City of Madras
Work Session
City Council Chambers

February 23, 2016
6:00 p.m.

AGENDA

I Call to Order

II Public Contracting Regulations and Spending Authorities

City Attorney, Jeremy Green
Finance Director, Brandie McNamee

III Public Works Department On-Call Truck Discussion

Public Works Director, Jeff Hurd

IV Adjourn

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above referenced meeting; however, the agenda does not limit the ability of the City Council to consider additional subjects. Meetings are subject to cancellation without notice.

This meeting is open to the public and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the Council. The meeting may be audio taped. Minutes of this and all public meetings are available for review at the Madras City Hall. The meeting place is handicapped accessible. Those needing assistance should contact the City Recorder two (2) days in advance of the meeting.

Executive Sessions are not open to the public; however, members of the press are invited to attend.

The City of Madras is an Equal Opportunity Provider.

Memorandum

To: City Administrator and Department Heads

From: City Attorney's Office, Jeremy M. Green, Bryant, Lovlien & Jarvis, P.C.

Date: February 8, 2016

Re: City of Madras - Public Contracting Code Update

This memorandum summarizes our proposed revisions to the City of Madras Public Contracting Rules and Procedures (the "Rules"). On August 26, 2008, the council adopted Ordinance No. 808, which ordinance amended the Rules to be consistent with certain legislative updates. Since 2008, the Oregon Legislature has revised the Oregon Public Contracting Code (the "Code") numerous times. The revised Rules (attached to this memorandum) reflect changes in the Code and staff-recommended improvements.

General Observations

1. Delegation; Purchasing Policy.

Spending authority for the city administrator and city staff is a policy question for the Council's consideration. Under the proposed revisions, the city administrator is authorized to enter into contracts with an estimated cost of $25,000 or less without council approval. Further, the city administrator's designee may enter into contracts with an estimated cost of $10,000 or less. By increasing these limits, the city administrator and designated staff will have more flexibility to approve contracts and/or contract amendments, and to process change orders. Rather than specifically identifying the authorized staff (whether by title or staffing level) or designee, the city administrator has the authority to determine which staff members need such authority to allow for efficient City procurement operations, while setting an outside limit for the amount of such delegation. Doing so gives the city administrator flexibility to develop a purchasing policy (within the prescribed limits) that may be revisited at a later date without needing council approval.

2. Small and Intermediate Procurements.

The proposed revisions align the small and intermediate procurement dollar amounts under the Rules with current statutory limits ($10,000 for goods and services; $5,000 for public improvements).

3. Brand Names or Products, "or Equal;" Single Seller and Sole Source.

Ordinance No. 808 contained Brand Names or Products, "or Equal;" Single Seller and Sole Source as a class special procurement and exemption. However, each of these are available with respect to procuring goods and services without adopting a class special procurement. ORS 279B.075 provides that sole-source contracts for goods and services may be made without competition. ORS 279B.200-.215 govern specifications. Therefore, these provisions have been (a) moved into the rules, and (b) separated for clarity. As they may still be useful in public improvement contracting, we have left those provisions in the exemptions, and merely separated for clarity.

4. Contract-Specific Special Procurements/Exemptions.

From time to time, there are circumstances where it is clear that competitive procurement will not result in satisfactory results, typically because of complex systems or other unique aspects of a project that require specific expertise or equipment. A recent example is the update of existing SCADA equipment in the wastewater treatment facility (other vendors/suppliers will almost certainly not have equipment compatible with the originally-installed equipment). Moving forward, if the City needs to enter into a contract of this type, and the contract does not qualify under an existing class special procurement or exemption, staff may present to council, for council's approval, a contract-specific special procurement or exemption. Under the Code, the council may approve such a contract-specific special procurement or exemption to address any single unique contracting circumstance. This authority is reiterated in Section C of the Rules.

5. References to Statutes and/or Rules.

Including specific language from specific statutes or rules is frequent when drafting public contracting rules (it creates a "one-stop shop" so you don't have to look in two places to find the relevant information). However, by including the exact language from the statute there is risk the City's rules will be out of sync with current law if the statute changes (and, thus, increase the time and expense associated with the periodic rule review).

A possible solution is to create a procurement guide, and replace any copied statutory language with reference to the statute (or Model Rule, as the case may be). The guide is a staff-level document, outlining/explaining the additional requirements of the Code or Model Rules that are not copied into the Rules. The guide will allow staff to update its procurement practices without the council having to amend the Rules. The guide will also provide a place to summarize important authority limits and contracting processes (e.g., when council approval is required, or when advertisement and competitive bidding is required).

6. Contracts.

Every procurement entered into under the Rules is a contract. Per council policy direction, a short-form contract may be developed for certain contracts up to a certain dollar amount. Jeremy is drafting a short form contract.

7. Bonding.

Bonding requirements are established by statute (currently, bridge/highway/transportation projects in excess of $50,000; all other public improvement contracts in excess of $100,000). Oregon law provides few exceptions to the bonding requirements, but failing to obtain a required payment bond results in joint and several liability, for any unpaid labor or materials, for both the City and its officers.

Class Special Procurements and Exemptions

1. With the exception of revisions for consistency with the Rules (i.e., increasing minimums to $10,000 from $5,000 and chief procurement officer to city administrator), the majority of class special procurements remain the same and do not need new and/or additional findings by the council. While the following two class special procurements do not need new findings, the revisions are important to note:

4. *Purchase of Used Personal Property*. Under Ordinance No. 808, this existing class special procurement allows the City to purchase used personal property regardless of dollar amount. As revised, the City may directly purchase used personal property if the anticipated purchase does not exceed $25,000, which is consistent with the city administrator's delegated authority under the proposed rules.

14. *Disposal of Surplus Property*. As suggested by staff, Subsection B now requires the City official seeking to dispose of property of minimum value to obtain a written confirmation from another City official regarding property less than $500 in value.

2. The following class special procurements and exemptions require the council to make findings pursuant to ORS 279B.085 and ORS 279C.335:

3. *Equipment Repair and Overhaul*. The original process under Ordinance No. 808 for this class special procurement required competitive quotes if the anticipated purchase was $5,000 or more but less than $150,000. As revised, competitive quotes must be obtained if the anticipated purchase is more than $150,000.

19. *Donated Materials and/or Services*. This is a new class special procurement allowing the City to accept donated services and/or materials.

Additional Considerations

As council and staff develop these rules, we will create the table of authority and process requirements consistent with the new Rules.

ORDINANCE NO. _____

AN ORDINANCE AMENDING, RESTATING, SUPERSEDING, AND REPLACING MADRAS ORDINANCE NO. 808 IN ITS ENTIRETY, WHICH ORDINANCE CONCERNS PUBLIC CONTRACTING RULES AND PROCEDURES; AND DECLARING AN EMERGENCY.

WHEREAS, City of Madras ("City") is a municipality in the State of Oregon which is subject to Oregon's public contracting laws; and

WHEREAS, the Madras City Council (the "Council") serves at the City's local contract review board ("LCRB"); and

WHEREAS, pursuant to ORS 279A.065(6), the City may adopt its own rules of procedure for public contracting that (a) specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency, and (b) prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General; and

WHEREAS, the Oregon Public Contracting Code (the "Code") allows City to establish class special procurements and exemptions to provide for the award of one or more contracts for one or more projects within certain classes without following the competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements that would otherwise be required under the circumstances; and

WHEREAS, by the passage of this Ordinance No. _____ (this "Ordinance"), City will establish local rules and procedures governing public contracts, and adopt class special procurements and exemptions, subject to the terms and conditions contained in this Ordinance.

NOW, THEREFORE, THE CITY OF MADRAS ORDAINS AS FOLLOWS:

1. Findings. The above-stated findings are hereby adopted.

2. Adoption. The Council hereby adopts the Oregon Attorney General's Model Public Contracting Rules (the "Model Rules"), Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49, except for those provisions modified or replaced by the Public Contracting Rules and Procedures attached hereto as Exhibit A (the "Public Contracting Rules"), as the public contracting rules for City, as such Model Rules or Public Contracting Rules presently exist or as they may be amended in the future. If any conflict between the Model Rules and the Public Contracting Rules should arise, the Public Contracting Rules will control. If any conflict between the Public Contracting Rules and the Code should arise, the Code will control. The Model Rules, Public Contracting Rules, and any amendments to the Model Rules or Public Contracting Rules, will collectively be referred to as the City of Madras Public Contracting Rules (the "Rules").

3. Class Special Procurements and Exemptions. The Council hereby adopts the Class Special Procurements and Exemptions contained in the attached Exhibit B as well as the Findings in Support of Adopting Class Special Procurements and Exemptions found in the attached Exhibit C.

4. Amendment and Restatement; Review. This Ordinance amends, restates, supersedes,

and replaces Ordinance No. 808 in its entirety, and supersedes any and all ordinances, resolutions, and/or policies in conflict with this Ordinance. The Council may amend the Rules at any time in the same manner as that required for the City Council to adopt an ordinance. The City will regularly review the Rules to ensure that the Rules are consistent with current law.

5. Interpretation; Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected at any time by order of the City Council to cure editorial and/or clerical errors.

6. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. Therefore, an emergency is hereby declared to exist. This emergency Ordinance will be in full force and effect upon its passage and adoption by the Council and signing by the mayor.

ADOPTED by the City Council of the City of Madras and signed by the mayor this ____ day of _____, 2016.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

_____
Royce Embanks, Mayor

ATTEST:

_____
Karen J. Coleman, City Recorder

Exhibit A
Public Contracting Rules and Procedures

A. Delegation.

(1) Except as otherwise provided by the Rules, the powers and duties given to the LCRB by the Code or the Model Rules must be exercised and performed by the Council.

(2) Except as otherwise limited by the Council or the Rules, all powers and duties given or assigned to local contracting agencies by the Rules may be exercised or performed by the City Administrator or the City Administrator's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080 and 279C.320.

(3) All public contracts or amendments to public contracts with an estimated cost of $25,000 or more must be approved by the Council. All public contracts or amendments to public contracts with an estimated cost of $25,000 or less may be entered into by the City Administrator without Council approval. The City Administrator may, by written designation, allow other City staff members to enter into public contracts with an estimated cost of $10,000 or less without Council approval. However, emergency contracts may be entered into by either the Council or the City Administrator pursuant to Paragraph F of these Rules, regardless of dollar limits, but subject to ORS 294.481.

(4) For the purposes of the Rules, except as provided in this Paragraph A, "City Administrator" will mean the City Administrator or the City Administrator's designee. Reference in the Model Rules to the "Chief Procurement Officer" shall be deemed to refer to the City Administrator.

B. Personal Services.

(1) Definitions. "Personal Services" will be defined to include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services will include, without limitation, the following: attorneys, accountants, auditors, and other licensed professionals; computer programmers; artists; graphic designers; performers; and consultants. The City Administrator will have the authority to determine whether any additional service not specifically mentioned in this paragraph is a "Personal Service" under this definition. "Personal Services Contract" means a contract for the provision of Personal Services.

(2) Contracts for Personal Services. Except as provided in Paragraph (3), below, Personal Services Contracts may be directly appointed, or awarded from proposals that are solicited informally, either orally or in writing. When proposals are sought, they will be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than two qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals will be documented in City's files. The selection may be based on criteria including, without limitation, each proposer's:

- Particular capability to perform the services required;
- Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;

- Performance history;
- Approach and philosophy used in providing services;
- Fees or costs; and
- Ability to provide timely performance in the area where the services are to be performed.

Price may be considered, but need not be the determining factor. Proposals may also be solicited by using a written request for proposals, at City's discretion.

(3) Contracts for Architectural, Engineering and Surveying Services, and Related Services. Personal Services Contracts for architectural, engineering, photogrammetric mapping, transportation planning, land surveying or related services, all as defined by ORS 279C.100, will be awarded in accordance with the source selection procedures set forth in ORS 279C and Division 48 of the Model Rules (except as otherwise provided in these Rules). Notwithstanding the foregoing, such Personal Services Contracts may be awarded pursuant to ORS 279C.115 or 279C.120 when applicable. When using the informal selection procedures described in OAR 137-048-0210, the City Administrator will submit Request for Proposals to a minimum of three prospective consultants drawn from the following:

(a) City's list of consultants that is created and maintained under OAR 137-048-0120;

(b) Another contracting agency's list of consultants that is created and maintained under OAR 137-048-0120; or

(c) All consultants that the contracting agency reasonably can locate that offer the desired architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, or any combination of the foregoing.

Where the City Administrator is unable to located three prospective consultants from the sources listed above, the City Administrator will submit requests for proposals to those prospective consultants identified from the sources listed above and document efforts to locate a minimum of three prospective consultants.

C. Special Procurements and Exemptions.

(1) The Council may exempt from competitive bidding certain contracts or classes of contracts for the procurement of goods and services according to the procedures described in ORS 279B.085. In accordance with OAR 137-047-0285(2), City will give public notice of City's approval of a special procurement for goods and services in the same manner as public notice of competitive sealed bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice will describe the goods or services or class of goods or services to be acquired through the special procurement. City will give affected persons at least seven days from the date of the notice of approval of the special procurement to protest the special procurement.

(2) The Council may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Council may authorize the contract to

be awarded using a request for proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

D. Small Procurements.

(1) Public contracts for goods and services under $10,000 are not subject to competitive bidding requirements. The City Administrator will make a reasonable effort to obtain competitive quotes in order to ensure the best value for City. City may amend a public contract awarded as a small procurement beyond the $10,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than $12,500.

(2) Public contracts for public improvements under $5,000 are not subject to competitive bidding requirements. The City Administrator will make reasonable efforts to obtain competitive quotes in order to ensure the best value for the City. City may amend a public contract for a public improvement awarded as a small procurement beyond the $5,000 limit, provided the cumulative amendments do not increase the total contract price to a sum that is greater than $6,250.

E. Intermediate Procurements (up to $150,000).

(1) A contract for procurement of goods and services that exceeds $10,000 but does not exceed $150,000 may be awarded according to the processes for intermediate procurements described in ORS 279B.070. City may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800.

(2) A contract for a public improvement that exceeds $5,000 but does not exceed $100,000, may be awarded according to the processes for intermediate procurements described in OAR 137-049-0160. City may increase the contract price of a public improvement awarded as an intermediate procurement through change order or amendment pursuant to OAR 137-049-0160.

F. Emergency Contracts.

(1) "Emergency" will be defined as circumstances that (a) could not have reasonably been foreseen, (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety, and (c) require prompt execution of a contract to remedy the condition.

(2) The Mayor, the City Administrator, or the City Administrator's designee will have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor will be documented.

(3) Emergency contracts may be awarded as follows:

(a) Goods and Services. Emergency contracts for procurement of goods, services, and construction services that do not constitute public improvements, may be awarded pursuant to ORS 279B.080 and Paragraph A, "Delegation," of these Rules.

(b) Public Improvements. City hereby adopts the procedures of OAR 137-049-0150 for awarding a public improvement contracts under emergency conditions, pursuant to ORS 279B.080. For emergency contracts awarded under this section, City will ensure competition that is reasonable and appropriate under the Emergency circumstances which may include, without limitation, written requests for offers, oral requests for offers, or direct appointment, without competition in cases of extreme necessity.

G. Appeals of Prequalification Decisions and Debarment Decisions.

Review of City's prequalification and debarment decisions will be as set forth in ORS 279B.425. The procedures in ORS 279B.425 will apply to hearings on such decisions.

H. Cooperative Purchases.

Subject to applicable Council approval requirements stated in the Rules, City may purchase goods under the Oregon Cooperative Purchasing Program or from any similar federal or regional program, including 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal or state laws will be permitted upon a finding by the Council that the law is sufficiently similar in effectuating or promoting transfers of property between contracting agencies.

I. Electronic Advertising.

Pursuant to ORS 279B.055 and 279C.360, electronic advertisement of public contracts in lieu of publication in a newspaper of general circulation in the area where the contract is to be performed, is authorized when it is likely to be cost-effective to do so. The City Administrator will have the authority to determine when electronic publication is appropriate, and consistent with City's public contracting policies. Notwithstanding the foregoing, publication of public improvement contracts with an estimated cost in excess of $125,000 will also be made in at least one trade newspaper of general statewide circulation.

J. Brand Names or Products, "or Equal."

(1) City may enter into public contracts for the procurement of Brand Name "or Equal" products, including products to be incorporated into a public improvement, subject to the requirements of this rule.

(a) Specifications. Solicitation specifications for public contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in Subsections (i) and (ii) of this Rule.

(i) "Or Equal" Specification. City may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of specification.

(ii) Specifying a Particular Make or Product. City may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no

other practical method of specification, after documenting the procurement file with the following information:

(I) A brief description of the solicitation(s) to be covered including volume of contemplated future purchases;

(II) The brand name, mark, or product to be specified; and

(III) The reasons for seeking this procurement method, which must include at least one of the following findings in the procurement file:

(A) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or

(B) Specification of the brand name, mark or product would result in substantial cost savings to City; or

(C) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(2) Public Notice. City will make reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or document the procurement file with findings of current market research to support the determination that the product is available from only one seller. This requirement is satisfied by electronically posting a notice as provided in OAR 137-047-0330 for a reasonable period of time or by documenting direct contact with such suppliers in the procurement file.

K. Single Seller and Sole Source.

(1) Sole Source Purchasing. City may purchase a particular product or service available from only one source if City meets the requirements of ORS 279B.075 and OAR 137-047-0275. Prior to purchase and in accordance with ORS 279B.075, City must determine in writing that the product or service is available from only one seller or source. City's single seller/sole source determination (which will be placed in the procurement file) shall include:

(a) Description of the product or service to be purchased;

(b) A brief description of the contract or contracts to be covered including volume of contemplated future purchases; and

(c) City's findings in support of a single seller/sole source which may include those items listed in ORS 279B.075(2).

(2) Sole Source, Multiple Purchases. If City intends to make several purchases of the product of a particular manufacturer or seller over an extended period, City must so state in the solicitation file, the solicitation document, if any, and the public notice required pursuant to OAR 137-047-0275(2). Such documentation and public notice constitute sufficient notice as to subsequent purchases. Such

purchase may not be made for a period in excess of five years without new findings supporting continuation of the sole source procurement.

Exhibit B

Class Special Procurements and Exemptions

I. CLASS SPECIAL PROCUREMENTS.

City may award a public contract under a Class Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow City to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements.

The Council declares the following as class special procurements. Unless otherwise specified in a particular special procurement rule, such contracts may be awarded in any manner that the City Administrator deems appropriate to City's needs, including by direct appointment or otherwise. Except as otherwise provided, the City Administrator will make a record of the method of award.

1. Advertising Contracts, Purchase Of.

The City Administrator, acting on behalf of City, may purchase media advertising, regardless of dollar value, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

2. Advertising Contracts, Sale Of.

The City Administrator, acting on behalf of City, may authorize the sale of advertising in City publications and for City activities, regardless of dollar value, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

3. Equipment Repair and Overhaul.

The City Administrator, acting on behalf of City, may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Conditions.

(i) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(ii) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(iii) City purchases within the limits and pursuant to the methods in Paragraph (B) of this Rule.

(B) Process and Criteria. The City Administrator will use competitive methods wherever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed to be impractical. If the anticipated purchase is

more than $150,000 competitive quotes must be obtained and retained in the procurement file.

4. Purchase of Used Personal Property.

If the anticipated purchase does not exceed $25,000, City may directly purchase used personal property and equipment if such property is suitable for City's needs and can be purchased for a lower cost than substantially similar new property. For the purpose of this rule, the cost of used property will be based upon the life-cycle cost of the property over the period for which the property will be used by City.

[Prev. adopt. in Res. No. 12-2006]

5. Information Technology Contracts.

The City Administrator, acting on behalf of City, will comply with the requirements of this rule for the procurement of information technology contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(A) If the anticipated purchase is $10,000 or more but less than $150,000, competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements.

(B) If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

6. Telecommunications Systems - Hardware and Software Contracts.

The City Administrator, acting on behalf of City, will comply with the requirements of this rule for the procurement of telecommunications systems contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(A) If the anticipated purchase is $10,000 or more but less than $150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements.

(B) If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

7. Telecommunications Services.

The City Administrator, acting on behalf of City, may enter into a public contract for telecommunications services without competitive bidding, if no competition exists within the area for the service required. To determine whether competition exists, the City Administrator will consider the following factors:

(A) Determination of alternative providers available within the geographic and service market area.

(B) The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance.

(C) The extent to which alternative providers can respond to City's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting City liability.

(D) City will use competitive methods wherever possible to achieve best value. If competition exists as defined above and the anticipated purchase is $10,000 or more but less than $150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing Intermediate Procurements. If the anticipated purchase exceeds $150,000, City will solicit written proposals in accordance with City rules governing requests for proposals.

[Prev. adopt. in Res. No. 12-2006]

8. Copyrighted and Library Materials.

City may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, without limitation, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.

[Prev. adopt. in Res. No. 12-2006]

9. Requirements Contracts.

The City Administrator, acting on behalf of City, may establish requirements contracts for the purposes of minimizing paper work, achieving continuity of products, securing a source of supply, reducing inventory, combining City requirements for volume discounts, standardization among City departments and reducing lead time for ordering. Purchases under requirements contracts may be utilized in accordance with the following:

(A) The requirement contract must have originally been let by competitive procurement procedures unless otherwise allowed by City's rules; and

(B) City departments may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures; and

(C) The term of any City requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.

[Prev. adopt. in Res. No. 12-2006]

10. Purchases under Federal Contracts.

When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, City may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising its authority under this exemption, City will obtain and document permission from the appropriate federal agency to purchase under the federal contract and document the cost savings to be gained for City from the anticipated purchases under the federal contract. City will not contract pursuant to this rule in the absence of a cost savings to City by using this method.

[Prev. adopt. in Res. No. 12-2006]

11. Hazardous Material Removal and Cleanup.

City may directly acquire services to remove or clean up hazardous material or oil from any vendor in an emergency or when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:

(A) To the extent reasonable under the circumstances, City will encourage competition by attempting to obtain informal price quotations or proposals from potential suppliers of goods and services; and

(B) City department responsible for managing or coordinating the clean-up will prepare a written description of the circumstances that require it and/or a copy of the DEQ order for the cleanup to the City Administrator, together with a request for contract authorization; and

(C) City department responsible for managing or coordinating the clean-up will record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made; and

(D) The timeline for cleanup does not permit use of intermediate procurement procedures.

[Prev. adopt. in Res. No. 12-2006]

12. Insurance—Employee Benefit and Other.

City may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement between City and represented employee groups.

[Prev. adopt. in Res. No. 12-2006]

13. Disposal of Abandoned, Seized or Non-owned Property.

Contracts or arrangements for the sale or other disposal of abandoned, seized or other personal property not owned by City at the time City obtains possession are not subject to competitive

procurement procedures. The City Administrator may select any method of disposal including, without limitation, donation to a charitable organization.

[Prev. adopt. in Res. No. 12-2006]

14. Disposal of Surplus Property.

(A) 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 interests of City. Factors that may be considered by the City Administrator include costs of sale, administrative costs, and public benefits to City. The City Administrator will maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

(i) Governments. Without competition, by transfer or sale to another City department or public agency.

(ii) Auction. By publicly advertised auction to the highest bidder.

(iii) Bids. By publicly advertised invitation to bid.

(iv) Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.

(v) 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.

(vi) Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation will require the offer to state the total value assigned to the surplus property to be traded.

(vii) Donation. By donation to any organization operating within or providing a service to residents in City's geographic area which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(B) Disposal of Property with Minimal Value. Surplus property which has a value of less than $500, 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. Prior to disposing property pursuant to this subsection (B), the City official proposing to dispose the property will obtain a written confirmation from another City official determining that the value of the property is less than $500. City official making the disposal will make a record of the value of the item and the manner of disposal.

(C) Restriction on Sale to City Employees. City employees will not be restricted from competing, as members of the public, for the purchase of publicly-sold surplus property, but will 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.

[Prev. adopt. in Res. No. 12-2006]

15. Temporary Extensions or Renewals.

City may enter into 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, without competitive bidding.

[Prev. adopt. in Res. No. 12-2006]

16. Temporary Use of City Property.

City may negotiate and enter into a license, permit or other contract for the temporary use of City-owned property without using a competitive selection process under the following circumstances:

(A) The contract results from an unsolicited proposal to City based on the unique attributes of the property or the unique needs of the proposer; and

(B) The proposed use of the property is consistent with City's use of the property and the public interest; and

(C) City reserves the right to terminate the contract without penalty, in the event that City determines that the contract is no longer consistent with City's present or planned use of the property or the public interest.

[Prev. adopt. in Res. No. 12-2006]

17. Sponsorship Agreements.

Sponsorship agreements, under which City receives or makes a gift, donation, or consideration in exchange for official recognition may be awarded by any method deemed appropriate by City, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

[Prev. adopt. in Res. No. 12-2006]

18. Concession Agreements.

City may enter into contracts that grant a franchise or concession to a private entity, individual, or other government to promote or sell, for its own business purposes, specified types of goods or services from City property and under which the concessionaire or promoter makes payments to City based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off City property. A concession agreement does not include an agreement

which represents a rental, lease, license, permit or other arrangement for the use of public property. Concession agreements 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.

[Prev. adopt. in Res. No. 12-2006]

19. Donated Materials and/or Services.

City may accept donated services and/or materials regardless of dollar amount under the following circumstances:

(A) The donator has agreed to donate all, or a portion of, the materials and/or services necessary to perform the work; and

(B) The donator enters into a license or agreement with City whereby the donator agrees to comply with public contract requirements applicable to the particular project and any requirements that City deems necessary or beneficial.

II. EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS.

City may award a public improvement contract under an exemption to competitive procurement pursuant to the requirements of ORS 279C.335. Such procurements allow City to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements.

The Council declares the following public improvement contracts to be exempt from competitive bidding. Unless otherwise specified in a particular exemption rule, such contracts may be awarded in any manner that the City Administrator deems appropriate to City's needs, including by direct appointment or otherwise. Except as otherwise provided, the City Administrator will make a record of the method of award.

1. Use of Existing Contractors.

When a public improvement is in need of minor alteration, repair or maintenance at or near the site of work being performed by a City contractor, City may hire that contractor to perform such work, provided:

(A) The contractor was hired through a selection process permitted by City's public contracting rules; and

(B) The City Administrator first obtains a price quotation for the additional work from the contractor that is competitive and reasonable; and

(C) The total cost of the proposed work will not exceed the Bureau of Labor and Industries' threshold specified in ORS 279C.810(2); and

(D) The original contract is amended to reflect the new work and is approved by the City Administrator before work begins.

[Prev. adopt. in Res. No. 12-2006]

Exhibit C

Findings in Support of Adopting Class Special Procurements and Exemptions

ORS 279B.085 and 279C.335 authorize the LCRB, upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts. Pursuant to that authority, the Council has, after notice and an opportunity to comment at a regular meeting of the City Council, adopted Ordinance No. _____, which establishes classes of contracts and the solicitation methods for their award, together with the following specific findings in support thereof, or a determination that no findings are required.

I. SPECIFIC FINDINGS – CLASS SPECIAL PROCUREMENTS.

The City Council approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and the methods approved for their award (1) is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, and (2) the awarding of public contracts under the exemption will result in substantial cost savings to City, or otherwise substantially promote 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.

1. Advertising Contracts, Purchase of.

(A) Alternate Award Process: City Administrator's discretion.

(B) Cost Savings and Other Benefits: Size of and frequency of average advertisement (including all notices required to be published to City by applicable statute or regulation) does not justify the cost of solicitation. Time period of recognition of need to advertise until date of advertisement is too short to issue solicitation.

(C) Effect on Competition: The potential market is limited because not all advertisers work in all markets. Choice of advertising medium is somewhat price sensitive, but is primarily driven by location and size of circulation compared to City's target audience.

(D) Effect on Favoritism: Minimal. Due to the lack of competitors and specialized contracting needs.

2. Advertising Contracts, Sale of.

(A) Alternate Award Process: The City Administrator may authorize the sale of advertising in City publications and for City activities, regardless of dollar value, without competitive bidding.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense.

(C) Effect on Competition: The sale of advertising is not for the purpose of generating revenue for City, but rather is utilized to offset the cost of publication. Businesses generally purchase advertising space in the spirit of good will and as a means of supporting community activities.

(D) Effect on Favoritism: Minimal. Any interested individual or business who wishes to advertise may do by contacting City staff.

3. **Equipment Repair and Overhaul.**

(A) Alternate Award Process: Contracts may be awarded in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: The need for equipment repair cannot be planned for and often must be handled on an expedited basis to avoid additional expense and adverse impact on the public's ability to utilize City's services. Experience with a single contractor can help improve reliability over the course of several projects.

(C) Effect on Competition: Allows contractor be selected based on ability to provide accurate, reliable and fast service.

(D) Effect on Favoritism: Requirement that City Administrator obtain competitive quotes when practical helps ensure that favoritism will not be greater than if statutory request for proposals process were used.

4. **Purchase of Used Personal Property.**

(A) Alternate Award Process: Contracts to be awarded in City Administrator's discretion.

(B) Cost Savings and Other Benefits: City is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the purchase of used property and equipment in certain instances. City purchases used property and equipment when it meets City's needs and is cost-effective. Considerations include type, quantity and estimated useful life of the used item.

(C) Effect on Competition: No impact. Allows City to respond to unique opportunities that become available sporadically and without notice. Used equipment and property is usually sold on a first-come, first-served basis. When used equipment or property does become available, City must be able to respond immediately in order to obtain the property or equipment.

(D) Effect on Favoritism: No impact. City is responding to unique opportunities. When a used item is available, there is often little competition available and sources for used items of the type, quality and quantity required by City are inconsistent.

5. **Information Technology Contracts.**

(A) Alternate Award Process: Competitive methods will be used wherever possible to achieve best value. In situations where a competitive process is deemed to be impractical, the reasons must be documented in the procurement file.

(B) Cost Savings and Other Benefits: Rapid changes in technology and technology pricing make it necessary for City to be able to purchase needed computer equipment quickly.

It is frequently possible to take advantage of lower pricing due to the frequent price changes in the market place.

(C) Effect on Competition: Generally, there is sufficient competition among vendors in the area of information technology and software for City to secure competitive quotes. City is required to make a good-faith effort to secure competitive quotes under this rule.

(D) Effect on Favoritism: Minimal. City is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

6. Telecommunications Systems – Hardware and Software Contracts.

(A) Alternate Award Process: Competitive methods will be used whenever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

(B) Cost Savings and Other Benefits: Rapid changes in technology and technology pricing make it necessary for City to able to purchase needed telecommunications hardware and software quickly. It is important that City be able to take advantage of price competition in the market place.

(C) Effect on Competition: Since deregulation, there is generally sufficient competition among vendors of telecommunications hardware and software for City to secure competitive quotes. City is required to make a good-faith effort to secure competitive quotes under this rule.

(D) Effect on Favoritism: Minimal. City is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

7. Telecommunications Services.

(A) Alternate Award Process: The Chief Procurement Office may enter into a public contract for telecommunications services without competitive bidding, if no competition exists within the area for the service required.

(B) Cost Savings and Other Benefits: The City Administrator will use competitive methods wherever possible to achieve best value. If competition exists, competitive quotes will be obtained.

(C) Effect on Competition: It is important that City take advantage of price competition in the market plan. There may be circumstances, however, where sufficient competition does not exist in the relative geographic and service market area. In such cases, City will follow this rule in determining whether sufficient competition exists to make a competitive procurement.

(D) Effect on Favoritism: Since deregulation, there is generally sufficient competition among vendors of telecommunications services for City to secure competitive quotes. Because

price is a primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

8. **Copyrighted and Library Materials.**

(A) Alternate Award Process: Contracts may be awarded in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: This special procurement is necessary to allow City to acquire special needs products that are unique and for which a single copyright owner or licensee is the only source of the material. Eliminates unnecessary competitive solicitation when a competitive market does not exist.

(C) Effect on Competition: By their nature, copyrighted materials are protected for the use of a single owner and are often produced by a single supplier who may be the owner of the copyright or its licensee. Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education, City generally purchases its instructional materials through Northwest Textbook Depository. This allows City to benefit from the regional purchase and warehousing of these materials and the associated savings. This rule allows City to participate in the largest possible bulk purchasing activity of instructional materials in the region.

(D) Effect on Favoritism: Not applicable due to the lack of competitors and specialized contracting needs.

9. **Requirements Contracts.**

(A) Alternate Award Process: City initially awards requirements contracts as a result of competitive procurement or an applicable exemption. This special procurement allows such a contract to be converted into one that will allow City to secure a constant source of supply for the contracted-for goods.

(B) Cost Savings and Other Benefits: Allows City to reduce inventory, combine City requirements for volume discounts, standardize goods among City departments and reduce lead time for ordering.

(C) Effect on Competition: It is unlikely that this exemption will diminish competition for City contracts as City initially enters into such contracts through a competitive process or applicable exemption.

(D) Effect on Favoritism: Minimal. City initially enters into such contracts through a competitive process or exemption.

10. **Purchases under Federal Contracts.**

(A) Alternate Award Process: This special procurement allows the City Administrator to make purchases of goods and services when the price has been established by a contract of the federal government, which contract was awarded through a competitive procurement process.

(B) Cost Savings and Other Benefits: City may use this special procurement method when it determines that there is a cost savings to be made in avoiding the solicitation process.

(C) Effect on Competition: The contracts are awarded through competitive processes that meet the standards of the Oregon public contracting code. Oregon companies are not excluded or disadvantaged in participating in bidding on federal contracts.

(D) Effect on Favoritism: Minimal. The contracts are awarded at the price most advantageous to the federal government. City is required to document the cost savings it will achieve by using the contract. These facts ensure that City purchases the desired goods or services at the best price available, rather than from a preferred contractor.

11. Hazardous Material Removal and Cleanup.

(A) Alternate Award Process: Contracts may be awarded in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: When City is ordered to remove or clean up hazardous material, it must respond within a very short time period. This time period does not generally allows for City to take the time necessary to solicit written bids or proposals for the work to be performed. Failure to comply within the allotted time period could make City liable for delays in responding to cleanup or removal orders. Such delay might also expose City to potential liability from third parties if the cleanup is not completed quickly.

(C) Effect on Competition: This special procurement will only be used in an emergency or in situations where a remedial order is in effect and therefore there is no time to employ a competitive procurement method. Routine competitive procurement methods will used where time permits.

(D) Effect on Favoritism: Minimal. City will follow competitive procurement procedures unless precluded by time constraints.

12. Insurance – Employee Benefit and Other.

(A) Alternate Award Process: City may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount subject to the terms of any collective bargaining agreement.

(B) Cost Savings and Other Benefits: The nature, type, specific services to be provided and timing of employee benefit insurance are dictated by collective bargaining agreements between City and represented labor groups. City must fulfill its contractual obligations to represented employee groups to provide appropriate employee benefits. City relies on its professional insurance broker or agent-of-record to solicit competitive proposals from responsible companies to furnish employee benefit coverages and other insurance coverages.

(C) Effect on Competition: Minimal. City's agent-of-record, solicits proposals from employee benefit insurance providers and other insurance providers under conditions

that foster competition among a sufficient number of potential suppliers. City evaluates the proposals submitted to furnish employee benefit insurance for the best value to City given the requirements specified by the employee benefits portions of City's agreements with represented labor groups.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

13. Disposal of Abandoned, Seized or Non-owned Property.

(A) Alternate Award Process: Abandoned, seized or non-owned property may be disposed of in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense by allowing the City Administrator to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the City Administrator to establish programs for donation to charitable organizations.

(C) Effect on Competition: No impact. Responds to unique opportunities.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

14. Disposal of Surplus Property.

(A) Alternate Award Process: Surplus property may be disposed of in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: Avoids an unnecessary solicitation expense by allowing the City Administrator to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the City Administrator to establish programs for donation to charitable organizations.

(C) Effect on Competition: No impact. Responds to unique opportunities.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

15. Temporary Extensions or Renewals.

(A) Alternate Award Process: Renewal: No competitive selection required.

(B) Cost Savings and Other Benefits: Allows City to prepare for competitive solicitation when existing contracts expire without notice due to administrative error.

(C) Effect on Competition: Delays competition by not more than one year.

(D) Effect on Favoritism: No impact. At expiration of temporary extension, standard competitive procedures will apply.

16. Temporary Use of City Property.

(A) Alternate Award Process: Contracts may be awarded in City Administrator's discretion.

(B) Cost Savings and Other Benefits: Allows City to respond to unsolicited proposals for unique revenue opportunities.

(C) Effect on Competition: None. No competitive market.

(D) Effect on Favoritism: No impact. Responds to unique opportunities.

17. Sponsorship Agreements.

(A) Alternate Award Process: Contracts may be awarded in the City Administrator's discretion.

(B) Cost Savings and Other Benefits: This special procurement allows City to respond to unsolicited proposals for revenue or marketing opportunities that would otherwise be unknown or unavailable.

(C) Effect on Competition: Mandatory open competition would likely discourage creative proposals from sponsors or City participation. Sponsorship often results from the match between a unique attribute of an event or asset and unique characteristics of the sponsor for which no competitive market exists.

(D) Effect on Favoritism: Minimal. Responds to unique opportunities.

18. Concession Agreements.

(A) Alternate Award Process: City Administrator to adopt rules for award similar to those used for personal service contracts.

(B) Cost Savings and Other Benefits: Allows City to take advantage of unique revenue opportunities. Not a contract for the acquisition or disposal of goods or services. Most similar to personal services contracts because the quality of the concession may be more important than price factors. Allows a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from City property. Concessionaire makes payments to City based, in part, on the Concessionaire's revenues from the concession.

(C) Effect on Competition: Minimal. Responds to unique opportunities.

(D) Effect on Favoritism: Minimal. Responds to unique opportunities.

19. Donated Materials and/or Services.

(A) Alternate Award Process: Subject to the requirements of this special procurement, the City Administrator will award such contracts in the City Administrator's discretion, including through direct solicitation.

(B) Cost Savings and Other Benefits: Avoids unnecessary expenditure when services and/or materials are donated to City. Affords City the ability to take advantage of such donated materials and/or services, enables City to use its limited funds in other areas, and

frequently results in materials and/or services City would not otherwise be able to afford.

(C) Effect on Competition: No competitive market exists or equivalent vendors will be identified and allowed to compete.

(D) Effect on Favoritism: Minimal. Not applicable where services and/or materials are donated.

II. SPECIFIC FINDINGS – EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS.

The Council approves the specific findings for the exemptions for each class of public improvement established in the provisions described below and also finds that the establishment of each class of contracts and the methods approved for their award (1) is unlikely to encourage favoritism in the awarding of public improvements contracts or substantially diminish competition for public improvement contracts, and (2) the awarding of public improvement contracts under each exemption will result in substantial cost savings to City.

1. Use of Existing Contractors.

(A) Alternate Award Process: From time to time, City needs to perform repair or maintenance functions at or near a site where a contractor, already hired by City through a competitive selection process, is performing other work. The City Administrator may obtain an informal price quotation from the contractor already at or near the site to perform the additional work. If the City Administrator determines that the informal price quotation is competitive for work of that type, then the contractor may be awarded this additional work without the need for competitive bidding provided that the value of the additional work, as estimated by the contractor, does not exceed $25,000.

(B) Cost Savings and Other Benefits: City will achieve cost savings because the cost of the additional work will be lower than if the work was competitively bid because the contractor is already mobilized at or near the site of the work and will not need to recover the cost of mobilization as a new contractor would.

(C) Effect on Competition: It is unlikely that this special procurement will substantially diminish competition in the award of City contracts, as the contractor was originally selected through a competitive bidding process.

(D) Effect on Favoritism: Not applicable where the contractor has already been selected through an appropriate contracting method. The occurrence of such additional work is haphazard and often was not foreseen and City is not required to provide the contractor with the work if the estimated price is not competitive.