

EXHIBIT B

Chapter 5.33

GOODS AND SERVICES

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

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5.33.010 Definitions.

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

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- 12. 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.
- 13. Competitive Range:** The number of Proposers the City will conduct discussions or negotiate if the City intends to conduct discussions or negotiations in accordance with Chapter 5.33 or Chapter 5.34.
- 14. Construction Manager/General Contractor (CM/GC):** An alternative contracting method, or a Person selected pursuant to that method, to perform a Public Improvement project. The method typically requires a Contractor to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating and acquiring subcontracting services, establishing a GMP to complete the Contract Work, acting as General Contractor, coordinating and managing the building process, and providing General Contractor expertise.
- 15. Contract:** See definition for “Public Contract.”
- 16. Contract Amount:** The total of the Awarded Bid or Proposal amount, including any approved alternates. The “original” Contract Amount is, depending on the context, the maximum amount that the City will pay for work performed pursuant to the Contract or an estimated amount when the amount is based on unit prices. The “final” Contract Amount is the amount that the City actually pays the Contractor after execution of change orders, Contract amendments, or variations in unit prices, which cause the original Contract price to increase or decrease.
- 17. Contract Execution:** Contract Execution occurs when the Contract is signed by any mark, word, or symbol, in ink, by an Authorized Representative of an Offeror and the City.
- 18. Contractor:** The Person with whom the City executes a Contract.
- 19. Cost Estimate:** The City’s most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting of either the estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, or formal planning or budgetary documents.

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- 20. Days:** Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later, unless otherwise specified by these rules or the Solicitation Document.
- 21. Descriptive Literature:** Informational materials concerning available products or services submitted by Offerors in response to the City's Solicitation Document.
- 22. Electronic:** Any means of transmission of information by Electronic device, including but not limited to Electronic mail or Facsimile. A Facsimile or fax is a document that has been transmitted to the City over telephone lines and received by the City in a hard copy form by a device commonly known as a Facsimile machine.
- 23. Electronic Advertisement:** A notice of the City's Solicitation Document or Request for Qualifications or information, or a request for price quotations, available over the Internet by:
- a.** the World Wide Web or some other Internet protocol; or
 - b.** the City's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- 24. Electronic Offer:** A response to the City's Solicitation Document or request for price quotations submitted to the City via (a) the World Wide Web or some other Internet Protocol; or (b) the City's Electronic Procurement System.
- 25. Electronic Procurement System:** An information system that Persons may access through the Internet or that Persons may otherwise remotely access through a computer, that enables Persons to send Electronic Offers and the City to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to the City's procurement of goods and services or construction services.
- 26. 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.

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- 27. Equal Employment Opportunity (EEO):** A certification program administered by the City, Certification by Contractors is required for in order to obtain most City Contracts as required by PCC Chapter 3.100.
- 28. 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.
- 29. ~~Goods and services/Goods or Services:~~** ~~Supplies, equipment, materials and services, other than personal services designated under ORS 279A.055 or Chapter 5.68, and any , personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the City or other contracting agency is authorized by law to procure. “Goods and Services” or “Goods or Services” include combinations of any of the items identified in this paragraph definition.~~
- 30. Goods and Services/Goods or Services:** Any combination of any of the items indentified in the definitions of “goods” and “services.”
- 31. Invitation to Bid (ITB):** The Written document that invites offers from prospective contractors pursuant to either ORS 279B.055 or 279C.335.
- 3132. 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.
- 3233. Local Contract Review Board:** The Portland City Council, or designee.
- 3334. Nonresident Bidder:** A Bidder who is not a Resident Bidder.
- 3435. Offer:** A Written response to a Solicitation Document.
- 3536. Offeror:** A Person that submits an Offer.
- 3637. Opening:** The date, time and place announced in the Solicitation Document for the public Opening of Written, sealed Offers.
- 3738. PCC:** The Code of the City of Portland, Oregon.
- 3839. Person:** An individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, governmental agency,

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public corporation or any other legal or commercial entity who has the legal capacity to enter into a Contract.

3940. Personal Services: as used in these rules, means services performed under a Professional, Technical or Expert Services contract governed by PCC 5.68 or pursuant to ORS 279A.055.

4041. 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.

4142. 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.

42.43. 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.

4344. Product Sample: The exact goods, or a representative portion of the exact goods requested by a Solicitation Document.

4445. Proposal: A Written response to a Request for Proposals.

4546. Proposer: A Person who submits a Proposal in response to the City's Request for Proposals.

4647. 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."

4748. 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

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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.

4849. Purchasing Agent: The individual designated by the Portland City Council to act as the City's Purchasing Agent or the individual to whom the Purchasing Agent has delegated the powers of the Purchasing Agent.

4950. 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.

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

51.52. 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.

5253. 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.

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- 5354. Responsible Offeror, Bidder or Proposer:** A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in PCC Section 5.33.500 or 5.34.600, as applicable, and who has not been debarred, disqualified, or who has not failed to prequalify when Prequalification is required by the Solicitation Document.
- 5455. 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.
- 5556. Scope:** The range and attributes of the Goods or Services described in the applicable Procurement document.
- 56.57. Services:** Services other than “personal” or “PTE” services covered by PCC 5.68.
- 5758. Signature:** Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- 5859. 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.
- 5960. Solicitation:** A request by the City for prospective Contractors to submit Offers.
- 6061. Solicitation Document:** An Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. All documents referenced by the Solicitation Document are included in, and part of, the Solicitation Document.
- 6162. 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.
- 6263. Subcontractor:** A Person, other than the Contractor’s employee, hired by the Contractor to perform a portion of the Work required by the Contract.

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6364. 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.

6465. 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.

65.66. Written: Existing in Writing.

5.33.020 City Council as Local Contract Review Board.

- A.** Pursuant to ORS 279A.055, the City Council is designated as the Local Contract Review Board for the City. The City Council shall exercise all the powers and duties conferred upon it by State law, except to the extent that such powers and duties have been delegated by these rules, or by a separate ordinance, to others. In order to carry out its powers and duties, the City of Portland's Purchasing Authority, Policies and Rules, PCC Chapter 5.33, and PCC Chapter 5.34 are hereby adopted by City Council.
- B.** The procedural rules of the City Council sitting as the Local Contract Review Board are the same as those regulating City Council as provided by PCC Chapter 3.02.
- C.** The Attorney General Model Public Contracting Rules do not apply to the City's Procurement of goods, services, and certain construction services. Instead, the rules contained in PCC Chapter 5.33 apply to those Procurements. Similarly, the Attorney General Model Public Contracting rules for Construction do not apply. Instead the Rules contained in PCC Chapter 5.34 apply to those Public Improvements and construction services. It is the intent of these rules to permit the City to act to the full extent permitted by State law. To the extent that the rules adopted in PCC Chapters 5.33 and 5.34 appear to give the City less authority than State law, then State law shall prevail and the City may act to the full extent permitted by State law.
- D.** The City Council reserves to itself the authority to authorize Contract amendments in excess of 25% for Contracts whose original Contract Amount was \$500,000 or more or whose total Contract price after an amendment would exceed \$500,000.

- E. The City Council shall authorize all intergovernmental agreements by ordinance pursuant to ORS Chapter 190.

5.33.030 Application of Purchasing Code.

- A. PCC Chapter 5.33 is applicable to the purchase of Goods or Services, or both, but is 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, intergovernmental and interstate agreements executed pursuant to ORS Chapter 190 between the City and other public contracting agencies;~~
 3. ~~Contracts with the Federal Government;~~
 - a. Another “contracting agency” as defined by ORS 279A.010;
 - 4.b. The Oregon Health and Science University;
 - c. The Oregon State Bar;
 - d. A governmental body of another state;
 - e. The federal government;
 - f. An American Indian tribe or an agency of an American Indian tribe;
 - g. A nation, or a governmental body in a nation, other than the United States; or
 - h. An intergovernmental entity formed between or among governmental bodies of this or another state, the federal government, an “American Indian tribe or an agency of an American Indian tribe, a nation other than the United States or a governmental body in a nation other than the United States.
 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

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federal law that the City Council determines are similar to those Acts in effectuating or promoting transfers of property to the City;

5.4. Contracts, agreements or other documents entered into, issued or established in connection with:

- a.** The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special or limited;
- b.** The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
- c.** The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive Contractor selection procedures of PCC Sections 5.33.100 through 5.33.225;

65. Professional, technical and expert Contracts governed by PCC Chapter 5.68, and any other Contract specifically designated as a Personal Service Contract by the City Council;

76. 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;
 - (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

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(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.

- | **87.** Acquisitions or disposals of real property or interests in real property;
- | **98.** Sole source expenditures when rates are set by law or ordinance for purposes of these rules concerning source selection;
- | **109.** Revenue Generating Contracts: Contracts whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing the most Advantageous or highest monetary Offer to the City, or both, except to the extent of the Purchasing Agent’s authority as stated in PCC Section 5.33.040. The City Council may designate a particular Contract as a revenue-generating Contract;
- | **110.** 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;
- | **121.** Contracts for Public Improvements, which are governed by PCC Chapter 5.34.

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5.33.040 Authority of Purchasing Agent.

- A. For Contracts covered by PCC Chapters 5.33 and 5.34, and for revenue producing Contracts, the Purchasing Agent is authorized to:
1. Advertise for Bids or Proposals for Goods and Services without specific authorization from City Council, when the proposed purchase is included within the current fiscal year budget.
 2. Award and execute Contracts for the purchase or lease of Goods and Services, and revenue producing services, without specific authorization by ordinance of City Council whenever the Contract Amount is \$500,000 or less.
 3. Award and execute Price Agreements for the purchase or lease of Goods and Services, including revenue producing services, if the yearly estimated cost to the City, or the yearly estimated revenue or value is \$500,000 or less.
 4. Recommend the Award of a Contract for Goods and Services, including revenue producing services by a report to City Council for Contracts in excess of \$500,000. If the City Council adopts the recommendation, it shall approve the Award by ordinance.
 5. Authorize and execute ~~Contract amendments~~ Contract amendments for Contracts ~~for~~, Price Agreements and Intergovernmental Agreements involving the procurement of Goods and Services that were originally executed in accordance with PCC Chapters 5.33 and 5.34 as follows:
 - a. ~~Contract amendments~~ Amendments not exceeding 25% of the original Contract Amount.
 - b. ~~Contract amendments~~ Amendments exceeding 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the director of the bureau in whose behalf of the Contract was issued concurs.
 - c. ~~Contract amendments~~ Amendments whenever an ordinance approved by the City Council grants additional authority to the Purchasing Agent beyond that stated in these rules.
 6. Authorize final payment for a ~~Contract for~~ Procurement of Goods and Services after confirming that all Work is completed and accepted by the City, as follows:

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- a. Whenever the final Contract Amount does not exceed 25% of the original Contract Amount; or
 - b. Whenever the final Contract Amount exceeds 25% of the original Contract Amount, provided that the final Contract Amount is less than \$500,000 and the Director of the Bureau on whose behalf the Contract was issued concurs.
 7. Adopt forms, procedures, and administrative rules for all City purchases of Goods and Services regardless of amount. The City shall use the forms, procedures and administrative rules unless they conflict with the City Code.
 8. Establish a procedure providing appropriate financial control over the authorization provided by PCC Sections 5.33.055 and 5.33.060.
 9. Revoke or place conditions on the authority of appropriation unit managers, directors and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed \$5,000, in the event of violations of these rules.
 10. Perform such other duties as directed by the Portland City Code, City Council or the Commissioner-in-Charge of the Bureau of Purchases.
 11. Delegate the Purchasing Agent's authority under this Chapter in accordance with City practices.
 12. Resolve protests of Contract Award decisions and other matters as required by City Code.
 13. Award and execute Intergovernmental Agreements (IGAs) without specific authorization by ordinance of City Council provided the cost to the City does not exceed \$5,000.
- B.** The Purchasing Agent is responsible for and shall make all purchases in accordance with State law, City Charter, and the City of Portland's Purchasing Authority, Policies and Rules, PCC Chapter 5.33 and PCC Chapter 5.34.
- C.** The Purchasing Agent may execute Intergovernmental Agreements as described above, or only with specific authorization by City Council.

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- D.** Notwithstanding the grant of authority above, if the Purchasing Agent believes that a procurement should be considered by the City Council, the Purchasing Agent may forward the proposed procurement to the City Council for approval.

5.33.050 Authority for Golf Concession Contracts.

- A.** The Director of Portland Parks and Recreation is authorized to execute a Contract for concessions in the parks of the City for the sale of refreshments and notions and for the performance of public service, upon such terms and conditions, and using evaluation criteria as the Director of Portland Parks and Recreation may deem to be in the public interest.
- B.** When the Purchasing Agent advertises for Bids or Proposals, and the Parks Director believes there is no acceptable Bid or Proposal received for a concession, a concession Contract may be granted to any entity upon such terms and conditions, including terms and conditions that are different from those advertised, as the Director of Portland Parks and Recreation deems to be in the best interest of the City. The Director of Portland Parks and Recreation may renew any concession Contract or concession permit upon request of the concessionaire without calling for Bids for a total term not to exceed the five (5) year limitation imposed by City Charter Section 2-105(a)(3).
- C.** Concessions at the City's golf courses may be Awarded in the following manner: The Purchasing Agent shall advertise for Bids or Proposals for golf concessions Contracts based on evaluation criteria authorized by the Director of Portland Parks and Recreation. A selection advisory committee appointed by the Director of Portland Parks and Recreation shall review all Offers. The selection advisory committee shall screen qualifications and Proposals, and shall recommend the most Advantageous Bid or Proposal to the Director of Portland Parks and Recreation. The advisory committee may reserve the right to interview prospective concessionaires after submission of Offers.
- D.** The Director of Portland Parks and Recreation is authorized to execute Contracts for golf concessions for food service operation, merchandise sales, cart rentals, golf instruction and other functions normal to clubhouse operations and for performance of public services, for a period not to exceed five (5) years, at the golf courses owned by the City, upon such terms and conditions as the Director of Portland Parks and Recreation deems to be in the best interest of the City, subject to approval by the City Council.
- E.** Renewal of any golf concession Contract upon request of the concessionaire and upon the recommendation of the Director of Portland Parks and Recreation may be authorized by the City Council without calling for new Bids or Proposals, for a

term not to exceed the five year limitation imposed by City Charter Section 2-105(a)(3).

5.33.055 Authority of Appropriation Unit Managers.

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

5.33.060 Authority of Directors.

Directors of Bureaus or Offices are authorized to:

- A.** Execute Contracts to the same extent as appropriation unit managers as provided in PCC Section 5.33.055;
- B.** Execute Contract amendments for Goods and Services Contracts covered by this Chapter:
 - 1.** Up to 25% of the original Contract Amount, regardless of the original Contract Amount;
 - 2.** More than 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the Purchasing Agent concurs.
- C.** Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- D.** The authority granted by this section regarding amendments is conditioned on the existence of an original valid Contract between the parties that was executed in conformance with City Code and State law.

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

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

5.33.075 Affirmative Action.

- A. Pursuant to ORS 279A.100, the City may limit competition on Contracts for Goods and Services, or on other Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City.
- B. Pursuant to ORS 279A.105, the City may require a Contractor to Subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - 1. A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - 2. A business enterprise that is:
 - a. Certified under ORS 200.055 as an emerging small business; and
 - b. Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department (OECDD).

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

5.33.080 Environmentally Preferable Procurement.

- A. Definitions:
1. "Alternative Environmentally Preferable Paper" is paper with environmental attributes beyond those of the U.S. Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines (CPG). These attributes include paper that is unbleached or is bleached without the use of chlorine compounds, goes beyond the EPA CPG post-consumer recycled content standard, is not derived from genetically modified organisms, or is made with fibers that come from certified, well managed forests, agricultural residues, sustainably-produced tree-free crops, or recycled non-tree fibers.

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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 product versus a lower price, less-energy efficient model. It is calculated by dividing the price premium by the annual savings in operating costs.
10. "Readily Biodegradable" shall be defined according to the Organisation 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.

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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 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
19. "Retreaded Tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

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20. "Reusable Product" means a product, such as a washable food or beverage container or a refillable ballpoint pen, that can be used several times for an intended use before being discarded.
 21. "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.
 22. "Used Oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.
 23. "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.
 24. "VOC" (Volatile Organic Compound) means an organic compound characterized by a tendency to readily evaporate into the air, contributing to indoor air pollution and photochemical smog.
- B.** Environmentally Preferable Procurement General Policy. In developing plans, drawings, work statements, specifications, or other product descriptions, the City shall insure, to the maximum extent economically feasible, the purchase of environmentally preferable products or services that comply with the City's Sustainable City Principles. This includes, but is not limited to, products that are durable, recyclable, reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. Furthermore, the City shall purchase products and services based on long-term environmental and operating costs, and find ways to include environmental and social costs in short-term prices.
- C.** Recycled Materials and Products Price Preference.
1. In accordance with ORS 279A.125, notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, and subject to PCC Section 5.33.080 C.2., the City shall give preference to the procurement of goods manufactured from recycled materials.

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

D. Purchasing Environmentally Preferable Paper & Related Equipment.

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

E. Purchasing Recycled Oils.

1. Preference for Oil Products with Greater Recycled Content: The City shall require that purchases of lubricating oil and industrial oil be made from the vendor whose oil product contains the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:

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- a. Not available within a reasonable period of time or in quantities necessary to meet the City's needs;
 - b. Not able to meet the performance requirements or standard recommended by the equipment or vehicle manufacturer, including any warranty requirements; or
 - c. Available only at a cost that exceeds the price preference established in PCC Section 5.33.080 C.
 - 2. In accordance with ORS 279B.240 the City shall ensure that its procedures and specifications for the procurement of lubricating oil and industrial oil do not exclude recycled oils and do not require oils to be manufactured from virgin materials.
- F.** Purchasing Retreaded Tires.
 - 1. All tires for use on the non-steering wheels of City vehicles shall be equipped with retreaded tires unless one of the following exceptions applies:
 - a. The vehicles are emergency vehicles as defined in ORS 801.260;
 - b. The vehicles are other fire suppression or emergency assistance vehicles;
 - c. The vehicles are passenger-carrying vehicles with a gross weight rating of one ton or more; or
 - d. The cost per mile differential of the retreaded tires exceeds the five percent preference set forth in PCC Section 5.33.080 C.
- G.** Purchasing Energy Efficient Products.
 - 1. As available, the City shall procure products that meet or exceed Energy Star[®] criteria for energy efficiency. This applies to:
 - a. any equipment that uses electricity, natural gas, or fuel oil; and
 - b. products that indirectly impact energy use, such as, but not limited to, windows, doors and skylights.
 - 2. City procurement language for such products described in 5.33.080 G.1 shall request from vendors:

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- a. Evidence that the equipment meets or exceeds the Energy Star[®] criteria for energy efficiency; and
 - b. Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.), operating costs (\$/yr), and the price premium payback (years).
3. Price Differential and Payback Period: While many Energy Star[®] compliant products are currently available for no price premium, should a price differential exist, the City will apply a simple life cycle cost analysis. Purchases where the price premium payback period is within five years or less shall be encouraged. Where the price premium payback period is longer than five years, Energy Star[®] compliant products may still be used; however, the City shall not be obligated to purchase and use Energy Star[®] compliant products in those circumstances.

H. Purchasing Interior/Exterior Architectural Paint Products.

1. All paint must be low-VOC by complying with the current standards set forth by the California South Coast Air Quality Management District Rule 1113 for Architectural Coatings or the VOC and chemical component limits of Green Seal's Standard GS-11, section 4.1.
2. Recycled or rebleded 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 rebleded and virgin latex paint does not exceed the five percent price preference set forth in PCC Section 5.33.080 C.
3. To reduce waste and support the recycled latex paint market, all surplus latex paint shall be recycled using a local latex paint recycling program. Surplus paint includes all latex paint in excess of quantities stored for touch-up purposes. Latex paint stored for touch-up purposes may not exceed 5 percent or 5 gallons, whichever is smaller, by volume, to the nearest gallon.

5.33.090 Use of Price Agreements.

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

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5.33.100 Overview of Source Selection and Contractor Selection.

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

 - 1.** An Award or Awards based solely on the ranking of Proposals;
 - 2.** Discussions leading to best and final Offers in which the City may not disclose private discussions leading to best and final Offers;
 - 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

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to the Proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial Request for Proposals; or

- 8.** Any combination of methods described in PCC Sections 5.33.100 D.1 - 7. or as otherwise adopted by the City Council by ordinance.
- E.** The methods of Contractor selection identified in PCC Section 5.33.100 D. shall conform to the procedures identified in these rules.
- F.** The Purchasing Agent is authorized, but not required, to waive any nonconformity with the rules of Contractor selection if the Purchasing Agent determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

5.33.110 Qualified Rehabilitation Facilities.

- A.** As used in PCC 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 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

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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 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

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- 1.** When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
- 2.** The City may use the formal selection procedure similar to that described in PCC Section 5.33.050 to select a QRF to provide a service on the Procurement list, provided that:
 - a.** The Solicitation shall not request any information concerning price and price shall not be a consideration in making the Award.
 - b.** The Solicitation shall not be advertised.
 - c.** Notice of the Solicitation may be given to those QRFs offering the service on the Procurement List.
 - d.** After selection of a QRF the price will be determined in accordance with PCC Section 5.33.110 D.3.
- 3.** Price.
 - a.** Price for products or services where the Price is listed. For products or services on the Procurement List where the Price is listed, the Contract shall provide that the City will pay the Price that is listed.
 - b.** Price for services where the Price is not listed. For services for which no Price is listed on Procurement List, the City shall proceed as follows:
 - (1)** The City shall request that the QRF submit its proposed Price to the City based on the volume or Scope of the Work and Specifications provided by the City as prescribed in the proposed Contract between the QRF and the City. For janitorial and security services where a Fair Wage is required to be paid, the Specifications shall state the wage required to be paid.
 - (2)** In submitting its proposed Price to the City, the City shall require the QRF to make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a). The

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City shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).

- (3) If the QRF and the City agree on the terms and conditions of a proposed Contract and the price for the services to be provided under the proposed Contract, the Department shall present the proposed Contract (including the agreed Price) to the State Procurement Office for review and approval of the Price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.
- (4) The City shall not execute or implement any Contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the City and the QRF.
- c. Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or City, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the Scope of Work that was the basis for establishing the existing Price.
- d. The City shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.
- E. The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of a QRF Contract under ORS 279.835 to 279.850 unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the City wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the City shall notify the QRF in Writing of the specific changes in the Scope of Work

or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

5.33.120 Sole-Source Procurements.

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

5.33.130 Emergency Procurements.

- A.** The City may Award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.
- B.** The Council, or person authorizing the Emergency Procurement, shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.
- C.** The authority to declare an Emergency and authorize an Emergency Procurement shall be as follows:

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1. The Purchasing Agent 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. ~~A bureau~~The director of a City Office, Bureau or Department may declare the existence of an Emergency and authorize ~~the bureau~~that Office, Bureau or Department to enter into an Emergency Procurement Contract under \$150,000 only if the Purchasing Agent or person to whom the powers of the Purchasing Agent have been delegated, is not available when the Procurement needs to be made.
 3. A Commissioner-in-Charge of a ~~bureau~~City Office, Bureau, or Department may declare the existence of an Emergency and authorize ~~the City and the bureaus of which the Commissioner has responsibility~~that Office, Bureau or Department to enter into an Emergency Procurement Contract not exceeding \$500,000.
 4. A Commissioner-in-Charge of a ~~bureau~~City Office, Bureau or Department may declare the existence of an Emergency and authorize ~~the City and the bureaus of which the Commissioner has responsibility~~that Office, Bureau or Department to enter into an Emergency Procurement Contract exceeding \$500,000 subject to the following procedures:
 - a. Following the declaration of Emergency the Commissioner shall immediately prepare an ordinance for approval of the Emergency Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.
 - b. If the Council adopts the ordinance, the City will pay for the Work required by the Contract. If Council disapproves the ordinance, the City only will pay for Work performed prior to the date that the Council considered the ordinance for approval. If for any reason presentation of the ordinance to the Council is delayed, the City still will only be liable for Work performed prior to the time when the ordinance first was presented to the Council.
- D.** All documentation of Emergency Procurements shall be sent to the Purchasing Agent for record keeping purposes.

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- 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's Purchasing Rules~~ 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

- A.** When the Mayor or person designated to perform the duties of office of the Mayor ("Equivalent"), proclaims a State of Emergency or Disaster the Mayor or Equivalent may award emergency contracts for the acquisition of goods, services, construction services and public improvements for the purpose of responding to the State of Emergency or Disaster. This section does not eliminate the power of any individual otherwise authorized to award or execute contracts under other portions of the City Code.
- B.** The Proclamation of a Disaster or State of Emergency are instances of "extreme necessity" so that the Mayor or Equivalent is permitted to award contracts by direct appointment and without the necessity for competition. However, competition is permitted to the extent reasonable and appropriate under the circumstances. When a Proclamation of a State of Emergency or Disaster is issued, the City hereby waives the requirement of furnishing sufficient performance and payment bonds for any public improvement contracts or construction services contracts awarded pursuant to this Section when such bonds otherwise would be legally required. Nonetheless, any person authorized to

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

5.33.140 Cooperative Purchasing.

- A.** The City may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Sections 5.33.200, 5.33.210 or 5.33.220.
- B.** The City may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Sections 5.33.200 or 5.33.210.

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- C.** The City may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish Contracts or Price Agreements for the acquisition of Goods or Services, as defined in these rules, that use source selection methods substantially equivalent to those set forth in PCC Section 5.33.200 or 5.33.210.
- D.** A Solicitation and Award process uses source selection methods substantially equivalent to those identified in PCC Section 5.33.200, 5.33.210 or 5.33.220 if the Solicitation and Award process:
- 1.** Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of Competitive Bids, on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of competitive Proposals;
 - 2.** Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120(2); and
 - 3.** Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- E.** The City shall determine, in Writing, whether the Solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in PCC Section 5.33.200, 5.33.210 or 5.33.220 in accordance with PCC Section 5.33.140.
- F.** Protests. Protests regarding the use of all types of Cooperative Procurements shall be governed by the applicable provisions of PCC Section 5.33.700 *et seq.*
- G.** For purposes of PCC Section 5.33.140 through 5.33.170 the following definitions are applicable:
- 1.** “Administering Contracting Agency” means a ~~Contracting agency~~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 ~~by or on behalf of one or more Contracting agencies.~~by one governmental body. ~~“Cooperative Procurement” includes but is not limited to multiparty Contracts and Price Agreements.~~“Cooperative Procurement” does not include an agreement formed among only governmental bodies

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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 ~~Contracting agencies~~governmental bodies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.
4. “Interstate Cooperative Procurement” means a permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into Contracts and in which one or more of the participating ~~agencies~~governmental bodies are located outside this state.
5. “Joint Cooperative Procurement” means a Cooperative Procurement in which the participating ~~Contracting agencies or governmental bodies~~ or the Cooperative Procurement group and the ~~agencies’~~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 ~~Contracting agency~~governmental body that procures goods, services or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.

5.33.145 Rules on all types of Cooperative Procurements.

- A. If the City is the Administering Contracting Agency, then:
 1. It may charge a fair and reasonable fee to purchasing Contract agencies that represent the excess costs of administering the Contract in light of the Purchasing Contracting Agencies use of that Contract; and
 2. Determine whether the purchasing Contract agency must enter into a Written agreement with it.

- B.** If the City is a Purchasing Contracting Agency it is authorized to pay a fee to the Administering Contracting Agency that the Purchasing Agent 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.

5.33.150 Joint Cooperative Procurements.

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

5.33.160 Permissive Cooperative Procurements.

- A.** A Permissive Cooperative Procurement is a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified in the Solicitation Document.
- B.** The City may enter into a Permissive Cooperative Procurement if:
 - 1.** The conditions of PCC Section 5.33.140 B. are met;

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2. The Administering Contracting Agency's Solicitation and Award process for the original Contract is allow the City to establish contracts or price agreements under the terms, conditions and prices of the original contract;
 3. The Contractor agrees to extend the terms, conditions and prices of the original contract to the Purchasing Contractor Agency; and
 4. No material change is made in the terms, conditions or prices of the contract or price agreement between the Contractor the Purchasing Contracting Agency from the terms, conditions and prices of the original contract between the Contractor and the Administering Contracting Agency.
- C. If the City wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement it must publish notice of its intent to do so if it is estimated that the City will spend in excess of \$250,000, on Goods and Services acquired under the Contract or Price Agreement.
- 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;

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2. An estimated amount of the Procurement;
 3. The name of the Administering Contracting Agency; and
 4. A time, place and date by which comments must be submitted to the City regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement;
- F.** Time: The City shall advertise the notice in the same manner as provided in PCC Section 5.33.300 A. The City shall give the notice required by this rule no fewer than seven (7) Days before the deadline for submitting comments regarding its intention to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- G.** An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by PCC Section 5.33.160 D., in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.
- H.** If the City receives comments on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement, the City shall make a Written determination that establishing a Contract or Price Agreement is in the best interest of the City before executing the Contract or using the Price Agreement.

5.33.170 Interstate Cooperative Procurements.

- A.** An Interstate Cooperative Procurement is a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rule or regulations to enter into Contracts and in which one or more of the participating ~~agencies~~governmental bodies are located outside the State of Oregon.
- B.** The City may procure Goods and Services through an Interstate Cooperative Procurement if:

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1. The Conditions of PCC Section 5.33.140 B. are met;
 2. The Administering Contracting Agency's Solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract; and
 3. The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions and prices of the Original Contract to the Purchasing Contracting Agency; and
 4. The City:
 - a. was listed in the Solicitation of the Administering Contract Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon, or
 - b. is a member of a Cooperative Procurement Group and the Group was listed in the Solicitation of the Administering Contracting Agency as a party that may establish Contracts or Price Agreements under the terms, conditions and prices of the Original Contract and the Solicitation was advertised in Oregon; or
 - c. publishes a Notice of intent to establish a Contract or Price Agreement in the manner required by 5.33.170 C below.
- C.** Notice of Intent. If the City is required by this rule to publish a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, the notice shall include:
1. A description of the proposed Procurement;
 2. An estimated amount of the proposed Procurement;
 3. The name of the Administering Contracting Agency; and
 4. A time, place and date by which comments must be submitted to the City regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.
- D.** The City shall give public notice at least seven (7) Days before the deadline for submission of comments regarding its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

- E.** If the City receives comments within seven (7) Days after publication of its notice, the City shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the City and provide a copy of the Written determination to any vendor that submitted comments before a Contract or Price Agreement may be established.

5.33.180 Small Procurements.

- A.** For Procurements of Goods and Services not exceeding \$5,000 the City may Award a Contract as a Small Procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such Contractors, including, but not limited to, offering the Contract to only one firm or conducting a competition for the Contract.
- B.** State law prohibits a Procurement from being artificially divided or fragmented so as to constitute a small Procurement under this section.
- C.** Notwithstanding any other provisions of the City Code, small Procurements shall not be amended beyond \$5,000 without prior approval of the Purchasing Agent 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.

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- C. Negotiations: The City may negotiate with an Offeror to clarify its price quotation or Proposal or to effect modifications that will make the price quotation or Proposal acceptable or more Advantageous to the City, provided that all Offerors contacted are offered the same opportunity in order to compete on the same basis.

5.33.200 Competitive Sealed Bidding.

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

- B. Invitation to Bid. The ITB shall include the following:

- 1. General Information.

- a. A time and date by which the Bids must be received and a place at which the Bids must be submitted;
 - b. The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - c. A Procurement description;
 - d. A time, date, and place that Prequalification applications, if any, must be filed and the classes of Work, if any, for which Bidders must be prequalified in accordance with ORS 279B.100 and PCC Section 5.33.510;
 - e. A statement that the City may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100 and PCC Section 5.33.645;
 - f. A statement that requires the Contractor or Subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
 - g. All Contractual terms and conditions applicable to the Procurement;
 - h. Notice of any pre-Offer conference as follows:

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acceptable Offers in phase one, to submit competitive sealed price Bids on the technical Offers in the phase two. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the City may require Offerors to submit a separate sealed price Bid during phase one to be opened after the technical evaluation.

- C.** Public Notice. Whenever the City uses multi-step sealed Bids for Contracts over \$150,000, Public Notice for phase one shall be given in accordance with PCC Section 5.33.300. Public Notice is not required for phase two. However, the City shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to PCC Section 5.33.430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to PCC Section 5.33.720.
- D.** Procedures Generally. In addition to the procedures set forth in PCC Sections 5.33.300 through 5.33.340, the City shall use the procedures set forth in this rule for multi-step Bidding:
- 1.** Solicitation protest. Prior to the Closing of phase one, the City shall provide an opportunity to protest the Solicitation pursuant to ORS 279B.405 and PCC Section 5.33.730.
 - 2.** Addenda Protest. The City may provide an opportunity to protest any Addenda issued after Closing of phase one pursuant to PCC Section 5.33.430.
 - 3.** Exclusion Protest. The City may, but is not required to, provide an opportunity for a Bidder to protest exclusion from phase two of multi-step sealed Bidding as set forth in PCC Section 5.33.720.
 - 4.** Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Bidder from phase two of multi-step Bidding to the extent such protests are provided for in the Solicitation Document required by this section. Failure to protest shall be considered the failure to pursue an administrative remedy made available to the Bidder by the City.
 - 5.** Award Protest. An Affected Person may protest the Notice of Intent to Award issued by the City pursuant to these rules. If the City did not provide an opportunity to protest a Bidder's exclusion from phase two or later phases of multi-step sealed Bidding or an Addendum issued following initial Closing, the Bidder may do so following the issuance of the Notice of Intent to Award within the same time frame as an Affected Person.

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- E.** Procedure for Phase One of Multi-Step Sealed Bidding.
- 1.** Form. The City shall initiate multi-step sealed Bidding by the issuance of an Invitation to Bid in the form required for competitive sealed Bids except as hereinafter provided. In addition to the requirements of PCC Section 5.33.200 B., the multi-step Invitation to Bid shall state:
 - a.** that un-priced technical Offers are requested;
 - b.** whether priced Bids are to be submitted at the same time as un-priced technical Offers; if they are, such priced Bids shall be submitted in a separate sealed envelope;
 - c.** that it is a multi-step sealed Bid Procurement, and priced Bids will be considered only in a subsequent phase and only from those Bidders whose un-priced technical Offers are found acceptable in phase one;
 - d.** the criteria to be used in the evaluation of un-priced technical Offers;
 - e.** that the City, to the extent it finds necessary, may conduct oral or Written discussions of the un-priced technical Offers;
 - f.** that Bidders may designate those portions of the un-priced technical Offers which contain trade secrets or other proprietary data which are to remain confidential; and
 - g.** that the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Offer as found to be finally acceptable and shall meet the requirements of the Invitation to Bid; and
 - h.** Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of Intent to Award. Such information can be given or changed by Addenda.
 - 2.** Addenda to the Invitation to Bid. After receipt of un-priced technical Offers, Addenda to the Invitation to Bid shall be distributed only to Offerors who submitted un-priced technical Offers.
 - 3.** Receipt of Handling of Un-priced Technical Offers. Un-priced technical Offers need not be opened publicly.

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4. Evaluation of Un-Priced Technical Offers. The un-priced technical Offers submitted by Offerors shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. The un-priced technical Offers shall be categorized as:
 - a. Eligible;
 - b. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - c. Ineligible. The City shall record in Writing the basis for finding a Bid ineligible and make it part of the Procurement file. The City may initiate Phase Two of the procedure if, in the City's opinion, there are sufficient eligible un-priced technical Offers to assure effective price competition in phase two without technical discussions. If the City finds that such is not the case, the City shall issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in PCC Section 5.33.205 E.5.
5. Discussion of Un-priced Technical Offers. Clarification of its technical Bid may be conducted by the City with any Bidder who submits an eligible, or potentially eligible technical Bid. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Offer to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Offer has been finally found ineligible, may submit supplemental information amending its technical Offer at any time until the Closing of phase two.. Such submission may be made at the request of the City or upon the Bidder's own initiative.
6. Notice of Ineligible Un-priced Technical Offer. When the City determines a Bidder's un-priced technical Offer to be eligible, such Bidder shall not be afforded an additional opportunity to supplement technical Offers.
7. Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during Phase One:
 - a. before un-priced technical Offers are considered;
 - b. after any discussions have commenced under 5.33.205 E.5; or
 - c. when responding to any amendment of the Invitation to Bid by Addendum. Otherwise mistakes may be corrected or withdrawal permitted in accordance with PCC Section 5.33.490.

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- F.** Revisions to Solicitation Specifications. After Closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.

- G.** Procedure for Phase Two.
 - 1.** Initiation. Upon the completion of Phase One, the City shall either:
 - a.** open priced Bids submitted in Phase One (if priced Bids were required to be submitted) from Bidders whose un-priced technical Offers were found to be eligible; or
 - b.** if priced Bids have not been submitted, technical discussions have been held, or amendments to the Invitation to Bid have been issued by Addendum, invite each eligible Bidder to submit a priced Bid.

 - 2.** Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:
 - a.** as specifically set forth in this rule; and
 - b.** no public notice need be given of this invitation to submit priced Bids because such notice was previously given.

5.33.210 Competitive Sealed Proposals.

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

- B.** Mandatory provisions in RFP Solicitation Documents. The RFP shall include the following:
 - 1.** General Information.
 - a.** A time, date and location when the sealed Proposals must be submitted and received;

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

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4. Preference for Goods manufactured from Recycled Materials under PCC Section 5.33.080 and ORS 279A.125;
5. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.
6. Optional RFP provisions: The RFP may contain the following provisions:
 - a. That certain identified Contractual terms or conditions that the City is reserving for negotiation with Proposers;
 - b. That Proposers propose Contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;
 - c. The form of Contract that the City will accept, or suggested Contract terms and conditions that nevertheless may be the subject of negotiations with Proposers;
 - d. That the method of Contractor selection may include negotiations with the highest ranked Proposers, Competitive Negotiations, multiple-tiered competition designed to identify a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;
 - e. That the City may conduct site tours, demonstrations, individual or group discussions and other informational activities with Proposers before or after the Opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation's requirements or to consider and respond to requests for modifications of the Proposal requirements.

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

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

- A. Generally. The City may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in PCC 5.33.210 through PCC 5.33.217 for methods of Contractor selection that call for the establishment of a Competitive Range or include discussions or negotiations, the City shall employ the procedures set forth in this rule for Competitive Range, multi-tiered and multi-step Proposals.
- B. Solicitation Protest. Prior to the initial Closing, a City shall provide an opportunity to protest the solicitation under ORS 279B.405 and PCC 5.33.730.
- C. Addenda Protest. The City may provide an opportunity to protest, pursuant PCC 5.33.430, any Addenda issued pursuant to ORS 279B.060(6)(d).
- D. Exclusion Protest. The City may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multi-step sealed Proposals as set forth in PCC 5.33.720.
- E. Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multi-step Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.
- F. Award Protest. A City shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and PCC 5.33.740. An Affected Proposer may protest, for any of the bases set forth in PCC 5.33.720, its exclusion from the Competitive Range or any phase of a multi-tiered or multi-step sealed Proposal, or an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

5.33.215 Negotiations, Discussions within the Competitive Range for RFPs.

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- A.** Competitive Range. When the City's Solicitation process conducted pursuant to PCC Section 5.33.210 calls for the City to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:
- 1.** Determining Competitive Range.
 - a.** The City shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City shall determine and rank the Proposers in the Competitive Range.
 - 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 most Advantageous Proposer. The City may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.
 - 2.** Protesting Competitive Range. The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City evaluation and determination of the Competitive Range in accordance with PCC Section 5.33.720.
 - 3.** Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with PCC Section 5.33.215 A.2., or after the City has provided a final response to any protest, whichever date is later, the City may either:
 - a.** Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - (1)** An unsuccessful Proposer may protest the City's intent to Award in accordance with PCC Section 5.33.740.
 - (2)** After the protest period provided in accordance with PCC Section 5.33.740 expires, or after the City has provided a final response to any protest, whichever date is later, the

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Public notice is not required for phase two. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to PCC Section 5.33.720.

D. Procedure for Phase One of Multi-Step Sealed Proposals.

- 1.** Form. Multi-step sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided by this rule. In addition to the requirements set forth in PCC Section 5.33.215, the multi-step Request for Proposal shall state:
 - a.** that un-priced technical Proposals are requested;
 - b.** whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;
 - c.** that the Solicitation is a multi-step sealed Proposal Procurement, and priced Proposals will be considered only in phase two from those Proposers whose un-priced technical Proposals are found qualified in phase one;
 - d.** the criteria to be used in the evaluation of un-priced technical Proposals;
 - e.** that the City, to the extent it finds necessary, may conduct oral or Written discussions of the un-priced technical Proposals;
 - f.** that the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals; and
 - g.** whether Proposers excluded from phase two have a right to protest the exclusion. Such information can be given and changed through Addenda.
- 2.** Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

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3. Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
4. Evaluation of Un-Priced Technical Proposals. The un-priced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. The un-priced technical Proposals shall be categorized as:
 - a. Qualified;
 - b. Potentially qualified; that is, reasonably susceptible of being made qualified; or
 - c. Unqualified. The City shall record in Writing the basis for finding a Proposal unqualified and make it part of the Procurement file. The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the phase two without technical discussions. If the City finds that such is not the case, the City may issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in Phase One above, or take any other action permitted by these rules.
5. Discussion of Un-priced Technical Proposals. The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of phase two. . Such submission may be made at the request of the City or upon the Proposer's own initiative.
6. Notice of Unqualified Un-priced Technical Proposal. When the City determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.
7. Mistakes During Multi-Step Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:
 - a. before un-priced technical Proposals are considered;

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B. For purposes of PCC Section 5.33.220 the following definitions are applicable:

1. “Class Special Procurement” means a contracting procedure that differs from the procedures described in PCC Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a series of contracts over time or for the acquisition of a specified class of Goods or Services multiple projects.
2. “Contract-Specific Special Procurement” means a contracting procedure that differs from the procedures described in PCC Sections 5.33.180, 5.33.190, 5.33.200 and 5.33.210 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Goods or Services 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.

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

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

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

1. **Manufacturer Direct Supplies:** The City may purchase goods directly from a manufacturer if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.
2. **Advertisements:** Except as provided by City Charter Section 8-101, the City may purchase advertising in newspapers and Written publications, web-based Internet sites and other electronic formats.

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3. Copyrighted Materials: The City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
4. Financial Products: The City may directly purchase financial products such as bond insurance, surety bonds for City bond reserves and liquidity facilities such as letters of lines of credit.
5. Employee Benefit Contracts: Contracts relating to employee benefits may be Awarded directly to a Contractor after the City obtains a consultant pursuant to PCC Chapter 5.68 to conduct a competitive process to acquire such contractors. Such contracts include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. The City will hire a consultant to advise it on firms available to provide the Work and the consultant is authorized to solicit firms pursuant to a Request for Proposal process as well as assist the City in placing advertisements in specific publications likely to reach the attention of such contractors. The City may then negotiate or enter into the Contract that appears most Advantageous to the City without further advertisement or issuance of its own Request for Proposals.
6. Insurance Contracts: Contracts for insurance, including Employee Benefit insurance, may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to PCC Chapter 5.68. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to the City about the costs and benefits of the various Proposals. The City may then negotiate or enter into the insurance Contract that appears most Advantageous to the City without advertisement or issuance of its own Request for Proposals.
7. Purchase of Used Personal Property or Equipment: The City may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as “used”. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.

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- 8.** Hazardous Material Removal and Oil Clean-up. The City may directly purchase services to remove or clean up hazardous material or oil from any vendor when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:
- a.** To the extent reasonable under the circumstances, encourage competition by attempting to obtain informal price quotations or Proposals from potential suppliers of Goods and Services;
 - b.** The Bureau responsible for managing or coordinating the clean-up shall submit a Written description of the circumstances that require it and a copy of the DEQ order for the cleanup to the Bureau of Purchases together with a requisition authorizing the Contract.
 - c.** The Bureau of Purchases shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the Contractor to whom Award is made; and
 - d.** The timeline for cleanup does not permit the use of intermediate Procurement procedures.
- 9.** Amendments to Contracts and Price Agreements: The City may execute Contract amendments, as follows:
- a.** An original valid Contract exists between the parties;
 - b.** Unit prices or “add alternates” were provided in the Solicitation Document that established the cost basis for the additional Work or product or in a lump sum Contract the Contractor has provided an estimate of the additional cost which has been verified by the Bureau seeking the amendment; and
 - c.** The Solicitation Document provided for such amendments; or
 - d.** Emergency: The original Contract was let pursuant to a declaration of Emergency, in accordance with PCC Section 5.33.130; or
 - e.** Unplanned Environmental Cleanup: The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of

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environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal.

10. Renegotiations of Existing Contracts with Incumbent Contractors.

- a.** Authorization. The City may renegotiate and amend existing Contracts with incumbent Contractors only if it is in the best interest of the City.
- b.** Process and Criteria. The City may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitutions, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The City must meet the following conditions in its Renegotiations with incumbent Contractors:
 - (1)** Favorable Result. The City must determine that, with all things considered, the renegotiated Contract is at least as favorable to the City as the Original Contract and document this in the Procurement File. For example, the City and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;
 - (2)** Within the Scope. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the City may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation.
 - (3)** Optional Term or Condition. If a Contractor offered to the City during the original Solicitation a term or condition that was rejected at that time, the City may not renegotiate for a lower price based on this rejected term or condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price pursuant to a rejected term or condition without additional consideration from the City and as only an option to the City, then the City may accept the option of a lower price under the rejected term or condition. For example, if the City initially

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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 PCC Section 5.33.350.
- 12. Software and Hardware Maintenance and Upgrades. The City may directly enter into a Contract or renew existing Contracts for information technology hardware or software maintenance and upgrades without Competitive Solicitation where the maintenance and upgrades are either available from only one source or, if available from more than one provider, are obtained from the City's current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's hardware or software system. The City shall document in the Procurement File the facts that justify either that maintenance and upgrades were available from only one source or, if from more than one source, from the current vendor.
- 13. Equipment Maintenance, Repair and Overhaul. The City may enter into a Contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
- ~~14. Hazardous Material removal or oil cleanup. The City may enter into contracts without competitive bidding or competitive quotations when~~

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~~ordered to clean up oil and/or hazardous waste pursuant to the authority granted to local, state or federal regulatory agencies having jurisdiction over such matters. However, the City shall encourage competition to the extent reasonable under the circumstances. The Bureau responsible for managing or coordinating the cleanup also shall submit a written description of the circumstances that require the cleanup and a copy of the order to the Bureau of Purchases when seeking to enter into such a contract.~~

- D.** Notice. The City shall give public notice of the City Council’s approval of an Individual or Class Special Procurement on its website as provided in PCC Section 5.33.300 A.3. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract. If the Special Procurement leads to a Solicitation Document, then the City will post a Notice of Intent to Award the contract pursuant to PCC Section 5.33.650.
- E.** If the City plans to conduct a competitive special Procurement, it shall award the contract to the Offeror the City determines to be 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.

- A.** Notice and Solicitation Fee. The City shall furnish public notice of every Solicitation Document in accordance with PCC Section 5.33.300 B. The City may give additional notice using any method it determines appropriate to foster and promote competition, including:
- 1.** Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in the City’s Solicitations; or
 - 2.** Placing Notice on the Oregon Department of Administrative Services’ Electronic Procurement System known as “ORPIN” (Oregon Procurement Information Network) or a successor Electronic system; or
 - 3.** Place Notice on the City’s Internet Web site.
- B.** Advertising. The City shall advertise every notice of a Solicitation Document as follows:

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1. The City shall publish the advertisement for Offers in accordance with the requirements of ORS 297.055(4)(a) and (b); or
2. Because the City finds that it would be cost effective to Electronically post notice of Bids and Proposals, the City may publish the advertisement for Offers by Electronic Advertisement in accordance with the requirements established by PCC Section 5.33.340.
3. Content. All advertisements for Offers shall set forth:
 - a. Where, when how and for how long the Solicitation Document may be obtained.
 - b. A general description of the Goods or Services to be acquired;
 - c. The interval between the first date of notice of the Solicitation Document given in accordance with PCC Section 5.33.300 B. and Closing which shall not be less than fourteen (14) Days for an Invitation to Bid and 21 Days for a Request for Proposals, unless the City determines that shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with PCC Section 5.33.300 B. and Closing be less than seven (7) Days as set forth in PCC Section 5.33.200. The City shall document the specific reasons for the shorter public notice period in the Procurement file;
 - d. The date that Persons must file applications for Prequalification if Prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
 - e. The office where Contract terms, conditions and Specifications may be reviewed;
 - f. The name and title of the person designated for the receipt of Bids and the person designated by the City as the contact person for the Procurement, if different;
 - g. The scheduled Opening; and
 - h. Any other information the City deems appropriate.

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- C. Posting Advertisement for Offers. The City shall post a copy of each advertisement for Offers at the Bureau of Purchases. An Offeror may obtain a copy of the advertisement for Offers upon request.
- D. The City may charge a fee or require a deposit for the Solicitation Document.
- E. The City shall provide potential Offerors notice of any Addendum to a Solicitation Document in accordance with PCC Section 5.33.430.

5.33.310 Specifications and Brand Names.

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

- 4. Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.
- E. The City's use of a brand name specification is subject to protest and review only as provided in PCC Section 5.33.730.

5.33.320 Bids or Proposals are Offers.

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

5.33.330 Facsimile Bids and Proposals.

- A. City Authorization. The Purchasing Agent 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

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

- f. Illegibility of Offer documents.
- g. Security and confidentiality of data.

5.33.340 Electronic Procurement.

- A.** The City may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by Electronic methods if and to the extent the City specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.
- B.** The City shall open an Electronic Offer in accordance with Electronic security measures in effect at the City at the time of its receipt of the Electronic Offer. Unless the City provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- C.** The City's use of Electronic Signatures shall be consistent with applicable statutes and rules. The Purchasing Agent may limit the use of Electronic methods of conducting a Procurement as Advantageous to the City.
- D.** If the City determines that Bid or Proposal Security is or will be required, the Purchasing Agent 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 Purchasing Agent may require potential Contractors to register with the City before the date and time on which the City will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the City may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an Electronic Signature.
- G.** Offer Process. The Purchasing Agent may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Purchasing Agent specifies that Persons may submit multiple Electronic Offers during a specified period of time, the City must

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designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the City will accept Electronic Offers for a period of time, then at the designated date and time that the City will first receive Electronic Offers, the City must begin to accept “real time” Electronic Offers on the City’s’ Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with 5.33.340 H.2 until the date and time specified by the City, after which the City will no longer accept Electronic Offers.

H. Receipt of Electronic Offers.

- 1.** When the City conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the City shall receive the Electronic Offers in accordance with these rules.
- 2.** When the City specifies that Persons may submit multiple Offers during a period of time, the City shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:
 - a.** Following receipt of the first Electronic Offer after the Day and time the City first receives Electronic Offers the City shall post on the City’s’ Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the City will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.
 - b.** A Person may not increase the price set forth in an Electronic Offer after the Day and time that the City first accepts Electronic Offers.
 - c.** A Person may withdraw an Electronic Offer only in compliance with these rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

I. Failure of the E-Procurement System. In the event of a failure of the City’s’ Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the City may cancel the Procurement in accordance with PCC Section 5.33.660,

or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

5.33.350 Reverse Auctions.

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

- B.** Offer process. The Solicitation must designate both an Opening date and time and a Closing date and time. The Closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the Solicitation. At the Opening date and time, the City must begin accepting real time Electronic Offers. The Solicitation must remain open until the Closing date and time. The City may require Offerors to register before the Opening date and time and, as a part of that registration, to agree to the terms, conditions, or other requirements of the Solicitation. Following receipt of the first Offer after the Opening date and time, the lowest Offer price or, if Proposals are accepted, the ranking of each Proposer, must be posted Electronically to the Internet and updated on a real time basis. At any time before the Closing date and time, an Offeror may lower the price of its Offer or revise its Proposal except that after Opening date and time, an Offeror may not lower its price unless that price is below the then lowest Offer. Offer prices may not be increased after Opening. Except for Offer prices, Offers may be modified only as otherwise allowed by these rules or the Solicitation Document. An Offer may be withdrawn only in compliance with these rules. If an Offer is withdrawn, no later Offer submitted by the same Offeror may be for a higher price. If the lowest Responsive Offer is withdrawn after the Closing date and time, the City may cancel the Solicitation or reopen the Solicitation to all pre-existing Offerors by giving notice to all pre-existing Offerors of both the new Opening date and time and the new Closing date and time. Notice that Electronic Solicitation will be reopened must be given as specified in the Solicitation Document.

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

5.33.360 Contract Conditions

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

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5.33.400 Offer Preparation.

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

5.33.410 Bid or Proposal Security.

- A.** Offer Security, not to exceed 10 percent of the Offer, is not required for Contracts other than Public Improvement Contracts unless the Purchasing Agent determines otherwise. If required, the purpose of Offer Security is to guarantee acceptance of the Award of the Contract. This requirement shall be stated in the Solicitation Document.
- B.** The Purchasing Agent may require Offer Security from any Offeror, even if the City has exempted a class of Solicitations from Offer Security.
- C.** The Offer Security shall be forfeited if the Offeror fails to execute the Contract promptly and properly after the City has Awarded the Contract, unless the Purchasing Agent determines forfeiture is not in the City's best interest.
- D.** The City shall not use Offer Security to discourage competition.
- E.** Return of Offer Security. The Offer Security of all unsuccessful Offerors shall be returned or released after a Contract has been executed and evidence of insurance and a performance bond provided (if insurance or performance bond is required

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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 PCC Section 5.33.410 F.1. above.

5.33.420 Pre-Offer Conferences.

- A.** Purpose. The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Solicitation requirements, obtain information, or to conduct site inspections.
- B.** Required Attendance. The City may require attendance at the pre-Offer conference as a condition for making an Offer. A prospective Offeror who fails to attend a mandatory conference is not eligible to make an Offer. If an Offer is made it will be rejected as nonresponsive.
- C.** Scheduled Time. If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- D.** Statements Not Binding. Statements made by a City representative at the pre-Offer conference or elsewhere about the proposed Contract or Solicitation

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Document do not change the Solicitation Document unless the Bureau of Purchases confirms such statements with a Written Addendum to the Solicitation Document.

- E.** City Announcement. The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with PCC Section 5.33.300.

5.33.430 Addenda to Solicitation Document

- A.** Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in accordance with these rules, then the Offeror shall be bound to the terms contained in all Addenda so issued.
- B.** Notice and Distribution. The City shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in PCC Section 5.33.300. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available. For example, the City may state: “City will not mail notice of Addenda, but will publish notice of any Addenda on City’s Web site. Addenda may be downloaded off the City’s Web site. Offerors should frequently check the City’s Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily during the week of the Closing.”
- C.** Timelines; Extensions.
 - 1.** The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the information contained in the Addenda in preparing their Offers. The City should extend the Closing if the Purchasing Agent determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the Purchasing Agent determines that the public interest requires it, the City shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. For purposes of computing this time, the Addendum shall be deemed issued to occur when it is first posted on the City’s web site or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
 - 2.** Notwithstanding PCC Section 5.33.430 C.1., an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of

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competition under a multi-step sealed Bid or a multi-tiered or multi-step sealed Proposal issued in accordance with PCC Sections 5.33.205 and 5.33.210 through 5.33.217 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

- D.** Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in PCC Section 5.33.730, by the close of the City's next business Day after issuance of the Addendum. The City shall consider only an Offeror's request for change or protest to the Addendum; the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this paragraph, the City is not required to provide a protest period for Addenda issued during a multi-tier or multi-step Procurement process conducted pursuant to PCC Section 5.33.200 or 5.33.210.

5.33.440 Request for Clarification or Change.

- A.** Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change of the Solicitation Document, Specifications or Contract provisions to the City in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by PCC Section 5.33.430 D.
- B.** Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and, a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. The City shall notify the Offeror if the City entirely rejects the request. If the City agrees with the request, in whole or in part, the City shall either issue an Addendum reflecting the change or cancel the Solicitation.

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- C. Extension of Closing date. If any request for change is timely received in accordance with these rules the Closing may be extended by the Purchasing Agent if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- D. Identification of request for change. Envelopes containing requests for change or protests of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
 - 1. Solicitation Specification or Contract Provision Request for Change; and
 - 2. Solicitation Document Number or Other Identification.
- E. A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, the request for change procedure shall be governed by the Solicitation Document and PCC Section 5.33.215 C.
- F. Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that the City clarify any provision of the Solicitation Document or Contract. The City's clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on the City unless the City amends the Solicitation Document or Contract by Written Addendum.

5.33.450 Offeror Submission.

- A. Product Samples and Descriptive Literature. Product Samples or Descriptive Literature may be required if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The City will dispose of Product Samples, return, or make available for return, Product Samples to the Offeror in accordance with the Solicitation Document.
- B. Identification of Offers.
 - 1. To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits Electronic Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers in accordance with the Solicitation Document.
 - 2. The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

3. Receipt of Offers. The Offeror is responsible for ensuring the City receives its Offer at the Bureau of Purchases prior to the stated Closing time for Offers, regardless of the method used to submit or transmit the Offer. Offers not so received are late as provided in PCC Section 5.33.480 and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided by PCC Section 5.33.480 shall apply except the submission shall be returned to the Offeror.

5.33.460 Pre-Closing Modification or Withdrawal of Offers.

- A. Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. The City may accept modifications Electronically only if it has authorized Electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:
 1. Offer Modification; and
 2. Solicitation Number or other identification as specified in the Solicitation Document.
- B. Withdrawals:
 1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to the Bureau of Purchases if no location is specified, and received by the specific location or to the Bureau of Purchases, as appropriate, prior to the time and date set for Closing.
 2. The Offeror or Authorized Representative of the Offeror may withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority. Because of the chance for error or misidentification, the City reserves the right to reject a purported withdrawal if in the judgment of the City, sufficient identification is not provided.
 3. The City may release an unopened Offer withdrawn under PCC Section 5.33.460 B.1. to the Offeror or its Authorized Representative, after voiding any date and time stamp mark or otherwise by appropriately marking the envelope in which the Offer was received.

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4. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Offer Withdrawal; and
 - b. Solicitation Number or other identification as specified in the Solicitation Document.
 - c. Documentation. The City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

5.33.470 Receipt, Opening, and Recording of Offers.

- A. Receipt. The Bureau of Purchases 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 PCC Section 5.33.460.
 1. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder shall be read aloud as well as the Bid price(s), and such other information as the City considers appropriate.
 2. In the case of Requests for Proposals, the City will not read Proposals aloud, but will only disclose the name of each Proposer.
- C. Availability. After Opening, Offers will be available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475.
 1. To the extent such designation is not in accordance with applicable law, the City shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer.

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2. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary. The Purchasing Agent may determine the appropriate charge to be paid for copies made pursuant to public records requests and may request payment for such copies before they are released.
3. Notwithstanding anything contrary above, the City is not required to disclose the contents of Proposals until after the City posts a Notice of Intend to Award pursuant to PCC Section 5.33.650.

5.33.480 Late Offers, Late Withdrawals and Late Modifications.

- A. Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications
- B. For manual submissions of Offers, the Bureau of Purchases' 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.

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- 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;
 - 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

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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.

5.33.495 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

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and the Offer will remain valid, irrevocable and binding on the Offeror for the agreed-upon extension period.

5.33.500 Responsibility of Offerors.

- A.** Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, the City shall consider whether the Offeror has:
- 1.** Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all Contractual responsibilities;
 - 2.** A satisfactory record of performance. The City shall document the record of performance of a prospective Offeror if the City finds the prospective Offeror nonresponsible under this paragraph;
 - 3.** A satisfactory record of integrity. The City shall document the record of integrity of a prospective Offeror if the City finds the prospective Offeror nonresponsible under this paragraph;
 - 4.** Qualified legally to Contract with the City. The Bureau of Purchases may determine that such an Offeror is not legally qualified if:
 - a.** The Offeror does not have a business license with the City; or
 - b.** The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 - 5.** Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information or may find the prospective Offeror nonresponsible;
 - 6.** Not been debarred by the City under ORS 279B.130, PCC Section 5.33.530 or 5.33.540.
- B.** In the event the City determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279B.110.

5.33.505 Qualified Products Lists.

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

- B.** When any Bureau begins the initial development of a qualified products list, the Purchasing Agent shall give public notice in accordance with PCC Section 5.33.300 of the opportunity for potential Contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list.
 - 1.** The Purchasing Agent may also solicit in Writing representative groups of potential Contractors, sellers or suppliers to submit goods for the testing and examination.
 - 2.** Any potential Contractor, seller, or supplier, even though not solicited, may offer its goods for consideration.

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

5.33.510 Prequalification of Prospective Offerors.

- A.** The City may Prequalify prospective Offerors as follows:
 - 1.** The Purchasing Agent shall determine the types of forms, the method of submitting applications and the information required to be a prequalified Offeror for Goods or Services.
 - 2.** Prospective Offerors shall submit the application on the form required by the Purchasing Agent.
 - 3.** Upon receipt of the application, the City shall investigate the prospective Offeror as necessary to determine whether the Prequalification should be granted.
 - 4.** If an early Prequalification decision is requested, the City shall make that decision in less than 30 Days, if practicable.
 - 5.** The Purchasing Agent shall notify prospective Offerors whether or not they have been prequalified If a prospective Offeror is not prequalified,

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the Purchasing Agent shall specify which of the standards of responsibility listed in PCC Section 5.33.500 the prospective Offeror failed to meet.

- B.** If the City determines that a prequalified Offeror is no longer qualified the Purchasing Agent 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.

5.33.530 Debarment of Prospective Offerors.

- A.** The City may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.
- B.** The City may debar a prospective Offeror from consideration for City Contracts for a period up to three (3) years if:
 - 1.** The Offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or Subcontract or in the performance of such Contractor or Subcontract;
 - 2.** The Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Offeror's responsibility as a Contractor;
 - 3.** The Offeror has been convicted under state or federal antitrust statutes;
 - 4.** The Offeror has committed a violation of a Contract provision ~~and debarment for such a violation was listed in Contract terms and conditions as a potential penalty.~~ that is regarded by the City or the Construction Contractors Board to be so serious to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment; or
 - 5.** The Offeror does not carry workers' compensation or unemployment insurance as required by Oregon Law.

- C. The City may debar a prospective Offeror as follows:
 - 1. Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.435 and PCC Section 5.33.760; and
 - 2. Mail or immediately furnish a copy of the decision to the debarred Offeror.
- D. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, the City may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- E. Imputed Knowledge. The City may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- F. Limited participation. The City may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

5.33.540 DBE Disqualification.

- A. The City may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a Subcontractor) as follows:
 - 1. For a DBE disqualification pursuant to ORS 200.065 the City may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065, or if the Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.
 - 2. For a DBE disqualification pursuant to ORS 200.075, the City may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075 (a) through (c).
- B. The City may disqualify or suspend a Person's right to submit Offers or participate in a Contract only for the length of time permitted by ORS 200.065 or ORS 200.075 as applicable.

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

5.33.610 Offer Evaluation and Award.

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

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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 PCC Sections 5.33.625 through 5.33.635.
 - 2.** Low, Tied Offers. Low, tied Offers shall be resolved pursuant to PCC Section 5.33.625.
- J.** Evaluation of Proposals. The City shall evaluate Proposals as set forth in 279B.060(6) and PCC Section 5.33.210 and in the event of low, tied Proposals, in accordance with PCC Section 5.33.625.
- K.** Recycled Materials. In determining the most Advantageous Responsive Proposal the City shall give preference for recycled materials as set forth in ORS 279A.125 and PCC Section 5.33.635.

5.33.620 Negotiation With Offerors Prohibited.

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

5.33.625 Contract Preferences.

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- A.** Award When Offers Identical. When the City receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the City shall Award the Contract based on the following order of precedence:
- 1.** The City shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, that have been manufactured or produced 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 have been manufactured or produced in Oregon. The City shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for those Offerors to be present when the lots are drawn.
 - 3.** If the City receives identical Offers, and none of the identical Offers offer Goods or Services, or both, that have been manufactured or produced in Oregon, then the City shall Award the Contract by drawing lots among the identical Offerors. The City shall provide to the Offerors that submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity to be present when the lots are drawn.
- B.** Determining if Offers are Identical. The City shall consider Offers identical in price, fitness, availability and quality as follows:
- 1.** Bids received in response to an Invitation to Bid issued under PCC Section 5.33.200 or ORS 279C.335 are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.
 - 2.** Proposals received in response to a Request for Proposals issued under PCC Section 5.33.210, are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
 - 3.** Proposals received in response to a Special Procurement conducted pursuant to PCC Section 5.33.220 are identical in price, fitness, availability and quality if, after completing the Contracting procedure approved by the City if the City determines, in Writing, that two or more Proposals are equally Advantageous to the City.

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- 4. Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the City in accordance with ORS 279B.070(4).

- C. Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with PCC Section 5.33.625 A., the City shall determine whether a Contract is predominantly for Goods or Services and then use the predominant purpose to determine if the Goods or Services are manufactured or produced in Oregon. The City may request in a Solicitation Document, following Closing, or at any other time determined appropriate by the City, any information the City may need to determine if the Goods or Services are manufactured or produced in Oregon. The City may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Offeror.

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

5.33.630 Reciprocal Preferences.

- A. When evaluating Bids pursuant to PCC Section 5.33.610, the City shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.

- B. The City shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both:
 - (i)1. whether the Nonresident Bidder's state gives preference to in-state Bidders, and

 - (ii)2. the amount of such preference.

5.33.635 Contract Preferences: Recycled Materials.

- A. Notwithstanding provisions of law requiring the City to Award a Contract to the lowest Responsible Bidder or best Proposer or provider of a quotation, and subject to PCC Section 5.33.635 B., the City shall give preference to the Procurement of goods manufactured from recycled materials.

- B.** In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the City shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four (4) conditions exists:
1. The recycled product is available;
 2. The recycled product meets applicable standards;
 3. The recycled product can be substituted for a comparable non-recycled product; and
 4. The recycled product's costs do not exceed the costs of non-recycled products by more than five (5) percent, or a higher percentage if a Written determination is made by the City and set forth in the Solicitation Document. For purposes of making the foregoing determination, the City shall consider the costs of the goods following any adjustments the City makes to the price of the goods for purposes of evaluation pursuant to PCC Section 5.33.610.
- C.** For the purposes of this section, the City shall determine if goods are manufactured from recycled materials in accordance with standards established by the City.

5.33.640 Rejection of all or part of an Offer.

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

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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:
 - 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.

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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 PCC Section 5.33.640 D.; or
 - f. Is otherwise nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the City must determine that the Offeror:
 - (1) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all Contractual responsibilities;
 - (2) Has a satisfactory record of Contract performance. The City should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, the City should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. The City may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. The City shall make its basis for determining an Offeror nonresponsible under this section part of the Solicitation file;

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- (3) Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City shall make its basis for determining that an Offeror is nonresponsible under this section part of the Solicitation file;
 - (4) Is qualified legally to Contract with the City. The City may find the Offeror is not legally qualified to contract with the City if:

 - (a) The Offeror does not have a business license with the City; or
 - (b) The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses within seven (7) Days of the receipt of an Offer, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
 - (5) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.
- C. Form of Business. For purposes of this rule, the City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring an ownership interest of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

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

5.33.645 Rejection of All Offers.

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

5.33.650 Notice of Intent to Award.

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

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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 PCC Section 5.33.740.

5.33.660 Cancellation, delay or suspension of Solicitation.

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

- E.** Notice of Cancellation After Opening. If the City cancels a Procurement or Solicitation after Opening, the City shall provide Written notice of Cancellation to all Offerors who submitted Offers.

5.33.670 Disposition of Offers if Solicitation Canceled.

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

5.33.675 Documentation of Award.

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

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5.33.685 Availability of Award Decisions.

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

5.33.690 Performance and Payment Security; Waiver.

- A. Public Contracts.** The Purchasing Agent has discretion to require the submission of a performance bond, a payment bond, or both in regard to any contracts subject to this Chapter in any amount not to exceed the Contract Price. If so, the requirement shall be expressly set forth in the Solicitation Document.
- B. Requirement for Surety Bond.** If required, the City shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon and who is duly listed in the United States Treasury List as published in the Federal Register or is otherwise approved by the City Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the City Attorney's office. The surety bond shall have the company's sealed affixed to it, be signed by the surety's Attorney in Fact, and have attached the Power of Attorney for the Attorney in Fact. The City Attorney may waive the requirement of the corporate seal.

- C. Time for Submission.** The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by the City. If the Offeror fails to furnish the performance security as requested, the City may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the City's discretion, the Offeror shall forfeit its Bid or Proposal Security.

5.33.695 Notification to State of Nonresident Contractor.

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

5.33.700 Protests and Judicial Review of Special Procurements

- A.** An Affected Person may protest the City's approval of a Special Procurement or a class Special Procurement.
- B.** Method of Protest
- 1.** Time: A Written protest of the City's approval shall be provided to the Purchasing Agent not later than seven (7) Days after the approval of the Special Procurement or class Special Procurement unless a different time period is provided in the Notice. The Purchasing Agent 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

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- e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.700 B.2. and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by PCC Section 5.33.700 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Purchasing Agent has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of 5.33.700 C, the Purchasing Agent may do any of the following:
 - 1. Agree with the protest and take any corrective action necessary;
 - 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 - 3. Refer the protest and any response to the Board of Appeals for decision;
 - 4. Refer the protest and any response to the City Council for decision; or
 - 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E. Judicial Review.
 - 1. An Affected Person may not seek judicial review of the City Council's approval of a Special Procurement or Class Special Procurement unless it has complied fully with the Protest requirements of this section and exercised all administrative appeal rights.

2. Judicial review is not available if the Request is denied by the City Council, Board of Appeals or is withdrawn by the Purchasing Agent.

5.33.710 Protests and Judicial Review of Sole-Source Procurements.

- A. An Affected Person may protest the determination that the Goods or Services or class of Goods or Services should be procured from only one source.
- B. Method of Protest
 1. Time: A Written protest of the Purchasing Agent's Determination shall be provided to the Purchasing Agent within seven (7) Days whenever the City posts a notice that it will make a sole source purchase. The Purchasing Agent shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Notice of Intent to make a Sole Source purchase.
 2. Contents:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.710 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by PCC Section 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business

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days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Purchasing Agent has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D.** Optional City Response: In addition to the requirements of 5.33.710 C., the Purchasing Agent may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- E.** Judicial Review. An Affected Person may not seek judicial review of the City Council's approval of a Sole Source Procurement unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Sole Source Procurement.

5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

- A.** Interested Offerors may file a Written protest of the Specifications, Contract terms and conditions, pursuant to PCC Section 5.33.730.
- B.** Affected Persons may protest in one of two ways:
1. If no other protest remedies are provided in the Solicitation Document, Affected Persons can file a Written protest to the Award within seven (7) Days after the issuance of the Notice of Intent to Award pursuant to PCC Section 5.33.740 if they meet the requirements of PCC Section 5.33.720 C. below.
 2. If expressly required or permitted by the Solicitation Document, Affected Persons must file a Written protest after being excluded from the

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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.
- D.** Method of Protest:
- 1.** Time: If the Solicitation document permits or requires protests prior to the City's issuance of a Notice of Intent to Award, an Affected Person must submit a Written protest specifying its basis within seven (7) Days after the Affected Person was excluded from participating further in the Procurement.
 - 2.** Contents: The protest must include the following information:
 - a.** Sufficient information to identify the errors that led to the Affected Person's exclusion from the Competitive Range or from subsequent stages of a Procurement;
 - b.** A detailed statement of all the legal and factual grounds for the protest;
 - c.** Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d.** A description of the resulting harm to the Affected Person; and
 - e.** The relief requested.
- E.** Required City Response. The City shall take the following actions, as appropriate:
- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2.** The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.720 D.2. and the reasons for that failure;

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3. If the protest was timely filed and provides the information required by PCC Section 5.33.720 D.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Purchasing Agent has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- F.** Optional City Response: In addition to the requirements of 5.33.720 E., the Purchasing Agent may do any of the following:
1. Agree with the protest and take any corrective action necessary;
 2. Issue a Written response to the protest and provide that decision to the Affected Person;
 3. Refer the protest and any response to the Board of Appeals for decision;
 4. Refer the protest and any response to the City Council for decision; or
 5. Take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.
- G.** Judicial Review. An Affected Person may not seek judicial review unless it has complied fully with the protest requirements of this section and has exercised all administrative appeal rights. Judicial review is not available if the City elects not to make a Procurement.

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

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

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1. Time: A Written protest of the City's posting of a solicitation document shall be provided to the Purchasing Agent within seven (7) Days after a Solicitation Document is advertised. The Purchasing Agent shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document. A Written Protest of any Addendum shall be submitted by the close of the next business day after issuance of the Addendum.
 2. Contents: The protest must include the following information:
 - a. Sufficient information to identify the Solicitation that is the subject of the protest;
 - b. A detailed statement of all the legal and factual grounds for the protest;
 - c. Evidence or supporting documentation that supports the grounds on which the protest is based;
 - d. A description of the resulting harm to the Affected Person; and
 - e. The relief requested.
- C. Required City Response.
1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.730 B.2. and the reasons for that failure;
 3. If the protest was timely filed and provides the information required by PCC Section 5.33.730 B.2. above, the Purchasing Agent shall issue a decision in Writing and provide that decision to the Affected Person no less than three (3) business days before Offers are due, unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 4. The Purchasing Agent's response shall inform the Affected Person if the decision is final or whether the Purchasing Agent has decided to refer the protest to the Purchasing Board of Appeals or City Council. When the

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

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

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

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

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

5.33.740 Protests and Judicial Review of Contract Award.

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

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

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

B. Method of Protest.

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

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

- 1.** The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2.** The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.740 B.2. and the reasons for that failure;

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

5.33.750 Protests of Other Violations.

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

- 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

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resulted or will result in the unlawful Award of a Contract or the unlawful failure to Award the Contract;

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

B. Method of Protest.

1. Time: A Written protest of the Purchasing Agent's Award shall be provided to the Purchasing Agent ~~seven (7)~~ no later than ten (10) Days after the date on which the alleged violation occurred and in no event no later than ~~seven (7)~~ ten (10) Days after the date of the execution of the Contract. The Purchasing Agent 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

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- e. The relief requested.
- C. Required City Response. The City shall take the following actions, as appropriate:
 - 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
 - 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.750 B.2. and the reasons for that failure;
 - 3. If the protest was timely filed and provides the information required by PCC Section 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
 - 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Purchasing Agent has decided to refer the protest to the Purchasing Board of Appeals or City Council.
- D. Optional City Response: In addition to the requirements of 5.33.750 C., the Purchasing Agent 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'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.

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

5.33.770 Purchasing Board of Appeals.

- A.** Purpose. The purpose of this rule is to provide for the prompt, effective and efficient resolution of appeals and protests of Affected Persons in regard to City decisions when such matters are referred to it by the Purchasing Agent or when authorized or required by this Chapter.
- B.** Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Purchasing Board of Appeals for the purposes described above.
- C.** Jurisdiction of Board. The Purchasing Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Purchasing Agent.
- D.** Composition of Board.
 - 1.** The Purchasing Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2.** The members of the Board shall be:
 - a.** A representative from the public purchasing sector;
 - b.** The City Engineer or designee;
 - c.** A member of the general public with affiliation to the purchasing industry.

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

5.33.780 Powers of the Board.

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

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

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5.33.900 Fair Contracting and Employment Programs.

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

5.33.920 Records Maintenance; Right to Audit Records.

- A.** Contractors and Subcontractors shall maintain all fiscal records relating to a Contract executed with the City in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall maintain any other records necessary to clearly document:
- 1.** Performance. Performance includes, but is not limited to, compliance with plans and Specifications, compliance with fair Contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the Contractor or Subcontractor under the Contract or subcontract;
 - 2.** Any claims arising from or relating to their performance under a Contract;
 - 3.** Any cost and pricing data; and,
 - 4.** Payment to suppliers and Subcontractors.
- B.** Such records shall be maintained for a period of six years from the date of final completion of the Contract or until the conclusion of any audit, controversy or litigation arising out of or related to a Contract, whichever is longer, unless a shorter period of time is authorized in Writing by the City.
- 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.

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- D.** The City and its Authorized Representatives shall be entitled to inspect, examine, copy and audit the books and records of any Contractor or Subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any Contract requirements. The records that may be inspected and copied include financial documents of the Contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to PCC Section 5.33.920 E. below.
- E.** Contractors and Subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F.** In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the Contractor or Subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the Contractor by the City.
- G.** Failure of the Contractor or Subcontractor to keep or disclose records as required may result in disqualification as a Bidder or Proposer for future City Contracts or may result in a finding that the Contractor or Subcontractor is not a Responsible Bidder or Proposer.

5.33.930 Right to Inspect Plant or Place of Business.

- A.** Time for Inspection. The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor or supplier which is related to the performance of any Contract Awarded.
- B.** Access to Plant or Place of Business. As a condition of Bidding or proposing, Bidders and Proposers agree that representatives of the City may enter a Contractor's or Subcontractor's or supplier's plant, place of business, work site or construction site during normal business hours for the following purposes:
 - 1.** To inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Bid or Proposal;
 - 2.** To investigate in connection with a Bidder's or Proposer's Bid or Proposal, a minority business or EEO certification, or Bidder or Proposer qualification.
 - 3.** To inspect for compliance with City programs required by the Solicitation Document.

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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.

- 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;

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2. Product or service Specifications;
 3. Delivery or completion requirements; or
 4. Contracted pricing and price escalation/de-escalation clauses.
- B.** The City and the Contractor may cancel the Contract at any time by mutual Written agreement.
- C.** Termination For Convenience.
1. Reasons for Termination. The City may, in its sole discretion, by a Written order or upon Written request from the Contractor, cancel the Contract or a portion thereof if any of the following occur:
 - a. The Contractor is prevented from completing the Work for reasons beyond the control of the City; or
 - b. The Contractor is prevented from completing the Work for reasons beyond the control of the Contractor; or
 - c. For any reason considered by the City to be in the public interest, other than a labor dispute or any third party judicial proceeding relating to the Work filed in regards to a labor dispute. These reasons may include, but are not limited to, non-availability of materials, phenomena of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional, state or local acts related to funding; or
 - d. Any third party judicial proceeding relating to the Work other than a suit or action filed in regards to a labor dispute; or
 - e. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of a Public Improvement.
- D.** Payment When Contract is Canceled. When the Contract, or any portion thereof, is canceled before completion of all items of Work in the Contract, payment shall be made, based on the Contract price, for the actual items of Work completed under the Contract, or by mutual agreement, for items of Work partially completed. No claim for loss of anticipated profits or overhead shall be allowed;
- E.** Responsibility for Completed Work if Contract Canceled. Cancellation of a Contract or a portion thereof shall not relieve the Contractor of responsibility for

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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.
- 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

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

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

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- J.** The Contract documents may provide Contract cancellation or Contractor termination procedures that are different from, or in addition to, those provided herein. If a Contract contains a cancellation or termination clause, that clause rather than PCC Section 5.33.940 shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.
- K.** Contract Completion By Substitute Contractor. If the Contractor has provided a performance and payment bond, the City may afford the Contractor's surety the opportunity, upon the surety's receipt of a cancellation or termination notice, to provide a substitute Contractor to complete performance of the Contract. The substitute Contractor may Contract with the surety or the City may Contract with the substitute Contractor selected by the surety. Performance by the substitute Contractor shall be rendered pursuant to all material provisions of the original Contract, including the provisions of the performance and payment bond. Substitute performance does not constitute the Award of a new Contract and shall not be subject to the provisions of ORS Chapter 279A, 279B or 279C.