS**

(Chapter amended by Ordinance No. 173369,  
effective May 12, 1999.)

**Sections:**

- 5.52.010 Petty Cash and Change Accounts.
- 5.52.020 Cancellation of Checks and Issue of in Lieu Checks.
- 5.52.030 Cancellation of City Assessments on Mortgage records.
- 5.52.040 When Checks Are to Be Canceled.
- 5.52.050 Drawing Checks on Charter Appropriations.

**5.52.010 Petty Cash and Change Accounts.**

(Amended by Ordinance Nos. 135063, 138943, 141163, 146673, 152320, 162106; 169321 and 177676, effective July 9 2003.)

- A.** Council by ordinance has authorized various offices of the City government to have petty cash and change funds. The Chief Administrative Officer shall approve establishment, closure, and administer changes to these funds, effective July 9, 2003. Petty cash accounts shall be for incidental expenditures and change cash accounts shall be for the purpose of making change at authorized locations and activities.
- B.** The amount of each purchase from petty cash accounts shall not exceed \$100 unless approved in writing by the Bureau Manager.
- C.** A petty cash account exceeding \$1,000 may be maintained as a checking account designated "City of Portland, Bureau of \_\_\_\_\_, (Title of Account.)" Such accounts shall be the responsibility of the individual bureaus/agencies, which will:
  - 1.** Authorize in writing three signatures for each account.
  - 2.** Require two signatures on each check.
  - 3.** Establish a dollar limit for each check.
  - 4.** Establish a control system for the account.
  - 5.** Provide for audit procedures.

The City Treasurer shall provide technical assistance to the bureaus/agencies in the establishment of such accounts.

- D.** Reimbursement from petty cash accounts may be made to employees for the purchase of safety shoes and/or rain gear as provided in labor contracts with the

## **TITLE 5**

### **REVENUE AND FINANCE**

City. Such reimbursements for these specific purchases shall be restricted to the \$100 limitation for petty cash purposes.

#### **5.52.020 Cancellation of Checks and Issue of in Lieu Checks.**

(Amended by Ordinance No. 173369, effective May 12, 1999). The Mayor and Auditor shall have the authority to cancel any City check issued for the payment of money and to issue in lieu thereof one or more checks; provided, that in lieu checks shall be drawn against the same fund and shall not exceed in the aggregate the amount of the check cancelled; and provided further, that such in lieu checks shall state on the face thereof the numbers and date of the check in lieu of which they are issued. In the event that a check is claimed to have been lost, stolen, or destroyed the payee or holder shall promptly give notice to the City Treasurer to stop payment and file with the Auditor a request for a new check which shall include a statement of facts concerning the claimed loss, theft or destruction of the check. The Mayor and the Auditor shall have the authority to issue a new check in place of the lost check; provided, however, that before delivery of the substitute check, the Auditor shall require from the payee a document relieving the City, its officers and employees from all harm in connection with the drawing and delivery of the substitute check, which document shall be approved as to form by the City Attorney.

#### **5.52.030 Cancellation of City assessments on Mortgage Records.**

The City Auditor is hereby authorized and empowered to cancel when paid, any and all assessments which have been or may be entered in the mortgage records for the cost of constructing sewers, drains, and all works necessary therefor by the City. Such cancellations may be made by endorsing a cancellation on the margin of the record as in case of release of mortgage or by executing and acknowledging a formal instrument of cancellation. Such cancellation shall be made only where payment has been duly received by the City Treasurer and duplicate copy of the receipt for such payment has been presented to the City Auditor.

#### **5.52.040 When Checks Are to Be Canceled.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) At the close of each fiscal year the Auditor of the City is hereby authorized and directed to cancel all checks the date of which shall be in excess of 6 years prior to the time of such cancellation.

#### **5.52.050 Drawing Checks on Charter Appropriations.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) The Mayor and the Auditor shall draw checks on the appropriations provided for by Section 2-108 and Section 2-105 (14) of the Charter when a memorandum requisition for funds has been submitted to the Auditor which has been signed personally by the Commissioner of Finance and Administration. The proceeds from the checks shall be held by the Commissioner of Finance and Administration for disbursement.

#### **5.52.060 Establishing Checking Account and Providing for Payment of Certain Refunds by Check.**

(Repealed by Ordinance No. 177676, effective July 9, 2003.)

**CHAPTER 5.56 - AMBULANCE SERVICE**

**Sections:**

- 5.56.010      Police Radio Dispatch Service.
- 5.56.020      Acceptance by Ambulance Companies.

**5.56.010      Police Radio Dispatch Service.**

In order to prevent a duplication or multiplicity of ambulance service at the scene of any emergency or disaster, the Bureau of Police Radio Dispatcher will notify by direct phone furnished by the ambulance operator, the ambulance nearest the emergency or disaster scene. In consideration for the emergency dispatching service herein provided for, the private ambulance operators shall pay to the City the sum of \$600 per month. Each ambulance operator shall pay monthly a sum equal to \$600 divided by the number of ambulance companies participating in the dispatching service.

All monies due the City by the terms of this Section shall be paid by the 10th day of the month following the month in which dispatching service was furnished. All such money received by the City shall be credited to the General Fund Revenue Account, police charges, Code 432.

**5.56.020      Acceptance by Ambulance Companies.**

No monies shall be paid out or received by the City under the authority contained in this Chapter until the ambulance company requesting payment from the City or offering payment to the City shall have executed an acceptance of the terms of this Chapter in writing in form approved by the City Attorney.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.60 - MISCELLANEOUS  
CHARGES**

**Sections:**

- 5.60.010 Charges For Architectural Services.
- 5.60.040 Employee Lists Furnished by Accounting Division Manager.
- 5.60.050 Licensees' Lists Furnished by License Bureau.
- 5.60.110 Driving City Cars to and from Work
- 5.60.120 Lien Accounting System Access.

**5.60.010 Charges For Architectural Services.**

(Replaced by Ordinance No. 136092; effective March 1, 1973.) Services performed by the Bureau of Architectural Planning for a service financed from a City fund other than the General Fund or by another governmental agency shall be charged for at the rate of 165 percent of the salary rates of the individuals working on the project. Services which are to be provided shall be undertaken only on approval of the Commissioner In Charge. Services to be charged for shall be authorized only after it has been determined that funds are available for payment.

**5.60.020 Public Records Copy Charges.**

(Repealed by Ordinance No. 156910, effective December 26, 1984.)

**5.60.040 Employee Lists Furnished by the Accounting Division Manager.**

(Amended by Ordinance No. 155770, effective April 4, 1984.)

- A. Upon written application, the Accounting Division Manager may furnish to any applicant a list of names of City employees.
- B. The Accounting Division Manager may charge a fee for providing such information with such fee determined by the Accounting Division Manager to be reasonable and approximating the cost to the City of providing the information.
- C. The information provided by the Accounting Division Manager pursuant to this Section shall be limited to names of employees only, and shall not include addresses, or phone numbers.
- D. This Section is not intended to prevent, nor is it related to, the verification of personal information provided voluntarily by employees to others.

**5.60.050 Licensees' Lists Furnished by License Bureau.**

Upon written application accompanied by the fee hereinafter set out, the Bureau of Licenses may furnish to any applicant a list of licensees. The fee for such list shall be as follows:

- A. For any list containing the names of not more than 15,000 licensees, the fee shall be \$250;

**TITLE 5**  
**REVENUE AND FINANCE**

- B.** For any list containing the names of more than 15,000 licensees, the fee shall be in addition to the above, \$1 for each 100 names or fraction thereof.

No list of names of licensees shall be furnished to any person not a City employee without the prior approval of the City Licenses Director.

**5.60.110 Driving City Cars to and from Work.**

(Amended by Ordinance Nos. 141835, 142504, 154639, 157641; 168313, 173369, and 176872, effective August 28, 2002.)

- A.** Employees authorized to drive City vehicles to and from their place of residence shall pay to the City a rental charge for each accounting period of use.

If there is more than one City employee commuting in the same vehicle, the charge to the passenger will be equal to that of the driver. It shall be the responsibility of bureaus to report to the Accounting Division vehicles used as commuting vehicles.

Payroll deductions for rental charges shall be made from the employee's second payroll check of the month. Submission of the Personal Use of City Vehicle form is required upon vehicle assignment, cancellation, or when reduction is requested by Friday of the payroll submission week.

- B.** Credit will be given when total consecutive working days of nonuse exceed working days.
- C.** Requests for authorization to drive City vehicles to and from work must be approved by the employee's bureau manager and the employee's Commissioner In Charge.

**5.60.120 Lien Accounting System Access.**

(Added by Ordinance No. 159619; amended by Ordinance No. 176577, effective July 1, 2002.) Access to the City's automated Lien Accounting System shall be provided by internet access. Fees for use of the System by internet will be assessed on a per search basis. The City Auditor shall set the fee per search and the fee may be adjusted annually. Agencies and individuals not affiliated with the City of Portland shall be billed monthly for searches on the System.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.64 - MISCELLANEOUS FISCAL  
PROVISIONS**

**Sections:**

- 5.64.010 Fiscal Agency in New York City.
- 5.64.020 Appointment of Deputy Auditors.
- 5.64.030 Treasurer to Cash Credit Union Checks.
- 5.64.040 Bureau of Water Works Accounts.
- 5.64.050 Execution of Releases from Claims for Damages.
- 5.64.060 Cancellation of Refund Checks.
- 5.64.070 Refunds.
- 5.64.090 Investment of Available Funds.
- 5.64.100 Determination of City's Subrogation for Time Loss Payments.
- 5.64.110 Procedure upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.

**5.64.010 Fiscal Agency in New York City.**

The National Bank of New York, New York City, State of New York, shall be the fiscal agency in New York City for the City.

**5.64.020 Appointment of Deputy Auditors.**

The Auditor of the City shall have the authority to appoint as his deputies with power to act for and in his behalf any and all persons employed in the Office of the Auditor of the City. The authority hereby conferred shall in no way affect the classifications or salaries of employees so appointed, the authority being conferred merely for the purpose of facilitating the transactions of business in the office of the City Auditor.

**5.64.030 Treasurer to Cash Credit Union Checks.**

The City Treasurer is hereby authorized and directed to accept and cash checks properly drawn by the City Employees' Credit Union, signed by the Treasurer and countersigned by the President and Vice President. It shall be the duty of the Secretary of the City Employees' Credit Union to file with the City Treasurer annually at the time of election of officers of the credit union a certificate showing the name of the President, Vice-president and Treasurer of the Credit Union. In the event any change is made in the organization of the Credit Union whereby any other officers or individuals are authorized to sign or countersign checks, the same shall be immediately transmitted to the City Treasurer by the Secretary by the filing with the City Treasurer of a certificate so stating. In the event any change in officers is made at any time during the year the same shall be immediately transmitted to the City Treasurer in like manner.

**5.64.040 Bureau of Water Works Accounts.**

The Auditor of the City is hereby directed to exercise the same supervision and authority over the accounts and financial affairs of the Bureau of Water Works as he is authorized, directed, and required by the Charter and ordinances of the City to exercise over other bureaus.



**5.64.050      Execution of Releases from Claims for Damages.**

The City Treasurer, or Deputy Treasurer, in the absence or inability to serve of the City Treasurer, is hereby authorized upon receiving payment in full of claims for damages, to execute and deliver on behalf of the City a formal release and discharge of and from any further liability upon such claim; provided, that such release be first approved by the City Attorney.

**5.64.060      Cancellation of Refund checks.**

The City Treasurer shall cancel outstanding refund checks after 6 years. The amount represented by such checks shall be transferred from the refund account to the General Fund. In order that persons having refunds due which are represented by outstanding refund checks may not be precluded from establishing their right to such refund in the future, any person entitled to a refund, for which refund a check has been issued and has not been presented for payment within 6 years, and which refund has been canceled under the provisions of this Section, may petition the Council at any time for the allowance of such refund. The Council may after hearing upon such claim allow and pay the amount of such refund from the General Fund. Such payment however shall be made only by ordinance.

**5.64.070      Refunds.**

(Amended by Ordinance No. 173369, effective May 12, 1999.)

- A.    The Mayor and Auditor are authorized to draw checks making refunds for any purpose except as provided in Subsection B below. A check may be drawn when a properly signed memorandum requisition is presented which contains a statement showing the necessity for the refund and the amount thereof, or which is supported by such statement. The statement shall bear the approval of the bureau head responsible for determining the amount of refund and he shall initiate the necessary requisition. A refund in any amount may be paid from petty cash if funds are available and if the required statement is submitted.
- B.    The Mayor and Auditor are authorized to draw checks for the refund of assessments paid in error after such refunds have been properly recorded in the Auditor's refund register, provided that no refund shall be made on account of assessments paid where the description of property assessed is found to be erroneous unless such refund is first authorized by Council.
- C.    A refund shall be charged against appropriations if the amount to be refunded was previously credited to a budgetary fund. It shall be charged to the fund receipts previously credited if the amount to be refunded was credited to a nonbudgetary account.

**5.64.090      Investment of Available Funds.**

The City Treasurer hereby is authorized to invest any uninvested surplus balance to the credit of the General Fund or any sinking fund or special fund in interest bearing securities

## **TITLE 5**

### **REVENUE AND FINANCE**

such as may be lawfully held by the City under Section 7-105 of the City Charter. The Treasurer may purchase such securities on the open market and may bid on new issues of such securities. The Treasurer may sell such securities on the open market, if there is an established market therefor, as necessary to meet the cash needs of the various funds.

The authority herein granted to the Treasurer may only be exercised with the approval of the Commissioner of Finance and Administration and, in the case of the investment of sums held in special funds or sinking funds, with the approval of Commissioner In Charge of the budget of such sinking fund or special fund.

#### **5.64.100 Determination of City's Subrogation for Time Loss Payments.**

The City Attorney shall determine the amount of any City claim under Charter Section 2-608 for time loss payments made to any officer or employee of the City. In making such determination the City Attorney shall consider the amount of time loss paid by the City, the amount of recovery, the nature and degree of the injury, the costs and expenses incident to the injury or to the recovery of damages, the testimony and evidence insofar as the same is conveniently available, the legal factors involved and all other facts and circumstances which he finds relevant to the particular situation. A tentative determination of the City claim may be made prior to recovery if the City Attorney finds it to be appropriate to assist in settlement of the claim of the officer or employee against another person. Such determination by the City Attorney on the basis of settlement or adjudication of the claim of the officer or employee shall in each case be deemed the amount of the City's claim by subrogation.

#### **5.64.110 Procedure Upon Obtaining Real Property with Outstanding Liens, Assessments or Accumulated Interest.**

In all cases where the City acquires a parcel of real property by purchase, gift, trade or otherwise, and the City is obligated to pay an outstanding lien and/or assessment with or without accumulated interest, the officer or Commissioner In Charge of the department or bureau acquiring the real property shall be responsible for the payment of the outstanding lien and/or assessment with accumulated interest, if any, from the appropriate fund at the time of acquisition.

**CHAPTER 5.68 -PROFESSIONAL,  
TECHNICAL AND EXPERT SERVICE  
CONTRACTS**

(Chapter replaced by Ordinance No. 177244,  
effective July 1, 2003.)

**Sections:**

- 5.68.010 Definition.
- 5.68.015 General Requirements – PTE Manual.
- 5.68.020 Personal Services Contracts.
- 5.68.030 Public Announcement of Requirements.
- 5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.
- 5.68.050 Review by City Attorney.
- 5.68.060 Outside Legal Services.
- 5.68.070 Procedure for Selection of Bond Counsel.
- 5.68.080 Contractor's Compliance with Workers' Compensation Requirements.

**5.68.010 Definition.**

(Amended by Ordinance Nos. 182213, 184427, 185065 and 187373, effective October 14, 2015.)

- A. For the purposes of this Chapter, "professional, technical and expert" refers to any individual or group, excluding regular City employees, who, for a fee, provides services or gives professional advice regarding matters in the field of their special knowledge or training. This includes but is not limited to: planners, architects, engineers, lawyers, accountants, doctors, dentists, ministers, and counselors in investments, insurance, advertising, graphics, training, public relations, communications, software, data processing and management systems. Such contracts may include incidental materials such as written reports, architecture or engineering renderings, and similar supplemental materials. The Chief Procurement Officer has authority to classify services not specifically addressed in this provision as professional services if those services require professional advice in a field of special knowledge or training similar to those listed above.
- B. "QBS Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A QBS Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- C. "Estimated Fee" means City's reasonably projected fee to be paid for a QBS Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used

## **TITLE 5**

### **REVENUE AND FINANCE**

solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.

- D.** “Price Agreement”, for purposes of the QBS Rules is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
- 1.** No guarantee of a minimum or maximum purchase; or
  - 2.** An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- E.** "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- F.** “Transportation Planning Services” include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- G.** “Related Services” means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representation services or land-use planning services.

**5.68.015      General Requirements– PTE Manual.**

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Chief Procurement Officer of Procurement Services shall create and publish a Professional, Technical and Expert (PTE) Services Manual that shall govern selection and award of PTE contracts. The Chief Procurement Officer may amend the PTE Manual to ensure that the interests of the public and PTE contractors are fully served and that the process promotes accountability and competition among all segments of the citizens of Portland. The PTE Manual shall include procedures providing for adequate notice of contract award to potential contractors and shall provide the exclusive means by which selection decisions may be protested before the contract is executed.

**5.68.020      Personal Services Contracts.**

(Amended by Ordinance Nos. 179802, 182213, 184427 and 187373, effective October 14, 2015.)

- A. This Chapter applies to City procurement of professional, technical and expert services.
- B. The following services, designated as Personal Services Contracts, are exempt from the selection process outlined in the City's Professional, Technical and Expert Services Manual and can be made by direct appointment under this Chapter:
  - 1. Processing of any claim for workers' compensation benefits;
  - 2. Physician or medical personnel to determine any prospective or current City employee's ability to work or return to work;
  - 3. Determining any reasonable accommodation that may be made to any job classification in the City; and
  - 4. Veterinary physician, specialist, or medical personnel required to determine any prospective or current City-owned service animal's ability to work or return to work, or providing general medical upkeep to a City-owned service animal;
  - 5. Performing artists, whether vocal, instrumental, or visual required by the City to provide a paid performance of their work for an audience determined by the City;
  - 6. A one-time payment or gratuity granted in recognition of a special service in which propriety or competitive selection process is not feasible and made without the giver recognizing themselves as having any liability or legal obligation for services;

## **TITLE 5**

### **REVENUE AND FINANCE**

7. Golf Course Management Agreements (including concessions and club house operations) of a duration not to exceed five years for the parks under the jurisdiction of the City of Portland Bureau of Parks and Recreation.
  8. Modification by the licensor of intellectual property licensed to the City.
  9. The City Attorney's retention of expert witnesses, consultants to assist the City Attorney's Office in providing legal advice to the City, and outside legal counsel.
- C. If any emergency as defined in the PTE Manual exists the Chief Procurement Officer may authorize selection of a contractor without following the requirements of this Chapter.
- D. If the services or expertise required for a project are only available from a "sole source" as defined in the PTE Manual, then the Chief Procurement Officer may authorize selection of a contractor without following these requirements.
- E. The Chief Procurement Officer shall include all emergency and sole source contracts in periodic reports to the City Council.
- F. If professional, technical or expert services are required in conjunction with the acquisition of goods, services, public improvements, construction services or some combination thereof, the Chief Procurement Officer may permit the acquisition of such services through the provisions of Chapter 5.33 or 5.34 of this Code instead of this Chapter.

#### **5.68.030 Public Announcement of Requirements.**

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.) The Professional, Technical and Expert Services Manual shall set forth the procedures to be followed by all bureaus in announcing and advertising City PTE solicitations. The procedures in the Manual shall be designed to make information about such solicitations readily available to interested PTE contractors, including state certified minority, women and emerging small business (M/W/ESB) firms and Disabled Veteran owned or controlled firms as defined in ORS 408.225. 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, the Chief Procurement Officer shall take steps to ensure that PTE contractors wishing to enter into contracts with the City are aware of their requirements.

#### **5.68.035 Authority to Obligate City for Professional, Technical or Expert Services.**

(Amended by Ordinance Nos. 182213 and 184427, effective February 23, 2011.)

- A. All professional, technical or expert services contracts or purchase orders shall be in writing in a form approved by the City Attorney as provided in Section 5.68.050. The Chief Procurement Officer, or designee, is authorized to execute contracts for

**TITLE 5**  
**REVENUE AND FINANCE**

PTE services required by the City in any amount not exceeding \$100,000 without the need for an ordinance specifically authorizing the contract if the contract is included within the current fiscal year budget of the bureau seeking the contract.

- B.** The Chief Procurement Officer has authority to execute amendments to such contracts, provided the amendments do not, in the aggregate, exceed 25 percent of the original contract amount. Otherwise, the original contract or contract amendment must be approved by the City Council. Except for contracts executed with outside counsel, contracts executed pursuant to Subsection 5.68.020 B.4. may be amended in excess of 25 percent without Council approval provided the City Attorney and the Chief Procurement Officer both approve the amendment. Periodic reports of such actions shall be provided to City Council by the City Attorney's Office.
- C.** The Chief Procurement Officer is authorized, but not required, to waive any procedural irregularities in the PTE selection process provided the irregularities had no material affect on the selection of the proposed contractor.
- D.** The provisions of Section 5.68.035 also apply to the procurement of services and contracts for services referenced in Subsection 5.68.020 B.

**5.68.040 Process for Services Costing Under and Over The Formal Bid Threshold.**

(Repealed by Ordinance No. 182213, effective September 24, 2008.)

**5.68.050 Review by City Attorney and Chief Procurement Officer.**

(Amended by Ordinance Nos. 182213, 184427 and 187373, effective October 14, 2015.)

- A.** The Chief Procurement Officer shall review and approve the form of all Requests for Proposals, Requests for Qualifications and other similar solicitation documents for all PTE contracts estimated to exceed \$100,000, prior to issuance. Further review by the City Attorney will be at the Chief Procurement Officer's discretion.
- B.** The City Attorney or designee shall approve the form of all PTE contracts and shall ensure that all required documentation, including, but not limited to insurance, is present before the contract is executed. Such approval shall occur before work begins.

**5.68.060 Outside Legal Services.**

(Amended by Ordinance Nos. 179802, 180659, 182213 and 184427, effective February 23, 2011.)

- A.** Except as specifically exempted by this Section, and in addition to the other requirements of this Chapter for professional, technical and expert service contracts, the following procedures and requirements shall apply to any contracts

## **TITLE 5**

### **REVENUE AND FINANCE**

for legal services to be provided by attorneys outside of the Office of the City Attorney.

1. All City bureaus and agencies shall submit in writing to the City Attorney all requests for legal services from outside the City Attorney's Office before any agreement is made to obtain any such outside legal services.
2. The Chief Procurement Officer has the authority to sign and approve contracts and contract amendments for outside counsel to the same extent as other contracts for professional, technical and expert services. However, all billings and invoices for outside legal counsel's services shall be directed to the City Attorney for review and approval prior to payment.
3. The Chief Procurement Officer shall not process any purchase requisition for outside legal services without the written approval of the City Attorney or designee.
4. The Accounts Payable Division shall not process for payment any billing or invoice for outside legal services without the written approval of the City Attorney or designee.
5. This Section does not apply to selection of bond counsel, who are selected in accordance with Section 5.68.070 of this Code. However, all billings and invoices of bond counsel shall be directed to the City Attorney for review and approval prior to payment.

#### **5.68.070 Procedure for Selection of Bond Counsel.**

(Amended by Ordinance No. 182213, effective September 24, 2008.)

- A.** At the time a bureau determines it will need bond counsel for a project or series of projects, the bureau will notify the City Attorney. The City Attorney or designee shall notify each counsel listed in the Oregon Section of the Bond Buyer's Directory of Municipal Bond Dealers (Red Book), requesting that those interested in serving as bond counsel for the project or series of projects submit proposals.

The notice shall indicate the nature of the project or series of projects, the type and approximate amount of bonds, the approximate date for the sale or sales of bonds, the bond counsel services required, and the date proposals are due.

- B.** Those counsel interested shall provide the following information to the City Attorney:
1. A statement of the fee arrangement proposed by the firm.
  2. Such other information as the City Attorney deems appropriate.



**TITLE 5  
REVENUE AND FINANCE**

- C.** On receipt of the proposals the City Attorney shall refer them to a consultant selection committee consisting of the City Attorney or designee; the Chief Administrative Officer or designee; and the Bureau Director or designee. The Committee shall consider only firms that are listed in the Red Book. The Committee may interview any or all firms, including more than once. The Committee may authorize firms to modify their proposals during the interview period.
- D.** The Consultant Selection Committee shall select a law firm to serve as bond counsel for the project or series of projects. The selection shall be based on fee, experience, or such other criteria as the Committee deems appropriate.

**5.68.080 Contractor's Compliance with Workers' Compensation Requirements.**

Prior to the performance of any work under a professional, technical or expert services contract awarded by the City, a contractor shall comply with the Workers' Compensation Law, ORS Chapter 656, as it may be amended, and if Workers' Compensation Insurance is required by ORS Chapter 656, shall maintain coverage for all subject workers as defined by ORS Chapter 656, and shall maintain a current, valid certificate of Workers' Compensation Insurance on file with the City Auditor for the entire period during which work is performed under the contract.

**5.68.090 Selection of Architectural, Engineering and Land Surveying Consultants for PTE Contracts.**

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

**5.68.100 Direct Contracts with Architects, Engineers and Land Surveyors.**

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

**5.68.110 Two-Tiered Selection Process.**

(Repealed by Ordinance No. 185065, effective January 1, 2012.)

## **TITLE 5 REVENUE AND FINANCE**

### **CHAPTER 5.72 - ECONOMIC DEVELOPMENT PROJECTS**

(Chapter added by Ordinance No. 145441; amended  
by Ordinance Nos. 149771, 155942, 157012; and  
157226 effective May 13, 1985.)

#### **Sections:**

- 5.72.010 Purpose.
- 5.72.020 Definitions.
- 5.72.030 Economic Development - Applications.
- 5.72.040 Economic Development - Initial Review, Standards.
- 5.72.050 Housing - Applications.
- 5.72.060 Housing - Initial Review, Standards.
- 5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.
- 5.72.080 General Conditions; Document Preparation and Review.
- 5.72.090 Application Processing, Financial Considerations.
- 5.72.100 Administrative Fees.
- 5.72.110 Bond Issuance.
- 5.72.120 Reporting Requirements.

#### **5.72.010 Purpose.**

The purpose of this Chapter is to provide necessary procedures and standards to carry out the powers granted to the City by Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) as amended. This Chapter shall be liberally construed in order to carry out this purpose.

#### **5.72.020 Definitions.**

(Amended by Ordinance Nos. 166682 and 172567, effective August 12, 1998.) As used in this Chapter unless the context requires otherwise:

- A. “Economic development project”** includes any properties, real or personal, used or useful in connection with a revenue producing enterprise. “Economic development project” shall not include any facility or facilities designed primarily for the operation, transmission, sale, or distribution of electrical energy. “Economic development project” also includes multiple unit residential housing development on land having an assessed valuation of \$8 per square foot or more on September 13, 1975, land within a designated urban renewal or redevelopment area formed pursuant to ORS Chapter 457, land within an area designated as a Housing and Community Development target neighborhood pursuant to the Housing and Community Development Act of 1974, or projects which benefit low or moderate income tenants, or address slum and blight as defined by the 1974 Housing and Community Development Act.

**TITLE 5**  
**REVENUE AND FINANCE**

- B. “Eligible project”** means an economic development project found by the City to meet standards adopted pursuant to this Chapter. “Eligible project” includes multiple unit residential housing development which increases available housing units through new construction, rehabilitation of nonresidential buildings, or provides for rehabilitation of residential buildings.
- C. “City”** means the City of Portland.
- D. “Costs”** as applied to any project must conform to all applicable Internal Revenue Service regulations and may include:
1. The cost of construction and reconstruction.
  2. The cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved and the cost of site improvements.
  3. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated.
  4. The cost of eligible machinery and equipment and related financing charges.
  5. The cost of engineering and architectural surveys, plans and specifications.
  6. The cost of financing charges and interest prior to and during construction, and if deemed advisable by the City for a period not exceeding 1 year after completion of construction.
  7. The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing a project, administrative and other expenses necessary to or incident to the construction of the project, including, but not limited to, costs of relocation and moving expenses according to a project plan developed by the City, and the financing of the construction of the project thereof, including reimbursement to any state or other governmental agency or any lessee of such project for the expenditures made with the approval of the City that would be costs of the project under this Chapter had they been made directly by the City, and any costs incurred after bond issuance by the City for audits or monitoring.
- E. “Qualified historic project”** shall mean a project which includes the restoration or rehabilitation of a structure or structures designated as a City of Portland Historic Landmark. Such rehabilitation or restoration shall require the approval of the City

## **TITLE 5**

### **REVENUE AND FINANCE**

of Portland Landmarks Commission to assure conformance with the Secretary of the Interior's standards for historic preservation projects.

#### **5.72.030 Economic Development - Applications.**

- A.** The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
  - 1.** Company/applicant information.
  - 2.** Project information.
  - 3.** Description of labor force at existing and proposed locations.
  - 4.** Financial information.
  - 5.** Environmental control information.
  - 6.** Any information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
  - 7.** An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.
- B.** The applicant must certify by letter that the issuance of revenue bonds is an inducement to locate, retain, or expand the project in Portland.
- C.** The requirements herein shall be considered to be minimums, and the Portland Development Commission and the City reserve the right to add additional requirements on a case-by-case basis. Likewise, the requirements herein stated pertain only to the Commission and the City and are not exclusive. Qualified bond counsel or the original purchaser may make additional requirements.

#### **5.72.040 Economic Development -Initial Review, Standards.**

- A.** Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Portland Development Commission staff may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.

**TITLE 5**  
**REVENUE AND FINANCE**

- B.** The Portland Development Commission shall consider the following:
1. Economic feasibility and general benefits to the City of the proposed project.
  2. Density of use and potential impact in the area affected by the proposed project.
  3. Land use, transit, and transportation facilities in the vicinity of the proposed project.
  4. City's ability to supply or support other needed services resulting from the Economic Development Project.
  5. Effect of proposed project on balanced economic development of the City.
  6. Employment and property tax income from the project.
  7. Employment opportunities. City and Portland Development Commission will use employment agreements when and where appropriate.
  8. Suitability of proposed area in the City for the particular type of proposed development project.
  9. Conformance with Internal Revenue Service regulations and the Oregon Revised Statutes.
- C.** No application shall be recommended for City Council approval unless the Portland Development Commission determines that the proposed project does not conflict with adopted City plans and policies, and conforms to the following uses:
1. Manufacturing or other industrial production.
  2. Agricultural development or food processing.
  3. Transportation or freight facilities.
  4. Warehousing or distribution.
  5. A project for the primary purpose of reducing air, water, or solid waste pollution.
  6. Other activities that represent new technology or types of economic enterprise that the City determines are needed to diversify the economic base of the community.

## **TITLE 5**

### **REVENUE AND FINANCE**

7. Parking in close proximity to the Portland Performing Arts Center. Such a parking facility may include space for retail and commercial uses in addition to parking.
8. Commercial uses when a part of a qualified historic project or publicly initiated urban development project.

#### **5.72.050 Housing - Applications.**

- A. The Portland Development Commission shall be responsible for receipt of applications and review and processing thereof, including, but not limited to, advice of bond counsel and legal advice. Applications shall be in a form established by the Portland Development Commission and shall include, in addition to other information deemed necessary by the Portland Development Commission:
  1. The applicant's name, address and telephone number.
  2. A brief description of the applicant's company history and past relevant performance.
  3. A legal description of the property upon which the project will be located.
  4. A detailed description of the project including the number, size and type of dwelling units; dimensions of structures; parcel size, proposed lot coverage with buildings, and amount of open space; type of construction; public and private access; parking and circulation plans; water, sewer, and other utility plans; landscaping; expected uses; and economic feasibility studies and market information including rent levels proposed.
  5. A description of the existing use of the property including a proposed relocation plan for any persons who would be displaced from existing housing by the project; and for any businesses which would be displaced.
  6. A site plan and supporting maps, which show in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking and loading areas; location and dimension of structures; use of the land and structure; major landscaping features; design of structures; and existing and proposed utility systems including sanitary sewers, storm sewers, water, electric, gas and telephone lines.
  7. Any other information required by law or otherwise which is reasonable and necessary to effectuate the purposes of this Chapter.
  8. The approximate amount of bond proceeds and allocation to eligible costs.

**TITLE 5**  
**REVENUE AND FINANCE**

9. An agreement to indemnify and hold harmless the Portland Development Commission and the City of Portland, its officers and employees, from any and all liability for loss or damage to the company or any third person or entity arising from or alleged to have arisen from the processing of this application or any error or omission in any official statement or representation related to the contemplated financing.

**5.72.060 Housing - Initial Review, Standards.**

(Amended by Ordinance No. 177259, effective February 19, 2003.)

- A. Upon receipt of an application, the Portland Development Commission shall review the application to determine whether the application should be further processed. In reaching such a determination, the Commission may request additional information from the applicant as well as assemble any and all data deemed relevant to the decision.
- B. The Portland Development Commission shall, after review and comment by all relevant City bureaus, recommend approval, approval with conditions, or denial of the application, after consideration of the following:
  1. The economic feasibility of the project, with and without the use of revenue bonds.
  2. The need for housing resulting from the project.
  3. The general benefits to the City of the proposed project.
  4. The City's ability to supply or support other needed services required by the project.
  5. Employment and property tax income from the project.
  6. Suitability of the project as proposed in the specific proposed location.
  7. (Amended by Ordinance No. 157998; Nov. 21, 1985.) Projects applying for permanent financing must be determined to provide housing at rent or price levels 85 percent of which shall be affordable by households with incomes up to 150 percent of the area median income.
  8. Projects in the downtown, particularly the RX Zone, designated urban renewal or redevelopment areas shall receive highest priority.
  9. Conformance with Internal Revenue Service Regulations and the Oregon Revised Statutes.

## **TITLE 5**

### **REVENUE AND FINANCE**

10. No application shall be recommended for approval unless the Portland Development Commission, after review and comment by all relevant City bureaus, determines that the project does not conflict with adopted City plans and policies.
  11. Projects applying for construction financing may be at rent or price levels up to 150 percent of median income, but must have available a firm commitment for long-term project financing.
- C. No project may be approved which would result in the conversion of existing occupied residential rental units to condominium or cooperative projects.
- D. The applicant, to be eligible for financing assistance under this program, must agree not to discriminate against any purchaser or tenant who is a parent or legal guardian with whom a child resides or is expected to reside, except in projects designed exclusively for households, the heads of whom are 62 years of age or older; or in projects designed for households, the heads of whom are 55 years of age or older, if the project meets the requirements of the applicable federal law.
- E. Revenue bonds may be issued secured by revenues from mortgage payments from individual owners of condominium and cooperative units within multiple unit housing projects which are newly constructed, rehabilitated from other uses or rehabilitated in abandoned residential buildings. Applications for such projects shall be considered by the Portland Development Commission if:
1. No individual or company may have more than one loan outstanding at any one time under this program for individual condominium or cooperative units.
  2. No mortgage loan funds under this program may be used for refinancing by existing owners, and no loans may be assumed by persons not eligible for condominium or cooperative units.
- F. The applicant shall submit a relocation plan for any households, individuals, or businesses which may be displaced by the proposed project. The Portland Development Commission will be responsible for analysis of that proposal and recommendation of that plan, that plan with amendments, or an alternative plan. The relocation plan shall assure that such households, individuals, or businesses are relocated to affordable housing of comparable or better quality.

#### **5.72.070 Initial Determination of Eligibility, Final Approval, Appeals.**

- A. The Portland Development Commission staff, within 60 days after a complete application is filed with the Commission, shall prepare a written recommendation of approval, approval with conditions or denial of the application.



**TITLE 5**  
**REVENUE AND FINANCE**

- B.** If Portland Development Commission staff recommends approval or approval with conditions of the application, the Commission shall, within 60 days of receipt of the application and recommendation, recommend by resolution that City Council approve, approve with conditions, or deny the application. This resolution shall include consideration of any required relocation plan. The Council shall, by resolution, approve, approve with conditions, or deny the application. Council approval or conditional approval of an application shall authorize the Portland Development Commission to process the application and to execute a letter of intent with the applicant.
- C.** Final approval shall take place after receipt and review by the Portland Development Commission of all requested and required final documents. All documents to be approved by the Portland Development Commission must be received in final form and received by the Commission 14 days prior to a scheduled Commission meeting. If the Commission determines that the documents comply with the rules and policies established within this Chapter, the Commission shall, by resolution, recommend issuance of the bonds in accordance with those final documents and further recommend that City Council adopt an ordinance authorizing issuance of the bonds in accordance with those documents.
- D.** If the Portland Development Commission staff recommends denial of the application, they shall notify the applicant in writing. The applicant may appeal by filing written notice thereof with the Portland Development Commission staff within 14 days of receipt of the notice of rejection. Upon receipt of the appeal, the Portland Development Commission shall, within 45 days, recommend by resolution, approval, approval with conditions or denial of the appeal.

**5.72.080 General Conditions; Document Preparation and Review.**

(Amended by Ordinance No. 166682, effective June 30, 1993.)

- A.** The following general conditions prevail in the issuance of all industrial development revenue bonds:

  - 1.** City of Portland economic development revenue bonds may be sold at public or private sale, and the bonds may mature at any time or times within the useful life of the project. For public sales, special approval may be required.
  - 2.** Any bond authorized under this Chapter which is to be sold by public sale must be rated by either a nationally recognized rating agency as Investment Grade.
  - 3.** Bonds sold through a private sale do not require a rating. For purposes of this Chapter, “private sale” means a sale of all of the bonds to persons or entities that qualify as “accredited investors” under 15 USC Section 77b

## **TITLE 5**

### **REVENUE AND FINANCE**

(15) (I) or 17 CFR Section 230.215. The purchasers must also certify, in a manner satisfactory to the City, that they have the financial sophistication, knowledge and experience in financial matters to evaluate the investment in the bonds and the appropriateness of that investment for them, and that they have received all the information required to make an informed judgement about the purchase of the bonds. Bonds which are sold through a private sale may be resold or transferred only to persons or entities that qualify as accredited investors and that provide the certification described in the preceding sentence.

4. The City of Portland does not guarantee the bonds and is not subject to any liability for their repayment.
5. The terms and conditions of the issuance and purchase of an industrial revenue bond issue are to be agreed upon by the applicant and bond purchaser with the concurrence of the Portland Development Commission (acting on behalf of the City.)
6. Where residential rental property is assisted under this Chapter, construction of the project must begin within 9 months from the date of bond issuance.
7. Applicant will be required to keep the Portland Development Commission advised of the schedule for document preparation and approval, and to provide drafts of documents to the Commission upon request of the Commission.

**B.** The following general conditions prevail regarding the preparation of all bond documents:

1. Bond counsel will be designated by the Portland Development Commission. Procedures for selecting bond counsel established by Section 5.68.080 of this Code shall not apply to projects initiated pursuant to this Chapter. The applicant will submit their recommendation of bond counsel.
2. Bond counsel will advise the Portland Development Commission of all federal and state procedural requirements as they apply to issuance of the bonds.
3. Bond counsel must be an Oregon law firm or other mutually acceptable bond counsel recognized in the Bond Buyers Directory of Municipal Bond Dealers of the United States.
4. The trustee chosen by the applicant, and approved by the Commission, must be a bank or trust company doing business in the State of Oregon with trust powers.

5. All documents to be approved by the Portland Development Commission must be in final form and received by the Portland Development Commission 14 days before the Commission meeting at which it will be acted upon.

**5.72.090 Application Processing, Financial Considerations.**

- A. Upon receipt of a resolution approving the application, the Portland Development Commission shall consider:

1. The bond market for the types of bonds proposed for issuance.
2. The terms and conditions of the proposed issue.
3. Whether the applicant is financially responsible and fully capable and willing to fulfill its obligations under the agreement of lease, or contract, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased, or sold, and to serve the purposes of this Chapter and such other responsibilities as may be imposed under the lease or contract. In determining financial responsibility of the applicant consideration shall be given to the lessee's or purchaser's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee or purchaser, financially and otherwise, to fulfill its obligations consistently with the purposes of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485.)
4. Such other relevant factors as the Development Commission considers necessary to protect the financial integrity of the City.

If the Development Commission shall determine that a bond issue is financially feasible it shall designate the underwriter, trustee and bond counsel and shall enter into appropriate agreements with each to carry out the provisions of this Chapter and Chapter 772, Oregon Laws of 1977 (ORS 280.410 to 280.485) subject to the approval of the Council pursuant to Section 5.72.110 of this Chapter. In reaching its determination, the Development Commission may appoint a Bond Review Committee to assist it in its deliberations, and may set administrative procedures from time to time as necessary.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.72.100 Administrative Fees.**

(Amended by Ordinance Nos. 160540, 160608; and 166996, effective September 29, 1993.)

- A.** The applicant agrees to pay all applicable City and Portland Development fees and expenses associated with the application whether or not the bonds are issued. A minimum application fee of \$500 shall be assessed to all projects at the time of filing the formal application with the Commission. In addition, the Commission shall be reimbursed in full for all direct and indirect costs incurred in the project. The fees shall be paid as follows:
- 1.** \$500 at the time of filing a formal application with the Portland Development Commission.
  - 2.** The balance at the time of closing of the bond issue. In the event the financing is not completed, costs incurred to date by the Commission shall be subject to immediate reimbursement.
- B.** Upon issuance of the bond, the applicant will pay the Portland Development Commission a one-time issuance fee equal to seven dollars per 1,000 dollars of the face amount of the bonds for ongoing administration of the bonds. On bonds issued prior to March 23, 1988, the annual administration fee will henceforth be seventy-five cents per 1,000 dollars of the outstanding principal, billed yearly in advance. On bonds issued prior to March 23, 1988, the Portland Development Commission and applicants of outstanding issues may enter into an agreement to pay a one-time fee in lieu of the annual administration fee.
- 1.** For refunding bonds issued under ORS Chapter 280 for economic development projects, if the one-time issuance fee has been paid in accordance with subsection (b) for the bonds being refunded, and the Portland Development Commission determines the refunding will not generate additional ongoing administration costs, the fee or an equitable portion thereof may be waived. Nothing in this subsection (1), however, should be construed to eliminate or limit the applicant's responsibility to pay all fees and expenses of the City and the Portland Development Commission described in subsection (a) of this section in connection with issuing the refunding bonds.

#### **5.72.110 Bond Issuance.**

Upon receipt of the recommendation of the Portland Development Commission, the Council may by ordinance authorize the issuance of bonds in an amount equal to the costs of the proposed project, pursuant to Chapter 772, Oregon Laws of 1977, if it determines that the proposed issue meets the requirements of said Act and this Chapter.

**5.72.120      Reporting Requirements.**

- A.**      Beginning no later than 12 months following the issuance of bonds by the City, and continuing annually for a period as long as the bonds are outstanding, the Portland Development Commission shall require each project owner of the assisted project to submit a written report which describes:

  - 1.**      Number of current employees by job category.
  - 2.**      Total assessed value and property taxes paid during the most recent period for the assisted facility or facilities.
- B.**      In addition to the foregoing, owners of multi-family projects assisted under this Chapter are required to report annually the number of residential units occupied by individuals or families who, at the date of reporting, have low or moderate incomes.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.73 - ARTS EDUCATION AND  
ACCESS INCOME TAX**

(Chapter added by Resolution No. 36939 (approved  
at November 6, 2012 election); effective December  
5, 2012.)

**Sections:**

- 5.73.010 Definitions.
- 5.73.020 Tax Imposed.
- 5.73.030 Net Revenues Distribution.
- 5.73.040 Intergovernmental Agreements.
- 5.73.050 Citizen Oversight Committee.
- 5.73.060 Audits.
- 5.73.070 Effective Dates.
- 5.73.080 Revenue Division Responsibilities.
- 5.73.090 Limitation on Costs.
- 5.73.100 Confidentiality.
- 5.73.110 Frivolous Filing, False Filing and Hacking.

**5.73.010 Definitions.**

(Amended by Ordinance Nos. 185827, 185960, 187339 and 187610, effective April 1, 2016.) For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A. “Catchment” means the geographical area from which an elementary school within a District draws its students.
- B. “Charter School” means a school offering a comprehensive institutional program as defined under ORS Chapter 338. The charter school will be included in the School District if sponsored by the School District or the State Board of Education, provided that the School District is the Fiscal Agent for state school funds for the Charter School and the Charter School has both Portland catchment and Portland k-5 students.
- C. “Director” means the Director of the Revenue Division, or authorized designee.
- D. “Gross Revenues” means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- E. “Income-earning resident” means a resident who has income of \$1,000 or more in the tax year.

**TITLE 5**  
**REVENUE AND FINANCE**

- F.** “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- G.** “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- H.** “Resident” or “resident of the City” means:
- 1.** An individual who is domiciled in this City unless the individual:
    - a.** Maintains no permanent place of abode in the City;
    - b.** Does maintain a permanent place of abode elsewhere; and
    - c.** Spends in the aggregate not more than 30 days in the taxable year in the City; or
  - 2.** An individual who is not domiciled in the City but maintains a permanent place of abode in the City and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this Subsection, a fraction of a calendar day shall be counted as a whole day.
- I.** “Resident” or “resident of the City” does not include:
- 1.** An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
  - 2.** A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
  - 3.** A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- J.** “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- K.** “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.73.020 Tax Imposed.**

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

#### **5.73.030 Net Revenues Distribution.**

(Amended by Ordinance No. 187339, effective October 16, 2015.) Net Revenues will be paid by the Revenue Division to the Arts Education and Access Fund for distribution by the City as follows:

- A.** First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:
  - 1.** Elementary schools within the School Districts that have no Portland K-5 students; and
  - 2.** Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B.** Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
  - 1.** Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.



**TITLE 5**  
**REVENUE AND FINANCE**

2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
3. These funds are in addition to existing and ongoing financial support from the City to RACC.

**5.73.040 Intergovernmental Agreements.**

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

**5.73.050 Citizen Oversight Committee.**

(Amended by Ordinance No. 185827, effective December 19, 2012.) The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of 10 and a maximum of 20 members, including, if possible, a member of the Tax Supervising and Conservation Commission.

**5.73.060 Audits.**

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

**5.73.070 Effective Dates.**

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

**5.73.080 Revenue Division Responsibilities.**

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;

**TITLE 5**  
**REVENUE AND FINANCE**

- B.** Keep accurate records of the funds;
- C.** Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D.** Adopt administrative rules necessary to implement tax collection and administration.
- E.** If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F.** Accept any and all gifts and donations to the Arts Education and Access Fund.

**5.73.090 Limitation on Costs.**

(Amended by Ordinance Nos. 185960 and 187339, effective October 16, 2015.)

- A.** The Revenue Division's first year start-up costs are capped at \$600,000. Ongoing administrative costs are capped at an average 5 percent or less of Gross Revenues over a five year period.
- B.** The City's contract amendment with RACC will require RACC to:
  - 1.** Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
  - 2.** Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
  - 3.** Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
  - 4.** Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
  - 5.** Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

**5.73.100 Confidentiality.**

(Added by Ordinance No. 185827; amended by Ordinance Nos. 187339 and 187610, effective April 1, 2016.) It is unlawful for any City employee, agent or elected official, or for any person who has acquired financial information pursuant to Chapter 5.73 or the Division's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts

Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

- A. Disclosure to the taxfiler or authorized representative of the taxfiler;
- B. Disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;
- C. Disclosure to the City Attorney's Office to obtain payment on unpaid accounts or to receive legal advice; or
- D. Disclosure to an outside collection agency for collection of any unpaid account balance receivable. Assignment to an outside collection agency permits the Division to collect a reasonable collection fee, above and beyond any amount otherwise owed to the Division;
- E. Disclosure as otherwise required by law.

**5.73.110 Frivolous Filing, False Filing and Hacking.**

(Added by Ordinance No. 185827, effective December 19, 2012.)

- A. A \$250 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5)(2) are hereby adopted by direct reference.
- B. A \$250 penalty will be assessed if a taxfiler willfully makes or provides false statements related to their tax return filing.
- C. The provisions of PCC Subsection 7.02.850 regarding Hacking apply.

**TITLE 5**  
**REVENUE AND FINANCE**

**CHAPTER 5.74 - ACQUISITION OF PUBLIC  
ART**

(Chapter replaced by Ordinance No. 161537;  
amended by Ordinance Nos. 168591 and 179869,  
effective February 10, 2006.)

**Sections:**

5.74.010	Purpose.
5.74.020	Definitions.
5.74.030	Dedication.
5.74.040	Public Art Trust Fund.
5.74.050	Siting.
5.74.060	Guidelines.
5.74.070	Ownership.
5.74.080	Decisions.
5.74.090	Implementation.

**5.74.010 Purpose.**

It is the purpose of this Chapter and the policy of the City of Portland to dedicate two percent of the total Eligible Costs or two percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art.

**5.74.020 Definitions.**

(Amended by Ordinance No. 178946, effective January 7, 2005.

**A.** As used in this Chapter:

1. Improvement Project means any project paid for wholly or in part by a Participating Bureau in which the Participating Bureau's contribution of Eligible Funds equals \$50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure, park, public utility, street, sidewalk or parking facility or any portion thereof within the limits of the City of Portland.
2. Maintenance and repair does not constitute an Improvement Project.
3. Improvement Projects which are developed privately and leased back to the City of Portland are not exempt from the provisions of this Chapter.
4. The purchase of improved or unimproved property by the Portland Development Commission solely for resale or redevelopment, in which

**TITLE 5**  
**REVENUE AND FINANCE**

property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.

- B.** Eligible Costs means the Participating Bureau's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.
- C.** Eligible Funds means a Participating Bureau's monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.
- D.** Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.
- E.** Participating Bureau means a City of Portland Bureau or Commission that funds an Improvement Project within the meaning of this Chapter.
- F.** Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts & Culture Council on the selection of Public Art. Selection Panels shall include a representative of the Participating Bureau, the Improvement Project architect or engineer, artists and citizens.

**5.74.030 Dedication.**

(Amended by Ordinance No. 187570, effective March 4, 2016.) Any City of Portland official or employee acting on behalf of a Participating Bureau who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts & Culture Council, a monetary contribution for Public Art equal to Two percent (2%) of the total Eligible Costs or two percent of the total Eligible Funds of the Improvement Project, whichever is less. The City Budget Office and the Portland Development Commission shall each adopt administrative rules and procedures to implement this section, which to the greatest extent practicable shall set forth the same procedures to be followed by all Participating Bureaus, including the Portland Development Commission.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.74.040 Public Art Trust Fund.**

The Regional Arts & Culture Council shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to section 5.74.030 shall be deposited.

- A.** Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
  - 1.** 63 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.
  - 2.** 27 percent shall be used by the Regional Arts & Culture Council for costs associated with Public Art, including, but not limited to costs of selection, project management, community education and registration of Public Art.
  - 3.** 10 percent shall be used by the Regional Arts & Culture Council for the maintenance, conservation and deaccessioning of Public Art.
- B.** Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the Participating Bureau or required by law.
- C.** Disbursements from the Public Art Trust Fund shall be made by the Regional Arts & Culture Council.
  - 1.** Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts & Culture Council.
  - 2.** If an Improvement Project is funded by revenue sources whose expenditure is restricted by the City Charter or other law, the Regional Arts & Culture Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.
  - 3.** The Regional Arts & Culture Council will report annually to Participating Bureaus on the disbursement of funds from the Public Art Trust Fund.

#### **5.74.050 Siting.**

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Portland in accordance with any restrictions placed on siting by the Participating Bureau.

**5.74.060 Guidelines.**

The Regional Arts & Culture Council shall, after consultation with Participating Bureaus, adopt guidelines to:

- A. Provide for annual reporting to Participating Bureaus;
- B. Develop an annual plan for Public Art that takes into account the views of the Participating Bureau;
- C. Provide a method for the appointment of representatives to Selection Panels;
- D. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;
- E. Determine the dedication and disbursement process for the Public Art Trust Fund;
- F. Determine a process for the ongoing care, maintenance and conservation of Public Art;
- G. Determine a process to deaccession art;
- H. Set forth any other matter appropriate to the administration of this Chapter.

**5.74.070 Ownership.**

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Portland, and title shall vest in the City of Portland.

**5.74.080 Decisions.**

Except as limited by other sections of this Chapter, the Regional Arts & Culture Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall be final.

**5.74.090 Implementation.**

(Amended by Ordinance No. 187570, effective March 4, 2016.) The Regional Arts & Culture Council, or its designee, shall implement the provisions of this Chapter, in cooperation with the City Budget Office and all Participating Bureaus.

**TITLE 5  
REVENUE AND FINANCE**

**CHAPTER 5.75 - CLAIMS UNDER ORS  
CHAPTERS 195 AND 197**

(Replaced by Ordinance No. 181640, effective  
February 28, 2008.)

**Sections:**

- 5.75.010 Purpose.
- 5.75.020 Definitions.
- 5.75.030 Filing an Amended Claim.
- 5.75.040 Review of Amended Claim by Program Manager.
- 5.75.050 Hearing on Amended Claim by City Council.
- 5.75.060 Filing a New Claim.
- 5.75.070 Review of New Claim by Program Manager.
- 5.75.080 Hearing on New Claim by City Council.
- 5.75.090 Claim Processing Fee.
- 5.75.100 Determination of Common Law Vested Right.
- 5.75.110 Hearing on a Common Law Vested Right By City Council.

**5.75.010 Purpose.**

The purpose of this Chapter is to establish a procedure by which owners of private real property located within the City of Portland may file claims pursuant to Chapters 195 and 197 of the Oregon Revised Statutes as amended by Ballot Measure 49 (November 6, 2007) (referred to in this chapter as "Measure 49") and to provide for consideration of claims by the City Council.

**5.75.020 Definitions.**

- A. Appraisal.** A written statement prepared by a person certified under ORS chapter 674 or a person registered under ORS chapter 308 that complies with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institution Reform, Recovery and Enforcement Act of 1989.
- B. Approved Measure 37 Claim.** A claim filed under ORS 197.352 and approved by the City Council before December 6, 2007.
- C. Department.** The Oregon Department of Land Conservation and Development.
- D. Exempt Land Use Regulation.** A land use regulation that:
  - 1. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
  - 2. Restricts or prohibits activities for the protection of public health and safety;
  - 3. Is required in order to comply with federal law;



**TITLE 5**  
**REVENUE AND FINANCE**

4. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- E. **Land Use Regulation.** A provision of the City of Portland comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use.
- F. **Measure 37.** A ballot measure adopted by the voters of the State of Oregon and effective on November 6, 2004 that was codified as Oregon Revised Statutes (ORS) 197.352 and that required, under certain circumstances, the payment of just compensation to landowners if a government land use regulation restricted the use of property and reduced its value, or, in the alternative, authorized the government to remove, modify, or not apply one or more challenged regulations.
- G. **Owner.** A person who is:
  1. The owner of fee title to the property as shown in the deed records of the county where the property is located;
  2. The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
  3. If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.
- H. **Program Manager.** The person authorized to administer and oversee the processing of claims under this Chapter.
- I. **Protection of Public Health and Safety.** A law, rule, ordinance, order, policy or permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.
- J. **Reduction in Value.** A decrease in fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after enactment, plus interest, adjusted by any ad valorem property taxes not paid as a result of any special assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.754 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any recapture of potential additional tax liability that the claimant has paid or will pay for the property if the property is disqualified from special assessment under ORS 308A.703.

**TITLE 5**  
**REVENUE AND FINANCE**

- K. Waiver.** Action by the Portland City Council to modify, remove or not apply one or more land use regulations found to have caused a reduction in value.

**5.75.030 Filing an Amended Claim.**

- A.** A person may amend a Measure 37 claim that was filed with the City of Portland on or before June 28, 2007.
- B.** To qualify for compensation or waiver, a person filing an amended claim under this section must establish that:
- 1.** The claimant is an owner of the property;
  - 2.** All owners of the property have consented in writing to the filing of the claim;
  - 3.** The property is located, in whole or in part, within the City of Portland;
  - 4.** On the claimant's acquisition date, the claimant lawfully was permitted to establish at least the number of single family dwellings on the property that are authorized under Measure 49;
  - 5.** The property is zoned for residential use;
  - 6.** A land use regulation prohibits the establishment of a single-family dwelling;
  - 7.** The establishment of a single-family dwelling is not prohibited by a land use regulation described in ORS 197.352(3);
  - 8.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was brought into the Metro Urban Growth Boundary;
  - 9.** The land use regulation described in paragraph 6 of this section was enacted after the date the property, or any portion of it, was annexed to the City of Portland;
  - 10.** The enactment of the land use regulation caused a reduction in the fair market value of the property; and
  - 11.** The highest and best use of the property was residential use at the time the land use regulation was enacted.
- C.** A person filing an amended Measure 37 claim under this section must submit the following information:

**TITLE 5**  
**REVENUE AND FINANCE**

1. The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
  2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot number(s) of the property, and the date on which the owner acquired the property interest;
  3. A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;
  4. A reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation prohibits the residential use of the property;
  5. A copy of the city land use regulations that applied to the property at the time the challenged land use regulations became applicable to, or were enforced against, the property;
  6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;
  7. A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation;
  8. If the property is or has been enrolled in one or more of the special assessment programs listed in Section 5.75.020 J., information regarding tax amounts not paid as a result of the program or programs; and
  9. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- D.** The Program Manager shall notify all claimants who filed claims on or before June 28, 2007, and whose claims were not decided by the City Council prior to December 6, 2007, that they may amend their claims under this section and shall provide a form for amended claims. A claimant must submit an amended claim under this section to the Program Manager within 120 days after the date of notice under this paragraph or the claimant is not entitled to relief.

## **TITLE 5**

### **REVENUE AND FINANCE**

#### **5.75.040 Review of Amended Claim by Program Manager.**

- A.** The Program Manager shall review a claim filed under Section 5.75.030 to ensure that it provides the information required by Subsection 5.75.030 C. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 21 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 21 days, the claim shall be considered complete on the date it was filed with the City of Portland.
- B.** The Program Manager shall review the claim for compliance with the requirements of Subsection 5.75.030 B. and prepare a tentative determination of compliance not later than 90 days after the filing of a complete claim. The Program Manager shall provide written notice to the claimant, the Department, and owners of property within 200 feet of the claim property of the tentative recommendation as to whether the claimant qualifies for the number of single-family dwellings the City of Portland proposes to authorize. The written notice shall inform recipients they have 15 days to submit evidence or argument to the Program Manager in response to the tentative recommendation. The Program Manager shall make a final recommendation on the claim within 135 days of the date the claimant notifies the Program Manager of the claimant's intent to continue the claim.
- C.** The Program Manager's recommendation to approve or deny a claim under Subsection B of this section shall be in writing and shall be supported by a brief explanation for the basis of the recommendation.

#### **5.75.050 Hearing on Amended Claim by City Council.**

- A.** The Auditor shall schedule each amended claim for consideration by City Council at a regularly scheduled City Council meeting. After considering the report and final recommendation by the Program Manager and any other material the Council determines is relevant, the Council shall make its final determination and adopt a final decision and order that explains the determination.
- B.** The City Council shall take final action within 180 days of receipt of a claim.
- C.** The City Council's decision shall be in writing and shall be supported by a brief explanation of the basis for the decision.
- D.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant, the Department, and owners of property within 200 feet of the claim property.

**5.75.060 Filing a New Claim.**

- A.** A person may file a claim after June 28, 2007, and will qualify for compensation or waiver, if:
1. The claimant is an owner of the property and all owners of the property have consented in writing to filing of the claim;
  2. The claimant's desired use of the property is a residential use;
  3. The claimant's desired use of the property is restricted by a land use regulation enacted after January 1, 2007;
  4. The enactment of the land use regulation has reduced the fair market value of the property; and
  5. The highest and best use of the property was residential use at the time the land use regulation was enacted.
- B.** A person filing a claim under this section must submit the fee for processing the claim prescribed in Section 5.75.090 and the following information:
1. The name, street address and telephone number of the claimant and all other owners of the property;
  2. A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property; the deed registry of the instrument by which the claimant acquired the property; the location and street address and township, range, section and tax lot number(s) of the property; the date on which the owner acquired the property interest; and any exceptions and encumbrances to title;
  3. A written statement signed by all owners of the property consenting to the filing of the claim;
  4. A citation to the land use regulation the claimant believes is restricting the claimant's desired use of the property;
  5. A description of the specific single-family residential use of the property that the claimant desires to carry out, but cannot because of the land use regulations;
  6. An appraisal showing the fair market value of the property one year before the enactment of the land use regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted;

**TITLE 5**  
**REVENUE AND FINANCE**

7. If the property is or has been enrolled in one or more of the special assessment programs listed in Measure 49, Section 9(6), information regarding taxes not paid as a result of the program or programs; and
  8. A statement whether the claimant filed a claim with other public entities on or before June 28, 2007, involving the same property and a copy of any decision made by the entity on the claim.
- C. A person filing a claim under this section must file the claim within five years after the challenged land use regulation was enacted.

**5.75.070 Review of New Claim by Program Manager.**

- A. The Program Manager shall review the claim to ensure that it provides the information required by Section 5.75.060. If the Program Manager determines that the claim is incomplete, the Program Manager shall, within 60 days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the Program Manager does not notify the owner that the claim is incomplete within the prescribed 60 days, the claim shall be considered complete on the date it was filed with the Program Manager.
- B. A claim filed under this section shall not be considered complete until the claimant has submitted the information required by this section. If the claimant fails to submit a complete claim within 60 days after the notice prescribed in Subsection A, the claim shall be deemed withdrawn.
- C. The Program Manager shall conduct a preliminary review of a claim to determine whether it satisfies all of the following prerequisites for full evaluation of the claim:
1. The property lies within the City of Portland's jurisdictional boundary;
  2. The land use regulation that is the basis for the claim is a provision of a city land use regulation; and
  3. The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.
- D. If the claim fails to satisfy one or more of the prerequisites in subsection C of this section, the Program Manager shall prepare a report to that effect and recommend to the City Council that it dismiss the claim following a public hearing under Section 5.75.080.
- E. If the claim satisfies each of the prerequisites in Subsection C of this section, the Program Manager shall complete the review of the claim to determine whether it satisfies the criteria in Section 5.75.060.

**TITLE 5**  
**REVENUE AND FINANCE**

- F.** The Program Manager may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ORS 197.352 and to assist in the development of a recommendation regarding appropriate relief for a valid claim.
- G.** The Program Manager shall prepare a written report with the determinations required by Subsection E of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on the validity of the claim and, if valid, whether the City of Portland should compensate the claimant for the reduction of value or waive the regulation. If the Program Manager recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the City of Portland's comprehensive plan. If the Program Manager recommends waiver, the report shall recommend the specific number of single-family dwellings the City of Portland should authorize commensurate to the reduction in fair market value of the property.
- H.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

**5.75.080 Hearing on New Claim by City Council.**

- A.** The City Council shall hold a public hearing on a claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 180 days after the filing of a completed claim.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the claimant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, the Department, Metro, and Multnomah County. The notice shall indicate that:

  - 1.** A copy of the Program Manager's recommendation is available upon request;
  - 2.** Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
  - 3.** Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.

## **TITLE 5**

### **REVENUE AND FINANCE**

- D.** After the close of the public hearing the City Council shall make its final determination on the claim and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, Multnomah County, and any person who submitted written or oral testimony prior to the close of the public hearing.
- E.** The City Council will make its final determination within 180 days of the date the claim is complete.

#### **5.75.090 Claim Processing Fee.**

A claimant shall pay a \$250 fee to file a claim under Sections 5.75.030 and 5.75.060 of this Chapter. A claim will not be considered complete until the fee is paid. For any claims submitted on or after December 2, 2004 for which a fee was not paid at the time of claim submittal, the Program Manager may bill the owner for the fee at any time during the claim review process and prior to a final decision on the claim.

#### **5.75.100 Determination of Common Law Vested Right.**

- A.** A person with an approved Measure 37 claim may apply for a determination that the person has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim consistent with Measure 49.
- B.** An applicant seeking to establish a common law vested right for an approved Measure 37 claim must submit the following information:
  - 1.** The name, mailing address, and telephone number of the applicant.
  - 2.** A legal description and tax lot numbers of the subject property as well as a street address for the property, if any.
  - 3.** A copy of the approved Measure 37 claim decision from the City of Portland and, if appropriate, the State of Oregon.
  - 4.** Additional information sufficient to address each of the factors listed in Subsection C of this Section.
- C.** The factors to be considered by the Program Manager and the City Council in determining whether the applicant has a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim are:
  - 1.** The amount of money spent on developing the use in relation to the total cost of establishing the use.
  - 2.** The good faith of the property owner.



3. Whether the property owner had notice of the proposed change in law before beginning development.
  4. Whether any improvements could be used for other allowed uses.
  5. The kind of use, and the location and cost of the development.
  6. Whether the property owner's acts are more than mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
  7. Other relevant factors.
- D.** The Program Manager shall review the application to ensure that it provides the information required by Subsections B and C of this Section. If the Program Manager determines that the application is incomplete, the Program Manager shall, within 30 days after the filing of the application, provide written notice of the incompleteness to the applicant. If the applicant fails to respond or submit the missing information within 30 days of the date of the Program Manager's notice, the application shall be considered complete on the date it was filed with the City of Portland.
- E.** The Program Manager shall prepare a written report with the determinations required by Subsections B and C of this section and the reasoning to support the determination. The report shall include a recommendation to the City Council on whether the applicant has established a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim.
- F.** The Program Manager shall provide the report to the City Council, the claimant, Metro, and other persons who request a copy.

**5.75.110 Hearing on a Common Law Vested Right By City Council.**

- A.** The City Council shall hold a public hearing on an application for a common law vested right to continue and complete a use or development allowed by an approved Measure 37 claim prior to its final determination. The Program Manager shall schedule the hearing for a date within 90 days after the filing of a completed application.
- B.** The Program Manager shall provide notice of the date, time and location of the public hearing at least 30 days before the hearing to the applicant and owners of the subject property, owners and occupants of property within 100 feet of the subject property, and the Department. The notice shall indicate that:
1. A copy of the Program Manager's recommendation is available upon request;

**TITLE 5**  
**REVENUE AND FINANCE**

2. Judicial review of the City of Portland's final determination is limited to the written evidence and arguments submitted to the City of Portland prior to or at the public hearing; and
  3. Judicial review is available only for issues that are raised with sufficient specificity to afford the City of Portland an opportunity to respond in its final determination.
- C. After the close of the public hearing the City Council shall make its final determination on the application and enter an order with findings of fact and conclusions of law, based upon the record made before the City of Portland, that explain the determination. The Program Manager shall mail a copy of the final determination to the claimant, the Department, and any person who submitted written or oral testimony prior to the close of the public hearing.
- D. The City Council will make its final determination within 120 days of the date the claim is complete.