

## ORDINANCE NO. 726

### AN ORDINANCE ADOPTING RULES TO BE KNOWN AS THE CITY OF AUMSVILLE PUBLIC CONTRACTING REGULATIONS AND REPEALING ORDINANCE NO. 677.

**The City of Aumsville ordains as follows:**

**Section 1. Short Title.** The provisions of this ordinance and all rules adopted under this ordinance may be cited as the city of Aumsville's "Public Contracting Regulations."

#### **Section 2. Policy.**

- (A) Purpose of Public Contracting Regulations. These Public Contracting Regulations are adopted by City Council as the governing body and local contract review board ("Board") of the City of Aumsville, for the purpose of establishing the rules and procedures for public contracts entered into by the City. It is the policy of the City in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
1. promoting impartial and open competition;
  2. using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
  3. taking full advantage of evolving procurement methods that suit the contracting needs of the City as they emerge within various industries.
- (B) Interpretation of Public Contracting Regulations. In furtherance of the purpose of the objectives set forth in subsection A, it is the City's intent that Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B, and 279C (the "Code").
- (C) Binding Contract. No public contract will be binding on the City unless set forth in writing, signed by an official who is duly authorized to bind the City in the manner described by the contract, and containing available and authorized funds of the City.

**Section 3. Authority of City Council.** Except as expressly delegated under these Public Contracting Regulations, Council reserves to itself the exercise of all of the duties and authority of a contract review board under state law, including, but not limited to, the power and authority to:

- (A) Solicitation Methods Applicable to Contracts. Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- (B) Brand Name Specifications. Exempt the use of brand name specifications for public improvement contracts;
- (C) Waiver of Performance and Payment Bonds. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- (D) Electronic Advertisement of Public Contracts. Electronically advertise public contracts in

accordance with the terms of these Public Contracting Regulations.

- (E) Appeals of Debarment/Disqualification and Prequalification Decisions. Hear properly filed appeals of the city administrator's determination of debarment, disqualification, or concerning prequalification;
- (F) Rulemaking. Adopt additional contracting rules pursuant to ORS 279A.055, 279A.065, and 279A.070, including, without limitation, rules for the procurement, management, disposal, and control of goods, services, personal services, and public improvements; and
- (G) Award. Award all contracts that exceed the authority of the city administrator.

**Section 4. Model Rules.** Except as provided within these Public Contracting Regulations, City public contracting is governed by the Code and the Oregon Attorney General's Model Public Contract Rules (OAR Chapter 137, divisions 46, 47 and 49) (the "Model Rules"). The City opts out of OAR Chapter 137, division 48 of the Model Rules, related to certain Construction-Related Personal Services.

**Section 5. Authority of City Administrator.**

- (A) General Authority.
  - 1. Definition. For the purposes of these Public Contracting Regulations, "City Administrator" means the City of Aumsville City Administrator, or another person designated certain authority to act by the City Administrator.
  - 2. Solicitation Agent. The city administrator is designated as the solicitation agent and contracting agent for all City contracts and concession agreements and will possess the authority granted to a "contracting agency" under the Code and Model Rules, subject to the limitations of these Public Contracting Regulations. The city administrator may award contracts for which the contract price does not exceed \$100,000, without additional authorization of Council; provided there is a current fiscal year budget appropriation; or supplemental budgetary authority from Council, with respect to the contract, is approved. For all other contracts the city administrator shall conduct the solicitation and make a recommendation to Council. The city administrator shall award all concession agreements that can be awarded under an informal solicitation or by direct appointment, and shall have authority to conduct the sale of, award all purchases of, surplus property.
  - 3. Execution and Delivery. The city administrator has the authority to execute and deliver on behalf on the City all contracts and all amendments to such contracts. All other contracts and amendments shall be executed by the officer designated by the Council or designee.
  - 4. Publicize Forms and Materials. Subject to the provisions of these Public Contracting Regulations, the city administrator may adopt and amend all solicitation materials, contracts, and forms required or permitted to be adopted by contracting agencies under the Code and Model Rules, or as otherwise convenient for the City's contracting needs. The city administrator shall hear all timely and properly filed solicitation and award protests.
- (B) Delegation of City Administrator's Authority. Any of the responsibilities or authorities of

the city administrator under these Public Contract Regulations may be delegated and sub-delegated by written directive.

- (C) Solicitation Preferences. When possible, the city administrator shall use solicitation documents and evaluation criteria that:
  1. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability, and quality are otherwise equal; and
  2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.
- (D) Purchasing From City Officials. The city administrator shall not make any purchase of goods and services from any City elected or appointed official, or any business with which a City employee is associated; except when the purchase is expressly authorized by the Board; or during a state of emergency. In any situation in which the city administrator believes that a purchase would cause an appearance of impropriety, regardless of whether the purchase is prohibited by this or any other public contracting code provision, the city administrator may forward the proposed purchase to the Council for approval.
- (E) Mandatory Review of Rules. Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify the Code or Model Rules, the city administrator shall review the Public Contracting Regulations and recommend to the Council any modifications required to ensure compliance with statutory changes.
- (F) Guidelines to Implement Public Contracting Regulations. The city administrator may adopt guidelines and other materials to assist staff and the public with the implementation of these Public Contracting Regulations. Such guidelines shall be consistent with these Public Contracting Regulations and may include flowcharts to guide staff in the City's day-to-day procurement activities.

## **Section 6. Personal Service Contracts Not Including Construction-Related**

**Personal Services.** Personal services contracts are subject to the regulations established by this section:

- (A) "Personal Service Contract" means a contract with an independent contractor predominantly for serves that require special training or certification, skill, technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of judgement skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, auditors, and other licensed professionals, administrators, artists, computer programmers, consultants, performers, and property managers. The city administrator shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services. Personal services contracts generally do not include contracts for Construction-Related Personal Services. The procedures for those contracts are found below in **Section 7**.

- (B) Procedures for the Screening and Selection of Persons to Perform Personal Services.
1. Large Personal Services Contracts. Personal service contracts exceeding \$250,000 shall be awarded under a publicly advertised request for proposals in accordance with ORS 279B.060. Personal services contracts in any amount may be awarded under a publicly advertised request for proposals in accordance with ORS 279B.060.
  2. Discretionary Award. The following personal service contracts may be awarded under any method deemed in the City's best interest by the city administrator, including by direct appointment; subject to approval by Council when required as provided in these Public Contracting Regulations.
    1. Contracts for which the city administrator estimates that payments will not exceed \$25,000.
    2. Contracts for legal services for the City.
    3. Contracts with architects, engineers, surveyors, and other professionals identified in ORS 279C.100 that involve "related services" as that term is defined in ORS 279C.100(8).
  3. Personal Service Contracts Not Exceeding \$250,000. Contracts for personal services for which the estimated contract price does not exceed \$250,000, may be awarded using an informal solicitation for proposals.
  4. Personal Service Contracts for Continuation of Work. Personal service contracts that include a continuation of work valued at not more than \$250,000 by a contractor who performed preliminary studies, analysis, or planning for the work under a prior contract may be awarded without competition, if the prior contract was awarded under a competitive process, and the city administrator determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.
  5. \$75,000 Award from Qualified Pool. Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.
- (C) Sole Source. The city administrator may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services, or the City has previously worked with the contractor. Unless the basis for a direct award under this subsection is a prior work history with the contractor, the city administrator must make written findings to demonstrate why the proposed contractor is the only contractor who can perform the services desired.
- (D) Emergency. The city administrator may select a contractor under this section without following any procedures in an emergency. The city administrator must make written findings of the circumstances that describe the emergency.

## **Section 7. Construction-Related Personal Service Contracts**

### **(A) Definitions.**

1. "Construction-Related Personal Service" means architectural, engineering, photogrammetric mapping, land surveying services, a transportation planning

services in narrow instances defined below.

2. "Transportation Planning Services" only includes project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.
3. "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

(B) Intent. This section implements ORS 279C.100 through 279C.125. The City will rely on this Section, not the Model Rules, for a contract with Construction-Related Personal Service providers.

(C) Applicability. This section only applies when a contract meets the following criteria:

1. The contract has an estimated fee that exceeds \$100,000; and
2. The services the City seeks are legally required to be performed by an architect, engineer, land surveyor, photogrammetrist or, in certain narrow instances, a transportation planner. For example: hiring an architect to design a building or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City may rely on this subsection to hire someone to perform those services. However, if the City is hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under **Section 6** of these Public Contracting Regulations. See definition of "related services" in **subsection 7(A).3** above.
3. Mixed contracts. Some contracts will contain a mixture of services covered by this Section (i.e. services that only the particular consultant may legally perform) and related services. Whether the City uses this Section or **Section 6** to solicit and award a mixed contract will depend upon the predominate purpose of the contract. The City will determine the predominate purpose based upon either the amount of money it estimates it will spend for covered services versus related services or the amount of time it estimates it the consultant will spend working

on covered services versus related services. If covered services predominate, the City will solicit the contract under this Section. If related services predominate, the City will solicit the contract under **Section 6**.

(D) Methods of Award.

1. Direct Award. The City may award a contract directly to a consultant of its choosing under this section:
  - a) If the estimated amount the City will pay a consultant for the consultant's services does not exceed \$100,000;
  - b) In an emergency; or
  - c) If the City previously had a contract with the consultant for the same or a substantially similar project and the prior contract was awarded in accordance with these Public Contracting Regulations, including prior versions of these Public Contracting Regulations.
2. Informal Selection. The following informal selection procedure may be used when the estimated payment to the consultant for Construction-Related Personal Services is equal to or less than \$250,000 and above \$100,000. The city administrator will contact a minimum of three (3) prospective consultants qualified to offer the services sought. The city administrator will request an estimated fee, and make the selection consistent with the City's best interests, to the most qualified consultant. If three (3) quotes are not received, the city administrator will make a written record of efforts to obtain the quotes.
3. Formal Selection. The following formal selection procedure will be used when the estimated payment for the Construction-Related Personal Services exceeds \$250,000.
  - a) When selecting a Construction-Related Personal Service consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services under this section, the City must award a contract to the most qualified consultant.
  - b) In accordance with Oregon law, when determining which consultant is most qualified, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Construction-Related Personal Service consultant's compensation *after* the City has selected the most qualified consultant.
  - c) As provided in ORS 279C.110, if the solicitation documents include the information described in ORS 279C.110(5)(a), the City may identify as many as three top-ranked proposals. Notwithstanding subsections (i) and (ii) of this section, the City may request pricing policies or pricing proposals from the top-ranked proposals including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates. A pricing policy or pricing proposal also may include a description of the tasks included in the bid, a list of persons or labor classifications who will perform the tasks, and a list of expenses. A bidder that does not wish to provide pricing information may withdraw its bid. The

City may use the pricing policies or pricing proposals to select a consultant provided the City does not assign more than 15 percent of weight in its evaluation to the pricing policies or information.

- d) When soliciting a Construction-Related Personal Service consultant under this section, the City will use a Request for Proposals ("RFP") or a Request for Qualifications ("RFQ") followed by a RFP, as described below. The City may advertise RFQs and RFPs in any manner it deems appropriate. If the City directly solicits qualifications or proposals from Construction-Related Personal Service consultants, it will attempt to contact at least three consultants.
- e) RFQ. The City may in its sole discretion issue a RFQ to evaluate potential Construction-Related Personal Service consultants and establish a short list of qualified Construction-Related Personal Service consultants to whom it may issue an RFP for some or all of the Construction-Related Personal Services described in the RFQ. RFQs may include:
  - i. A brief project description;
  - ii. A description of the Construction-Related Personal Services required for the project;
  - iii. Any conditions or limitations that may constrain or prohibit the selected Construction-Related Personal Service consultant's ability to provide additional services related to the project, including but not limited to construction services;
  - iv. A response deadline and a description of how or where to submit a response;
  - v. A statement that interested consultants respond solely at their own expense;
  - vi. RFQ evaluation criteria; and
  - vii. Any other elements the city administrator deems appropriate.
- f) RFP. The City will issue an RFP to select the most qualified Construction-Related Personal Service consultant, regardless of whether an RFQ precedes an RFP. RFPs will include:
  - i. A description of the project and the specific Construction-Related Personal Services sought for the project, the estimated project cost, the estimated time period during which the project is to be completed, and the estimated time period in which the specific Construction-Related Personal Services sought will be performed;
  - ii. The RFP evaluation process and the criteria that the City will use to select the most qualified Construction-Related Personal Service consultant, including the weight, points or other classifications applicable to each criterion. Without limitation, the criteria may include:
    - a. Proposers' availability and capability to perform the services described in the RFP;
    - b. Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;

- c. The amount and type of resources, and number of experienced staff persons proposers will commit to the project;
  - d. Proposers' demonstrated ability to successfully complete similar projects on time and within budget, including the hourly rates for key personnel and related cost data for similar projects in the previous 12 months;
  - e. References and recommendations from past clients; and
  - f. Any other criteria the city administrator deems appropriate.
- iii. Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Personal Service consultant's ability to provide additional services related to the project, including but not limited to construction services;
  - iv. Whether interviews will or may occur and, if so, how the interview will factor into the City's selection;
  - v. A proposal deadline and a description of how or where to submit a proposal;
  - vi. A statement whether City will accept proposals in electronic format;
  - vii. A statement that interested consultants respond solely at their own expense;
  - viii. A statement reserving City's right to reject any or all proposals and its right to cancel the RFP at any time if doing either would be in the public interest;
  - ix. A statement directing proposers to the protest procedures set forth in the RFP;
  - x. A statement whether the City will hold a pre-proposal meeting for all interested Construction-Related Personal Service consultants to discuss the project and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
  - xi. Any other elements the city administrator deems appropriate.
- g) After selecting the most qualified Construction-Related Personal Service consultant in accordance with a RFP, the city administrator will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:
    - i. The consultant's performance obligations and performance schedule;
    - ii. Payment methodology and a maximum amount payable to the consultant for the services required under the contract;
    - iii. Legally required terms; and
    - iv. Any other provisions the City believes are in its best interest to negotiate.
  - h) The City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as the City may determine in its sole discretion. The City may thereafter negotiate with the second ranked consultant, and if



necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, the City may end the particular solicitation. Nothing in this section precludes the City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

- i) Award. If a contract is negotiated, the City will notify other prospective consultants of its intent to award a contract.

(E) Price agreements. Solicitation materials and the terms and conditions for a price agreement for Construction-Related Personal Services must:

- a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a Construction-Related Personal Service consultant to decide whether to submit a proposal;
- b) Specify whether the City intends to award a price agreement to one consultant or to multiple consultants. If the City will award a price agreement to more than one consultant, the solicitation document and price agreement will describe the criteria and procedures the City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Construction-Related Personal Services are at the City's sole discretion

## **Section 8. Public Contract Exemptions and Process for Approval of Special Solicitation Methods.**

(A) Authority of the City Council. Council upon its own initiative, or upon request of the city administrator, may create special selection, evaluation, and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section.

(B) Basis for Approval. The approval of an exemption from competition or special solicitation methods must be based upon a record before the Council that contains the following:

1. To the extent that the exemption from competition or special solicitation method is for a public improvement or Construction-Related Personal Service contract, or class of such contracts, the city administrator must produce written findings that demonstrate all applicable elements of ORS 279C.335(2)(a) and (b), and follow the notice and hearing requirements of ORS 279C.335(5). Notice of an exemption shall be published at least fourteen days prior to the Council meeting at which Council will consider the exemption.
2. To the extent that the exemption from competition or special solicitation method is for a goods, service, or personal service contract, or class of such contracts, the city administrator must produce certain findings that demonstrate the use of the special procurement or exemption (a) is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and (b) is reasonably expected to result in substantial cost

savings to the City or to the public; or; (c) otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder. The City shall provide public notice of the exemption approval in the same manner as provided in ORS 279B.055(4). Notice of an exemption shall be published at least seven days prior to the Council meeting at which Council will consider the exemption.

(C) Hearing.

1. Notice. The City shall approve the special solicitation or exemption after a public hearing before the Council following notice by publication in at least one publication of general circulation in the City. The Notice shall state that the purpose of the hearing is to consider findings in support of, as applicable:
  - a) A special procurement for a single contract or classes of contracts under ORS 2798.085; or
  - b) An exemption for a single contract or class of contracts under ORS 279C.335. The notice shall describe if and how copies of the draft findings may be obtained for review prior to the hearing and state that persons who wish to comment on or protest the considered action may appear and present testimony at the hearing.
2. At the public hearing, the City shall, if requested or desired, offer an opportunity for any interested party to appear and present comment.
3. The Council will consider the findings and may approve the special solicitation or exemption as proposed or as modified by the Council after providing an opportunity for public comment.
4. If the Council approves the special procurement(s) or exemptions(s) at the public meeting of the City Council following the hearing, or at a subsequent public meeting of the City Council, no published notice of the approval shall be required.

- (D) Commencement of Solicitation Prior to Approval. A solicitation may be issued prior to the approval of a special exemption under this **Section 8**, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Council approves the exemption. If the Council fails to approve a requested exemption or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or canceled.

**Section 9. Solicitation Methods for Classes of Public Contracts.** The City may encourage meaningful competition through a variety of solicitation methods. Subject to the Code, the city administrator shall choose the solicitation method that is most likely to encourage offers representing optimal value to the City. The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the Board. However, nothing in this section may be construed as prohibiting the City from conducting a procurement under competitive bidding or competitive proposal procedures.

- (A) Small Procurements - Direct Purchase or Appointment. The following classes of contracts may be awarded in any manner, which the city administrator deems appropriate to the City's needs, including by direct purchase or appointment.
1. Goods, Services, and Public Improvement Contracts Up to \$25,000. Contracts for goods, services, or public improvements for which the contract price does not exceed \$25,000, may be awarded as a small procurement.
    - a) Notwithstanding any other contrary provisions of these Public Contracting Regulations, a goods, services, or public improvement contract awarded as a small procurement may be amended or re-negotiated without additional competition, with prior approval of the city administrator if it is advantageous to the City; but the cumulative amendments shall not increase the total contract price to greater than \$31,250.
    - b) State law prohibits a procurement from being artificially divided or fragmented, so as to constitute a small procurement under this section.
  2. Amendments. Contract amendments shall not be considered separate contracts, if made in accordance with the Public Contracting Regulations.
  3. Advertising. Contracts for the placing of notice or advertisements in any medium.
  4. Small Concessions. Concession agreements for which the city administrator estimates that receipts by the City will not exceed \$25,000 in any fiscal year, and \$100,000 in the aggregate may be awarded by any method deemed appropriate by the city administrator; including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
  5. Copyrighted Materials; Library Materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
  6. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without preliminary dismantling or testing.
  7. Government Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
  8. Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145.
  9. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
  10. Sole Source Contracts. Contracts for goods, services, or personal services which are available from a single source, may be awarded without competition in accordance with ORS 279B.075.
  11. Specialty Goods for Resale. Contracts for the purchase of specialty goods by City for resale to consumers.
  12. Sponsor Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
  13. Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive

procurement procedures.

14. Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
15. Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
16. Hazardous Material Removal and Oil Clean-up. The City may acquire 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.

(B) Intermediate Procurements - Informal Solicitation. The following classes of contracts may be awarded using the informal solicitation procedures in **Section 11** of these Public Contracting Regulations. State law prohibits a procurement from being artificially divided or fragmented, so as to constitute an intermediate procurement under this Section.

1. Public Improvement Contracts.
  - a) Public Improvements up to \$100,000. Public improvement contracts for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for competitive quotes. ***Contracts in excess of \$100,000, unless approved for a special exemption, shall be issued in accordance with the provisions of ORS 279C;***
  - b) Contracts for a public works project (as defined by ORS 279C.800(6)) estimated to exceed \$50,000 shall include the Bureau of Labor and Industries (BOLI) provisions regarding the prevailing wage, unless otherwise exempt under Oregon law.
  - c) Use of Existing Contractors. When a public improvement is in need of minor alteration, or ordinary repair or maintenance at or near the site of work being performed by another City contractor, the City may hire that contractor to perform the work, provided:
    - i. The contractor was hired through a competitive selection process permitted by these Public Contracting Regulations;
    - ii. The city administrator first obtains a price quotation from the contractor that is competitive and reasonable or based on unit prices in the current contract;
    - iii. Any prevailing wage requirements are complied with and
    - iv. A change order or other contract amendment is issued for the work.
2. Contracts for Goods and Services up to \$250,000. Public improvement contracts for which the estimated contract price does not exceed \$250,000 may be awarded using an informal solicitation for competitive quotes. ***Public contracts for goods or services in excess of \$250,000, unless approved for a special exemption, shall be let in accordance with the provisions of ORS 279B.***
3. Intermediate and Major Concessions. For Concession Agreements for which receipts by the City exceed \$25,000 in a fiscal year or \$250,000 in the aggregate;

the city administrator has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. Major concession agreements, for which receipts by the City exceed \$25,000 in a fiscal year or \$250,000 in the aggregate, shall be awarded using a request for proposals.

(C) Emergency Procurements.

1. In General. When an official with authority to enter into a contract on behalf of City determines that immediate execution of a contract, within the official's authority, is necessary to prevent a substantial risk of loss, damage, or interruption of services; or a substantial threat to property, public health, welfare, or safety, the official may execute the contract without competitive selection and award or City approval; but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
2. Emergency Public Improvement Contracts. A public improvement contract may only be awarded under emergency circumstances if the city administrator or Council has made a written declaration of emergency. Any public improvement contract awarded under emergency conditions must be awarded within 60 days following the declaration of an emergency, unless the Council grants an extension of the emergency period. 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. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the city administrator or Council may waive the requirement for all or a portion of required performance and payment bonds.
3. Reporting. An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, document the nature of the emergency; and for good or services contracts, describe the method used for the selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public; and notify the Council of the facts and circumstances surrounding the emergency execution of the contract.

(D) Surplus Property.

1. Definition. "Surplus Property" means personal property owned by the City which is no longer needed for use by the City.
2. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$5,000, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the

- estimated value of the item and the manner of disposal.
3. General Methods. Surplus property may be disposed of by any of the following methods upon a determination by the city administrator that the method of disposal is in the best interest of the City. Factors that may be considered by the city administrator include costs of sale, administrative costs, and public benefits to the City. The city administrator shall maintain a record of the manner of disposal, including the name of the person to whom the surplus property was transferred.
    - a) Auction. By publicly advertised auction to the highest bidder.
    - b) Bids. By public advertised invitation to bid.
    - c) Donation. By donation to any non-profit cause or organization operating within or providing a service to residents of the City.
    - d) Governments. Without competition, by transfer or sale to another public agency.
    - e) Fixed Price Sale. The city administrator may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
    - f) Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
    - g) Trade-In. By trade-in, in conjunction with acquisition of other price-based item under procurement. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
  4. Restriction on Sale to City Employees. City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.
  5. Personal-Use Items. An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$1,000 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the city administrator.
  6. Police Officers' Handguns. Upon honorable retirement from service with the City, a police officer may purchase the handgun that she or he was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the City at least 30 days prior to his or her expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the City shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value.

7. Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the City shall make, execute, and deliver, a bill of sale signed by the city administrator, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.
- (E) Federal Purchasing Programs. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this subsection.
1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders and contracts submitted to and approved by the city administrator. The city administrator shall provide the city administrator with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the City to purchase under the federal program.
  2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
  3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.
  4. If a single purchase of goods or services exceeds \$250,000, the city administrator must solicit informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
- (F) Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in ORS 279A.200-225.

## **Section 10. Sole Sources.**

- (A) Determination of Sole Source. A sole source contract is a contract with a vendor who is the only responsible source for the goods, services, or personal services required by the City. A determination of sole source may be made by the city administrator based upon written findings that demonstrate that the contractor is a sole source, and that alternative goods, services, or personal services would be unsatisfactory for the City's needs based on factors that may include any of the following:
1. A record that no qualified vendors responded to a notice issued in accordance with **Subsection B**;
  2. A written statement from a manufacturer established as a sole source that the product is only available to the City from a single point of sale;
  3. Written evidence that the contract is for a patented product and that the proposed vendor is the exclusive holder of a right to sell the product;
  4. Records of research that demonstrate that only one suitable source for the goods or service exists and that alternate goods or services do not meet the City's requirements, including, without limitation, that efficient utilization of existing

- goods requires the acquisition of compatible goods or services; or
5. A statement that the goods or services are for use in a pilot or experimental project.

(B) Manner of Notice. The record that a contractor is a sole source may be established if no qualified alternative sources responded to a public notice of the City's requirements. The notice shall be published at least five business days before contract execution and shall:

1. Describe the goods, services, or personal services sought;
2. State the estimated amount of the contract;
3. Request statements of ability to provide the identified goods, services, or personal services from vendors who are qualified to compete for the contract, and
4. State that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Manager will proceed with a sole source award.

(C) Method of Selection. Sole source contracts may be awarded pursuant to direct negotiation with the sole source contractor, without competitive solicitation.

**Section 11. Informal Solicitation Procedures.** When authorized by these Public Contracting Regulations, the City may use the following procedures for informal solicitations of goods, services, and public improvements, and a contract for goods, services, or public improvements may be awarded using the informal solicitation procedures described in this Section.

(A) Record of Contract Requirements and Evaluation Criteria. The city administrator shall make a written record of the contract requirements and criteria upon which the award will be based before conducting the solicitation. This record shall be used to provide all potential offerors with the same information concerning the contract requirements and the manner in which their offers will be evaluated.

(B) Contact with Potential Offerors. The city administrator request for quotes or proposals may be by general or limited distribution to a certain group of vendors, by direct inquiry to persons selected by the city administrator, or in any other manner that the city administrator deems suitable for obtaining a sufficient number of competitive quotes or proposals.

(C) Number of Offers. The city administrator shall attempt to obtain at least three responsive quotes or proposals from offerors who are qualified to perform the contract unless three offers cannot be reasonably obtained. If fewer than three quotes or proposals are reasonably available, fewer will suffice, but the city administrator shall make a record of the efforts made to obtain the offers.

(D) When Written Solicitation Required. The city administrator shall attempt to request written quotes or proposals using a written description of contract requirements and award criteria. In the absence of written quotes or proposals, electronic or telephonic quotes or proposals are acceptable. When soliciting quotes for a public works project, the city administrator must deliver all written materials, including written copies of the prevailing wage rates required by the Bureau of Labor and Industries if a public



- improvement contract's estimated value is equal to or greater than \$50,000.
- (E) Basis for Award. Selection of contractors for goods and services pursuant to this Section shall be based on the quote or proposal that is most advantageous to the City, as determined in the city administrator's sole discretion. The selection criteria for public improvement contracts shall be based on quotes but may include a consideration and ranking of other factors in addition to, price, such as experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors. The city administrator shall make a written record of all offerors, the prices quoted and, if the award was made on a basis other than price, a record of the evaluation of each offer, and the basis for award.
  - (F) Discussions and Negotiations. The city administrator may discuss the solicitation requirements for any type of informal solicitation with potential offerors and may discuss a quote or proposal with an offeror to clarify its quote or proposal or to effect modifications that will make the quote or proposal responsive to the solicitation requirements. After all initial quotes have been received and recorded, the city administrator may negotiate with an offeror to effect modifications that will make the quote or proposal more advantageous to the City. The city administrator may not disclose the price offer or terms of one offeror to another during discussions prior to contract award.
  - (G) Amendment. A contract awarded using an Informal Solicitation may be amended only as provided in these Public Contracting Regulations.

## **Section 12. Qualified Pools**

- (A) Purpose of Qualified Pools. In lieu of selection of contractors on a case-by-case basis, the City may establish qualified pools that can be used on a continuous basis for the selection of contractors when direct appointment or informal solicitation is otherwise authorized by these Public Contracting Regulations.
- (B) Creation of Qualified Pool. To create a qualified pool, the city administrator may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, personal services, or public improvements.
- (C) Advertisement. The invitation to participate in a qualified pool shall be advertised, at the discretion of the city administrator, by publication in a publication of general circulation in the Aumsville area or broader, by electronic publication as permitted in these Public Contracting Regulations, or by any other method that the city administrator deems desirable to develop a sufficient pool of qualified contractors. The advertisement shall be made at the time of initial formation and whenever the qualified pool is subject to re-opening or renewal. If the pool is open to entry at any time, and is continuously advertised on the City's website, no additional advertisement shall be required.
- (D) Qualification for Participation. A qualified pool shall be open for entry not less than once every three years. Standards for participation in a qualified pool may include the applicant's financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant

qualifications that are important to the contracting needs of the City. The City may also require, as a condition to participation, that the applicant furnish additional materials such as proof of licensure, insurance, insurance endorsements to protect the interests of the City, material concerning performance and fidelity bonds, and that the applicant agree to the terms and conditions of participation in the qualified pool. The qualifications for participation in each qualified pool shall be set forth in writing, but may be changed at any time, provided that all participants are notified of the change.

- (E) Contents of Solicitation. Requests for participation in a qualified pool shall describe the type or nature of goods, services, personal services, or public improvements for which the pool will be maintained, the minimum qualifications for participation in the pool, the time for submitting applications, the manner of submission, and the location or method to obtain the applicable form of application.
- (F) Application. The city administrator shall prescribe and adopt a standard form for all qualified pool applications. The application form shall include, at minimum, the following terms:
1. City's acceptance of an applicant into a qualified pool binds the applicant to participate and remain in the pool until (1) the pool reopens for entry; (2) the City otherwise revokes or revises the applicant's qualification; or (3) the applicant provides the City with ninety (90) days advance notice of its intent to exit the pool.
  2. Participants shall be selected from the qualified pool to complete work in accordance with Section 12(H) of the Public Contracting Regulations. Qualified participants may refuse up to three (3) City solicitations, after which time the City may immediately revoke the participant's qualification, in the City's sole discretion.
  3. If a selected participant agrees to complete the work, it shall execute a contract with the City substantially in the form attached to the application.
  4. The total value of any contract that is executed pursuant to the qualified pool, including all change orders, minor amendments, and other changes to the terms and conditions of the contract, shall not exceed the appropriate informal solicitation threshold, and each contract shall include a not-to-exceed amount that is no higher than this threshold.
  5. Participation in a qualified pool shall not entitle any participant to the award of a City contract, nor shall it obligate the City to award a contract to any particular participant.
- (G) Notice of Qualification. Upon the applicant's timely submission, the city administrator shall review all applications and investigate the prospective participant as necessary to determine whether such participant is qualified in accordance with Subsection (D). The City shall promptly notify the prospective participant whether they are qualified in accordance with ORS 279B.125 and ORS 279B.130, or ORS 279C.430 and ORS 279C.440, as applicable.
- (H) Use of Qualified Pools. The city administrator may use a qualified pool to make direct appointments as authorized in these Public Contracting Regulations or to obtain quotes or proposals for an informal solicitation but shall not be limited to selection from a qualified pool.
- (I) Revocation or Revision of Prequalification. The city administrator may revoke or revise

an individual's qualification in accordance with ORS 279B.125(3) or ORS 279C.430(4), as applicable.

- (J) Amendment and Termination. The city administrator may discontinue a qualified pool at any time or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- (K) Protest of Failure to Qualify. The city administrator shall notify any applicant who fails to qualify for participation in a pool that it may appeal the city administrator's decision in the manner described in **Section 17**.

**Section 13. Requirements for Invitation to Bids and Request for Proposals.** Unless otherwise provided in these Public Contracting Regulations, all formal bids and proposals made to the City shall:

- (A) Be in writing.
- (B) Be filed with the city administrator before closing. Any offer received after the closing is late. An offeror's request for withdrawal or modification of an offer received after the closing is late. The City shall not consider late offers or late modification of an offer or late withdrawal of an offer.
- (C) Subject to confidentiality requirements and restrictions, be opened publicly by the City at the date, time, and place designated in the solicitation.

**Section 14. Use of Brand Name Specifications for Public Improvements.**

- (A) In General. Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
  1. It is unlikely that such exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; or
  2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City; or
  3. There is only one manufacturer or seller of the product of the quality required; or
  4. Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.
- (B) Authority of City Administrator. The city administrator shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of Subsection A.
- (C) Brand Name or Equivalent. Nothing in this section prohibits the City from using a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality, or other characteristics of the product needed by the City, or from establishing a qualified product list.

**Section 15. Bid, Performance, and Payment Bonds.**

- (A) City Administrator May Require Bonds. The city administrator may require bid security and a good and sufficient performance and payment bond, in his or her discretion, even though the contract is of a class that is exempt from the requirement.
- (B) Bid Security. Except as otherwise exempted, the solicitations for all contracts that include the construction of a non-transportation related public improvement and for which the estimated contract price will exceed \$100,000 shall require bid security. For transportation-related public improvements, bid security is required if the estimated contract price will exceed \$50,000. Bid security for an RFP or ITB may be based on the City's estimated contract price. The amount of bid security may not exceed 10 percent of the estimated contract price or bid amount and shall comply with all state law requirements.
- (C) Performance and Payment Bonds.
  - 1. General. Except as provided in these Public Contracting Regulations, all public contracts are exempt from the requirement for the furnishing of a performance and payment bond.
  - 2. Contracts Involving Public Improvements. Successful bidders shall execute performance and payment bonds in accordance with ORS 279C.380.
  - 3. Cash-in-Lieu. The city administrator may permit the successful offeror to submit a cashier's check or certified check in lieu of all or a portion of the required performance or payment bond.
- (D) Design/Build Contracts. If a project contract is a design-build contract, the obligation of the performance bond for the faithful performance of the contract must also cover the preparation and completion of the design and related services covered under the contract.
- (E) Construction Manager/General Contractor Contracts. If a project contract is a construction manager and general contractor contract, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by Subsection C of this section upon execution of an amendment establishing the guaranteed maximum price. The City shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- (F) Emergencies. In cases of emergency, or when the interest or property of the City likely would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of Section 9.C.2, unless the Council requires otherwise.

**Section 16. Electronic Advertisement of Public Contracts.** In lieu of publication in a newspaper of general circulation in the City area, the advertisement for an invitation to bid or request for proposals for any type of public contract may be published electronically by posting on the City's website, provided that the following conditions are met:

- (A) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- (B) The city administrator determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a publication of general circulation in the area and will provide costs savings for the City, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the area in encouraging meaningful competition; and
- (C) If the solicitation is for a public improvement that exceeds \$125,000, the advertisement shall also be published at least once in a trade newspaper of general statewide circulation (such as the Daily Journal of Commerce).

**Section 17. Protests and Appeals.**

- (A) Protests Generally. A qualified individual may file a protest with the City in accordance with ORS 279B.400 through 279B.425, or ORS 279C.460 through 279C.470, as applicable. The City will rely on this Section, not the Model Rules, in connection with local public contracting-related protests.
- (B) Time for Submission of Protest. Protests shall only be considered when presented to the city administrator in writing in accordance with the following timelines:
  1. Solicitation protests shall be submitted in writing, not less than five (5) days prior to the solicitation closing unless the solicitation period is shorter than seven (7) days, in which case, the solicitation documents shall recite another protest deadline that allows a period of at least one (1) business day after the issue date of the solicitation to submit protests;
  2. Unless a longer or shorter time period is provided in the solicitation documents, protests of contract notice of intent to award shall be submitted in writing, within five (5) days after the date of issuance of the notice of intent to award, and three (3) days, if mailed, or 72 hours, if issued electronically, after a notice of competitive range determination, to submit to the city administrator a written protest of the matter described in the award;
  3. Protests of special procurements shall be in accordance with ORS 279B.400;
  4. Protests in connection with any other alleged violation shall first require written notice describing the alleged violation to the City not later than ten (10) days after the date on which the alleged violation occurred, and, regardless of when the alleged violation occurred, not later than 10 days after the date of execution of the contract;
  5. With respect to public improvement contract protests, in accordance with the time periods set forth in ORS 279C.465; and
  6. Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester as failing to exhaust all local remedies.
- (C) Identification of Protest. It is the protester's responsibility to ensure that the protest is received by the City within the stated timelines. The protest should be delivered in an envelope that is clearly marked with the protester's name and sufficient information to

identify the solicitation being protested, identified as a protest, and directed to the person identified in the solicitation documents for receipt of protests. Faxed protests may not be accepted.

- (D) Eligibility for Consideration. The city administrator shall consider the protest if the protest is timely filed and contains the following:
1. Sufficient information to identify the solicitation that is the subject of the protest;
  2. The grounds that demonstrate how the procurement process, contract award, or other alleged violation is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed, or improperly specifies a brand name;
  3. Evidence or supporting documentation that supports the grounds on which the protest is based; and
  4. The relief sought.
- (E) Form of Decision. If the protest is timely submitted and contains the required information, the city administrator shall consider the protest and issue a decision in writing. Otherwise, the city administrator shall promptly notify the protestor that the protest is untimely or that the protest failed to meet the requirements of this Section and give the reasons for the failure.
- (F) Time of Decision. The city administrator shall issue a decision no less than 72 hours before the solicitation closing, or in all other instances, within ten (10) days of receipt and acceptance of a timely and complete protest, unless a written determination is made by the city administrator that circumstances exist that require a shorter time limit.
- (G) Appeal. If the city decisionmaker is the city administrator's designee, the city decisionmaker's decision may be appealed to the city administrator by notifying the city administrator of the intent to appeal within three (3) business days after the date on which the city decisionmaker sends its decision to the protestor's electronic or postal address specified in the written protest.
- (H) Finality of Decision. The decision of the city administrator, or if no appeal is made to the city administrator, of the city administrator's designee, shall be the final determination of the City on the protest.
- (I) Delay of Solicitation Closing or Award; Cancellation of Solicitation. If the City receives a protest from an offeror in accordance with this Section:
1. If the protest is regarding a solicitation, the city administrator may in his or her discretion extend the date of solicitation closing if the city administrator determines an extension is necessary to consider the protest and, if necessary, to issue addenda to the solicitation documents or otherwise cancel the solicitation; or
  2. If the protest is regarding a contract award, the city administrator shall not submit the contract for execution until the protest is resolved through the final decision under Subsection 17(H). In addition, the city administrator shall have discretion to delay or cancel an award or a solicitation in response to a protest, regardless of the final decision on the protest, and may, but shall not be required to, reissue the solicitation, if the city administrator determines that such action best serves the City's interests.

(J) Appeal of Debarment or Prequalification Decision.

1. Right to Hearing. Any person who has been debarred from competing for City contracts or for whom prequalification has been denied, revoked, or revised may appeal the City's decision to Council as provided in this Section.
2. Filing of Appeal. The person must file a written notice of appeal with the city administrator within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial, revocation, or revision of prequalification.
3. Notification of City Council. Immediately upon receipt of such notice of appeal, the city administrator shall notify Council of the appeal.
4. Hearing. The procedure for appeal from a debarment or denial, revocation, or revision of prequalification shall be as follows:
  - a) Promptly upon receipt of notice of appeal, the City shall notify the appellant of the time and place of the hearing;
  - b) Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the city administrator; and
  - c) At the hearing, Council shall consider de novo the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
  - d) The burden of proof shall be on the appellant to prove why debarment, denial, revocation, or revision was improper.
5. Decision. Council shall set forth in writing the reasons for the decision.
6. Costs. Council may allocate Council's costs for the hearing between the appellant and the City. The allocation shall be based upon facts found by Council and stated in Council's decision that, in the Council's opinion, warrant such allocation of costs. If Council does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City, if the decision is overturned.

**Section 18. Public Contracts Amendments.**

- (A) Amendment Defined. An amendment is any change or modification of any term or condition of a contract or any addition or deletion of any term or provision of a contract. Amendments include, but are not limited to change directives, change orders, and any addition, deletion, or modification that affects the nature, quantity, degree, or scope of the goods or services or improvements to be provided under a contract or the time of performance or price or that affects any provision concerning the rights or obligations of a party.
- (B) Writing and Signature Requirements. No amendment will be binding on the City unless set forth in writing and signed by an official who is duly authorized to bind the City in the manner described by the amendment.
- (C) Amendments That Increase Price. No contract may be amended to increase the contract price unless the increase is directly related to an increase in the quantity or types of goods or services to be provided, a betterment in the quality of goods or materials to be provided, to compensate the contractor for delays occurring after the

execution of the contract for which the City is responsible, or to mutually renew or extend the previously procured and contracted for goods, services, or public improvement. Amendments that increase the contract price are further limited as follows:

1. Price Established by Contract. Amendments that increase the quantity of goods or services to be provided under the contract and for which unit prices were established in the original contract (for example, by weight, volume, itemized equipment price lists, or hourly fees) shall be permitted without limitation, provided that the possibility of such amendments was contemplated in the original solicitation.
  2. Price Not Established by Contract. Amendments that increase the contract price and that are not described in subsection 18(C)(1) may not, in the aggregate, increase the total amount to be paid under the contract by more than twenty-five percent (25%) above the maximum contract price for the class of contracts under which the solicitation was conducted, unless approved in advance by Council.
- (D) Time. The time of performance under a contract, or the term of an expiring contract, may not be extended by amendment except as provided in the original contract or on a temporary basis as provided in Section 9(A).15.

**Section 19. Repeal.** Ordinance 677, adopting public contracting regulations, enacted November 9, 2020, is hereby repealed.

**Section 20. Effective Date.** This ordinance shall take effect on the thirtieth day after its enactment.

PRESENTED AND PASSED the first reading by unanimous vote on the 9th day of September 2024.

ADOPTED AND PASSED the second reading by the Aumsville City Council on the 9th day of September 2024.