

Exhibit A

Chapter 5.33 GOODS AND SERVICES

a. Amend Section 5.33.010 Definitions as follows:

- A.** The following definitions apply to the City of Portland's Purchasing Authority, Policies and Rules as contained in this Chapter.

Subsections 1. – 12. are unchanged.

- 13.** **Commercially Useful Function (CUF):** A function or service that the enterprise or business actually performs, for which a demand exists in the marketplace, and for which the enterprise or business receives payment that is proportionate to the work that the enterprise or business performs or that conforms with industry standards. CUF does not include acting as a broker to provide for other to perform work.

Subsections 13. – 23. renumbered 14. -24.

- 25.** **Domestic Partner:** Any person who is registered with his or her employer as a domestic partner, or, in the absence of an employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration and who is in fact a current domestic partner with the person with whom that person was registered. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the Bureau.

Subsection 24. – 45. renumbered 27. -47.

- 468.** **Procurement Services:** A division of the Bureau of ~~Internal Business~~ Revenue and ~~Financial~~ Services in the City of Portland.

Subsections 47. – 69. renumbered 49. – 71.

a. Amend Section 5.33.040 Authority of Chief Procurement Officer as follows:

- A.** For Contracts covered by Chapters 5.33 and 5.34, the Chief Procurement Officer is authorized to:

Subsections 1. – 9. are unchanged

- 10.** Revoke or place conditions on the authority of ~~appropriation unit managers, directors~~ and officers to issue limited purchase orders obligating the City for purchase of materials or services not to exceed ~~\$5,000~~ 10,000 in the event of violations of these rules.

Remainder of Section is unchanged.

b. Section 5.33.060 Authority of Directors amended as follows:

Directors of Bureaus or Offices are authorized to:

- A. Execute Contracts obligating the City for purchases of Goods and Services for use by their bureau in an amount not to exceed ~~\$5,000~~ 10,000 for a single transaction as specified in Section 5.33.180. Procurements shall not be artificially divided or fragmented so as to constitute Procurements under ~~\$5,000~~ 10,000.

Remainder of Section is unchanged.

c. Section 5.33.075 Affirmative Action Subsection D. is amended as follows:

- D. The City may ~~disqualify-sanction~~ 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.

d. Section 5.33.180 Small Procurements is amended as follows:

- A. For Procurements of Goods and Services not exceeding ~~\$5,000~~ 10,000 the City may Award a Contract as a Small Procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such Contractors, including, but not limited to, offering the Contract to only one firm or conducting a competition for the Contract.
- 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~~ 10,000 without prior approval of the Chief Procurement Officer before the additional Goods or Services are provided.

e. Replace Section 5.33.540 DBE Disqualification as follows:

Disadvantaged, Minority, Woman, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.

- A. If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer certified, the City may:

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1. Terminate the contract;
 2. Require the contractor to terminate the subcontract; or
 3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B.** Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C.** The City may investigate complaints alleging one or more of the following violations of ORS 200.065:
1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 4. Aiding another person to attempt to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 5. Knowingly making a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of gaining a contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.

- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withholding payment;
 2. Suspending or terminating a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualifying for up to 3 years from submitting a bid or proposal for, or receiving an award of, a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years;
1. Who under oath during the course of an investigation admits to violating ORS 200.065(1) or (2); or
 2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply material under a public improvement contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or

subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise does not perform a Commercially Useful Function in carrying out its responsibilities and obligations under the public contract.

4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H.** The suspension shall be one year for a first violation, 3 years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
- I.** Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
1. That the City intends to sanction;
 2. The effective date and period of the sanction, if applicable;
 3. The reason(s) for the sanction; and
 4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
- J.** The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer

Chapter 5.34 PUBLIC IMPROVEMENTS AND CONSTRUCTION SERVICES

a. Section 5.34.010 Definitions amended as follows:

- A. The definitions contained in Sections 5.33.010 and 5.33.140 are applicable to Chapter 5.34.
 - 1. **“Change Order”** means a written agreement between the City and Contractor that alters the specifications of the Contract.
 - 2. **“Conduct Disqualification”** means a Disqualification pursuant to ORS 279C.440.
 - 3. **“Disqualification”** means the preclusion, suspending or sanctioning of a Person from contracting with the City for a period of time in accordance with Section 5.34.530 or Section 5.34.535. Disqualification may be a Conduct Disqualification, ~~or~~ DBE Disqualification, or MWESB Disqualification.
 - 4. **“Foreign Contractor”** means a Contractor that is not domiciled in or registered to do business in the State of Oregon.
 - 5. **“Notice”** means any of the alternative forms of public announcement of Procurements, as described in Section 5.34.310.
 - 6. **“Work”** means all services, material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory system or structure.

b. Section 5.34.020 Application and Authority amended as follows:

Subsections A. – B. not changed

- C. Authority and Ethics
 - 1. The Authority of the City Council as the Local Contract Review Board is the same in regard to Chapter 5.34 as it is for Chapter 5.33, including the authorization of Contract amendments.
 - 2. The Authority of the Chief Procurement Officer is the same for Chapter 5.34 in regard to public improvement and construction services Contracts as it is for Goods and Services as set forth in Chapter 5.33.

3. The authority of Bureau and Office directors ~~and appropriation unit managers~~ to authorize and execute Contracts and Contract amendments is the same in regard to Chapter 5.34 as it is in Chapter 5.33.
4. The rules stated in Section 5.33.070 regarding the purchase of Goods and Services from City employees shall also apply to Public Improvements covered by Chapter 5.34.

c. Section 5.34.040 Affirmative Action amended as follows:

Subsections A. – C. are unchanged

- D. The City may ~~disqualify~~ sanction a Person from consideration of Award of the City's Contracts under ORS 200.065(5) or ~~suspend a Person's right to be on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with Section 5.34.535 and these rules.~~

d. Section 5.34.530 Disqualification of Persons amended as follows:

- A. Authority. The City may disqualify a Person from consideration of Award of the City's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with this rule.

Subsection 1. is unchanged

2. ~~Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, the City may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., as Subcontractors) as follows: For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with the City.~~
 - a. ~~For a DBE Disqualification under ORS 200.065, the City may disqualify a Person upon finding that:~~
 - (1) ~~The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or~~
 - (2) ~~The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS~~

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~~200.055 for the purpose of gaining a Contract or subcontract or other benefit; or~~

~~(3) The Person has been disqualified by another public contracting agency pursuant to ORS 200.065.~~

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

~~(1) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or~~

~~(2) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or~~

~~(3) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.~~

~~c. If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the City shall not permit such Person to participate in the City's Contracts.~~

~~d. For a DBE Disqualification under ORS 279A.110, the City may disqualify a Person if the City finds that the Person discriminated against minority, women or emerging small business enterprises in Awarding a subcontract under a Contract with that City.~~

Subsections B. – D. are unchanged

e. Add Section 5.34.535 Disadvantaged, Minority, Women, Service-Disabled Veteran or Emerging Small Business Enterprise Prohibited Conduct; Sanctions; Appeals.

- A.** If the City determines at any time during the term of a contract that a contractor to which the City awarded the contract on the basis described in ORS 279A.107 (1), or a subcontractor to which the contractor awarded a subcontract in connection with the contract on the basis described in ORS 279A.107 (1), is no longer

certified, the City may:

1. Terminate the contract;
 2. Require the contractor to terminate the subcontract; or
 3. Exercise any of the remedies for breach of contract that are reserved in the contract.
- B.** Notwithstanding the scope of ORS 200.055 et seq., Section 5.33.540 or 5.34.535 applies to all projects, including, but not limited to, contracts, loans, grants, development agreements, and any other City-owned, City-sponsored or City-funded project.
- C.** The City may investigate complaints alleging one or more of the following violations of ORS 200.065:
1. Fraudulently obtaining or retaining certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 2. Attempting to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise;
 3. Aiding another person to fraudulently obtain or retain certification as a disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprise; or
 4. Knowingly make a false claim that any person is qualified for certification or is certified under ORS 200.055 (Certification of disadvantaged, minority, woman, service-disabled veteran or emerging small business enterprises) for the purpose of obtaining a public contract or subcontract or other benefit.
- D.** When the City investigates a complaint that a person has violated ORS 200.065, the City may require any additional information, and through the City Attorney's Office, administer oaths, take depositions, and issue subpoenas to compel witnesses to attend and to produce books, papers, records, memoranda or other information necessary for the City to complete its investigation. If a person fails to comply with any subpoena that the City issues under ORS 200.065 or refuses to testify on any matter on which a person may lawfully be interrogated, the City shall follow the procedure provided in ORS 183.440 to compel compliance.
- E.** The City may issue the following sanctions against any person for violating ORS 200.065:
1. Withhold payment;

2. Suspend or terminate a public contract;
 3. Impose a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation; and
 4. Disqualify for up to 3 years from submitting a bid or proposal for, or receiving an award of a public contract.
- F.** The City may also disqualify any person from bidding or participating in a public contract for a period of up to 3 years:
1. Who under oath during the course of an investigation admits to violating ORS 200.065 (1) or (2); or
 2. Upon notice of a finding of fraudulent certification by the Oregon Business Development Department or other public contracting agency.
- G.** Any bidder, proposer, contractor or subcontractor on a City contract that knowingly commits any of the following acts shall have its right to submit a bid or proposal for, or receive an award of, a City contract in the future suspended under ORS 200.075:
1. Entering into any agreement to represent that a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise.
 2. Exercising or permitting another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise other than the bidder's, proposer's, contractor's or subcontractor's own business enterprise. As used in this paragraph, "internal operations" does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.
 3. Using a disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise does not perform a Commercially Useful Function in carrying out responsibilities and obligations under the public contract.

4. Failing to perform a Commercially Useful Function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract or subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged, minority, woman, service-disabled veteran, or emerging small business enterprise to meet an established goal or requirement.
- H. The suspension shall be 1 year for a first violation, three years for a second violation and 5 years for a third violation. Each violation must remain on record for 5 years. After 5 years the City may not consider the violation in reviewing future violations.
 - I. Prior to suspending, disqualifying or otherwise sanctioning a person under Section 5.33.540 or 5.34.535, the City shall provide written notice to the person of a proposed sanction under ORS 200.065 or ORS 200.075, served personally or by registered or certified mail, return receipt requested. This notice shall include:
 1. That the City intends to sanction;
 2. The effective date and period of the sanction, if applicable;
 3. The reason(s) for the sanction; and
 4. That the person has the right to request a hearing before the Code Hearings Officer in accordance with Section 3.130.020.
 - J. The hearing shall be conducted in accordance with Chapter 22.10 and any administrative rules governing appeals to the Code Hearings Officer.
- f. Amend Section 5.34.645 Rejection of Offers as follows:**
- A. Rejection of an Offer.
 1. The City may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest. An example of rejection in the public interest is the City's determination that any of the unit Bid prices are significantly unbalanced to the City's potential detriment.
 2. The City shall reject an Offer upon the City's finding that the Offer:
 - a. Is contingent upon the City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. Takes exception to terms and conditions (including Specifications);

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- c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - d. Offers Work that fails to meet the Specifications of the Solicitation Document;
 - e. Is late;
 - f. Is not in substantial compliance with the Solicitation Documents;
 - g. Is not in substantial compliance with all prescribed public Solicitation procedures.
 - h. Omits, or is unclear as to, the price; or the price cannot be determined in the Solicitation Documents;
 - i. Requires a delivery date different from that required by the Solicitation Document;
 - j. The Offeror failed to substantially comply with any Subcontractor Equity Program ~~Good Faith Efforts~~ Specifications;
3. The City shall reject an Offer upon the City's finding that the Offeror:
- a. Has not been Prequalified under ORS 279C.430 and the City required mandatory Prequalification;
 - b. Has been Disqualified or suspended;
 - c. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - d. Is listed as not qualified by the Construction Contractors Board or the Landscape Contractors Board, when required;
 - e. Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - f. Has not submitted properly executed Bid or Proposal Security as required by the Solicitation Document;
 - g. Has failed to provide the certification required under Subsection 5.34.645 C.;

h. Is not Responsible.

Subsections B. – E. are unchanged

g. Amend Section 5.34.690 Performance and Payment Security; Waiver as follows:

- A. Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a ~~separate~~ payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. Price Agreements with specific Work/Task Orders forming Contracts at a value under \$150,000 are exempted from performance and/or payment bonds. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$150,000. Notwithstanding any exemption, the Chief Procurement Officer may require a performance bond, or payment bond, or both, in the Chief Procurement Officer's sole discretion (see also, Section 5.34.915 regarding the separate public works bond).

Subsections B. – D. are unchanged