

Policy for Public Contracting & Purchasing



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City of Oakridge Policy for Public Contracting & Purchasing

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Public Purchasing Code

I. Introduction.

A. Purpose of Purchasing Policy. This ordinance is adopted by the Oakridge City Council as the governing body of the City to establish the rules and procedures for contracts entered into and purchases made by the City. It is the policy of the City in adopting this ordinance to utilize public contracting and purchasing practices and methods that maximize the efficient use of City resources and the purchasing power of City 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;
3. Securing favorable and economical terms to seek efficient use of City resources. Taking full advantage of evolving procurement methods that suit the purchasing needs of the City as they emerge within various industries.

B. Interpretation of Purchasing Policy. Except as specifically provided in this ordinance, public contracts and purchases shall be awarded, administered and governed according to the applicable requirements of ORS Chapters 279, 279A, 279B and 279C (the “Public Contracting Code”) and the Attorney General’s Model Public Contract Rules (“Model Rules”) as set forth in applicable Oregon Administrative Rules Division 46. General Provisions Related to Public Contracting OAR 137-046-0100 et seq., and specifically OAR 137-046-0100(1), Division 47, Public Procurements for Goods or Services, OAR 137-047-0000 et seq., Division 48, Consultant Section: Architectural Engineering, Land Surveying and Related Services Contracts, OAR 137-048-0100 et seq. and Division 49, General Provisions Related to Public Contracts for Construction Services, OAR 137-049-0100 et seq., as they now exist.

1. In furtherance of the purposes of the objective set forth above in subsection A, it is the City’s intent that this ordinance be interpreted to authorize the full use of all contracting and purchasing powers described in ORS Chapters 279, 279A, 279B and 279C.
2. The Model Rules adopted under ORS 279A.065 shall apply to the contracts and purchases of the City to the extent they do not conflict with this ordinance and the rules and regulations adopted by the City.
3. In the event of a conflict between any provisions of this ordinance and the Model Rules, the provisions of this ordinance shall prevail.
4. Nothing herein shall take precedence over State of Oregon Public Ethics Law, ORS 244.040 et seq. requirements as they apply to Councilors, the Mayor and employees.

- C. **Specific Provisions' Precedence over General Provisions.** In the event of a conflict between the provisions of this ordinance, the more specific provision shall take precedence over the more general provision.
- D. **Conflict with Federal Statutes and Regulations.** Except as otherwise expressly provided in ORS Chapters 279, 279A, 279B and/or 279C, applicable federal statutes and regulations govern when federal funds are involved.

II. Definitions. Unless a different definition is specifically provided herein, or context clearly requires otherwise, the following terms have the meanings set forth herein. Additionally, any term defined in the singular includes the meaning of the plural, and vice versa.

- A. **Administering agency.** The contracting agency that solicited and established the original contract in a cooperative procurement for goods, services, personal services, professional services or public improvements.
- B. **Affected person/offeror.** A person whose participation in a procurement is adversely impaired by a City decision.
- C. **Architectural, engineering and land surveying services.** Architectural, engineering, land surveying, photogrammetric mapping, transportation planning service required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq., or related services, or any combination of these services, provided by a consultant, as appropriate within the context of a section of the Model Rules, See ORS 279C.100, and OAR 137-048-0100 et seq.
- D. **Award.** The decision to enter into a contract or purchase order with a specific offeror.
- E. **Bid.** A response to an invitation to bid.
- F. **Bidder.** A person who submits a bid in response to an invitation to bid.
- G. **Business with which a City employee is associated.** Any business in which a City employee is a director, officer, owner or employee, or any corporation in which a City employee owns or has owned ten percent (10%) or more of any class of stock. In considering this definition, please also review the requirements of the Oregon Public Ethics Law, ORS 244.010 et seq.
- H. **City.** The City of Oakridge, a municipal corporation and a contracting and purchasing agency.
- I. **City Administrator.** The person appointed by the City Council to the position of City Administrator.
- J. **Closing.** The date and time announced in a solicitation document as the deadline for submitting bids or offers.
- K. **Contract.** See Public Contract.
- L. **Contractor.** The person who enters into a contract with the City.

- M. Contract price.** As the context requires:
1. The maximum payment that the City will make under a contract if the contractor fully performs under the contract, including bonuses, incentives and contingency amounts; or
 2. The maximum not-to-exceed payment specified in the contract; or
 3. The unit prices set forth in the contract.
- N. Contracting agency.** A public body authorized by law to conduct a procurement.
- O. Cooperative Procurement.** A procurement conducted by, or on behalf of, one or more contracting agencies as set forth in ORS 279A.200 through ORS 279A.220.
- P. Days.** Calendar days.
- Q. Emergency.** Involves circumstances that:
1. Could not have been reasonably foreseen;
 2. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 3. Require prompt execution of a contract or amendment in order to remedy the condition.
- R. Findings.** The justification for a conclusion made by the Contracting Agency. If the justification relates to a public improvement contract, findings may be based on information that includes, but is not limited to:
1. Operational, budget and financial data;
 2. Public benefits;
 3. Value engineering;
 4. Specialized expertise;
 5. Market conditions;
 6. Technical complexity; and
 7. Funding sources.
- S. Goods and/or services.** Supplies, equipment, materials and services, other than Personal Services and Architectural, Engineering, Land Surveying, Photogrammetry, Transportation Planning, required for compliance with the National Environmental Policy Act and Land Surveying or related services or any combination of these, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto. The term includes combinations of any of the items identified in the definition.

- T. Grant.** An agreement under which:
1. The City receives moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - a. The assistance received by the City is from a grantor for the purpose of supporting or stimulating a program or activity of the City which the City finds is for a public purpose; and
 - b. No substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions; or
 2. The City provides moneys, property or other assistance, including but not limited to, federal assistance that is characterized as a grant by federal law or regulation, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
 - a. The assistance is given to the recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
 - b. No substantial involvement by the City is anticipated in the program or activity other than involvement associated with monitoring compliance with grant conditions.
- U. Immediate family member.** An employee's: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; siblings, and spouses thereof; grandparents and grandchildren, and spouses thereof; and domestic partner, and parents thereof.
- V. Offer.** A bid, proposal, quote or other response to a solicitation document.
- W. Offeror.** A person who submits an offer.
- X. Opening.** The date, time and place announced in the solicitation document for the public opening of written sealed offers.
- Y. Original contract.** The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering agency.
- Z. Person.** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public body, public corporation or other legal or commercial entity, and any other person or entity with legal capacity to contract.
- AA. Personal services.** Services, other than architectural, engineering, photogrammetric mapping, transportation planning services required for compliance with the National Environmental Policy Act and land surveying , or "related services" or combination thereof under Section NN., that require specialized skill, knowledge and resources in the application of technical or

scientific expertise or in the exercise of professional, artistic or management discretion or judgment.

1. Qualifications and performance history, expertise and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary. May also be based on need for special trust and confidence between Council and contractor. See also section VII A.
2. Personal services contracts include, but are not limited to, the following classes of contracts:
 - a. Contracts for services performed in a professional capacity, including but not limited to, services of an accountant, archeological services, artist, appraising services, attorney, auditor, biological services, commissioning services, cost estimating services, court reporter, endangered species studies, environmental impact studies not required for compliance with the National Environmental Policy Act, hazardous substances or hazardous waste or toxic substance testing service, historical research services, information technology consultant, investment consultant, real estate consultant, insurance consultant, labor negotiator, material testing services, mechanical system balancing services, Native American studies, training consultant, financial advisors, public relations consultant physician or broadcaster, rare plant studies, wetland delineation studies, wetland mitigation service and commissioning services; See VII A.
 - b. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested;
 - c. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, film maker, actor, director, painter, weaver or sculptor;
 - d. Contracts for services that are specialized, creative or research-oriented; and/or
 - e. Contracts for services as a consultant.
3. Except as specified in Section V(D) regarding services performed by an architect, engineer, land surveyor photogrammetric mapping professional, transportation planner required for compliance with the National Environmental Policy Act, or related services or combination thereof, nothing herein shall be construed as prohibiting the Council or Administrator from determining or requiring that a particular contract for personal services shall be subject to a competitive bidding or proposal process.

BB. Price agreement. A contract for the procurement of goods or services at a set price which has:

1. No guarantee of a minimum or maximum purchase; or

2. An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services with no guarantee of any minimum or maximum additional purchase.
- CC. Procurement.** The act of purchasing, leasing, renting or otherwise acquiring goods or services, personal services or professional services. It includes each function and procedure undertaken or required to be undertaken to enter into a contract, administer a contract and obtain the performance of a contract for goods or services, personal services or professional services.
- DD. Proposal.** A response to a request for proposals.
- EE. Proposer.** A person that submits a proposal in response to a request for proposals.
- FF. Provider.** As the context requires, a supplier of goods or services, personal services, or professional services.
- GG. Public contract.** A sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of personal property, goods or services, including personal services, professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. It does not include grants.
- HH. Public contracting.** Procurement activities relating to obtaining, modifying or administering contracts or price agreements.
- II. Public improvement.** A project for construction, reconstruction or major renovation on real property, by or for the City. It does not include projects for which no funds of the City are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection; or emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.
- JJ. Public improvement contract.** A contract for a public improvement. This does not include a contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to maintain a public improvement.
- KK. Purchasing agency.** An agency that procures goods or services, personal services, or public improvements from a contractor based on the original contract established by an administering agency in a cooperative procurement.
- LL. Qualified nonprofit agency for individuals with disabilities.** A qualified nonprofit agency for individuals with disabilities is a mandatory program run by the Department of Administrative Services. It provides a procurement list for products and services of nonprofit agencies produced by individuals with disabilities. ORS 279.850 requires public agencies to procure products or services from qualified nonprofit agencies for individuals with disabilities, provided that the product or service is of the appropriate specifications and available. See ORS 279.835 et seq.

- MM. Recycled product.** All materials, goods and supplies, not less than fifty percent (50%) of the total weight of which consists of secondary and post-consumer waste with not less than ten percent (10%) of its total weight consisting of post-consumer waste. It includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
- NN. Related Services.** Personal services, other than architectural, engineering land survey, photogrammetric mapping, transportation, planning required for compliance with the National Environmental Policy Act or related service or combination thereof, , that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, as expressed in ORS 279C.100(8) and ORS 279C.105, including but not limited to:
1. Landscape architectural services;
 2. Facilities planning services;
 3. Energy planning services;
 4. Space planning services;
 5. Project management services;
 6. Construction management services and owner's representatives service; and/or
- OO. Request for proposals.** A solicitation document used for soliciting proposals.
- PP. Request for qualifications.** A written document issued by the City describing particular services to which potential contractors respond with a description of their experience and qualifications that results in a list of potential contractors who are qualified to perform those services, but which is not intended to create a contract between a potential contractor on the list and the City.
- QQ. Revenue generating agreements.** Contracts or agreements for services that generate revenue and that are typically awarded to the offeror proposing the most advantageous or highest monetary return.
- RR. Scope.** The range and attributes of the goods or services described in a procurement document.
- SS. Signed or signature.** Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person with the authority and intent to be bound.
- TT. Solicitation.** As the context requires:
1. A request for the purpose of soliciting offers, including a request for quotes, an invitation for bid, a request for proposal, a request for quotation, a request for qualifications, or other similar documents;
 2. The process of notifying prospective offerors of a request for offers;

3. The solicitation document.
- UU. **Work.** The furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a contract and successful completion of all duties and obligations imposed by the contract.
- VV. **Written or in writing.** Conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words, including electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

III. Authority.

- A. **City Council as Local Contract Review Board.** The Oakridge City Council is designated as the local Contract Review Board of the City under ORS 279A.060, and has all the rights, powers and authority necessary to carry out the provisions of this ordinance, the Public Contracting Code.
- B. **Application of Attorney General’s Model Rules of Procedure.** Pursuant to ORS 279A.065(6), the City has elected to establish its own policy for public contracting and purchasing. Except as provided herein, the Model Rules apply to the City. (See 1B in the Introduction.)
- C. **Applicability of ordinance** Except as specified herein, this ordinance does not require competitive bidding or competitive proposals for the following types of contracts:
 1. **ORS Exemptions:** Contracts or agreement to which the Public Contracting Code does not apply including, but not limited to, those set forth in ORS 279A.025;
 2. **Intergovernmental Contracts** and interstate agreements entered into pursuant to ORS Chapter 190;
 3. **Grants;**
 4. **Real Property.** Acquisitions or disposals of real property or interests in real property (provided however all such acquisitions or disposals of real property or interest in real property shall be subject to the approval of the City Council;
 5. **Oregon Corrections Programs.** Procurements from an Oregon Corrections Enterprise program;
 6. **Financial Undertakings.** Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

- b. The making of program loans and similar extensions or advance of funds, aid or assistance by the City to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
 - c. The investment of funds by the City as authorized by law; or
 - d. Banking, money management or other predominantly financial transactions that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City Administrator.
7. **Benefit Plans.** Contracts for employee benefit plans;
 8. **Publications.** Contracts with newspapers and other publications for the placement of advertisements or public notices;
 9. **Price Regulated Source Limited.** Contracts for items where the price is regulated and available from a single source or limited number of sources;
 10. **Insurance.** Insurance contracts;
 11. **Revenue.** Revenue-generating agreements;
 12. **Federal Contracts.** Federal agreements where applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or this ordinance or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or this ordinance.
 13. **Purchase Through Federal Programs.** ORS 279A.180,
 14. **Cooperative Procurement Purchase.** Purchases under Cooperative Procurement with other public agencies ORS 279A.200 et seq.
 15. **Energy Saving Performance Contracts.** An energy savings performance contract is defined as a public contract between a public agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract that guarantees energy savings or performance ORS 279C.335(1)(f) & 279A.065; and
 16. **Copyrighted Materials.** Contracts for the purchase of copyrighted materials where there is only one supplier available within a reasonable purchase area for such goods.
 17. **Emergency.** In the event of an emergency involving an immediate hazard to the public health, safety, or welfare, the contracting agency may secure necessary goods and/or services without a formal competitive selection process provided that the local Contract Review Board at a regularly

scheduled meeting within 30 days of the procurement is furnished with a full report of the circumstances of the emergency and costs of the materials and/or services secured, and the method used for the selection of the particular contractor. An emergency means circumstances that:

- A. Could not have been reasonably foreseen;
- B. Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- C. Require prompt execution of a contract to remedy the condition.

- 18. **Existing Equipment.** Contracts for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment if required for efficient utilization of such equipment.
- 19. **Food Services.** Contracts for the provision of food services for special and isolated events for employees or officers of SUB.
- 20. **Investment/Borrowing Public Funds.** Contracts for the purpose of investment of public funds or the borrowing of funds.
- 21. **Oil or Hazardous Waste Removal.** After being ordered to do so by the Oregon Department of Environmental Quality.
- 22. **Personal Service Contracts.** Personal service contracts as may be exempted pursuant to Section VII.
- 23. **Qualified Rehabilitation Facilities (“QRF”).** See ORS Chapter 279.835. See Section II LL
- 24. **Rate or Price Established.** Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulating authority.
- 25. **Requirements Contract.** Purchases of goods or services pursuant to a Requirements Contract which was established by a formal competitive selection process. Purchases may also be made at prices established by a Requirements Contract or other agreement between another public body and a contractor if the requirements contract was established by a formal competitive selection process, or otherwise in conformance with the Public Contracting Code.
- 26. **Sole Source.** Contracts for goods or services, or a class of goods or services, which are available from only one source. To the extent reasonably practical, the Contracting Agent shall negotiate with the sole source to obtain contract terms advantageous to the Board. The determination of a sole source must be based on written findings that may include:

- A. That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
- B. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- C. That the goods or services are for use in a pilot or experimental project;
- D. Other findings that support the conclusion that the goods or services are available from only one source; or,
- E. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source but are less than \$50,000 must be approved by the City Administrator. Sole source contracts for goods or services, or classes of goods or services, which are available from only one source which are equal to or exceed \$50,000 must be approved by the Council.

27. **Special Procurement.**

- A. Special Procurement. A special procurement provided that the Contracting Agency adheres to the requirements of ORS 279B.085, for goods and services; or the requirements of 279C.335 for public improvements.
- B. Special Procurement Class Exemptions. Those Special Procurement Class exemptions adopted by Resolution of the Board pursuant to ORS 279B.085 (goods and services) or 279C.335 (public improvements).

28. **City Provided Services.** Contracts for purchase or sale of services, materials or products traditionally provided by the City of Oakridge.

D. Authority of City Administrator. For contracts and purchases covered by this ordinance, the City Administrator is authorized to:

- 1. Award contracts and amendments without specific authorization by the City Council whenever the contract amount is \$50,000 or less and the proposed expenditure is included in the current fiscal year budget.
- 2. Execute contracts and amendments with specific authorization by the City Council whenever the contract or amendment amount is greater than \$50,000 and the proposed expenditure is included in the current fiscal year budget.
- 3. As the purchasing agent for the City, the City Administrator is authorized to:

- a. Advertise for bids or proposals without specific authorization from the City Council, when the proposed purchase is included within the current fiscal year budget.
 - b. Advertise for bids or proposals when the proposed purchase is not included within the current fiscal year budget after the City Council approves the proposed budget transfer.
 - c. Purchase goods, services and/or property without specific authorization by the City Council whenever the amount is \$50,000 or less and the proposed expenditures are included in the current fiscal year budget.
 - d. Purchase goods, services and/or property with specific authorization by the City Council whenever the amount is greater than \$50,000 and the proposed expenditure is included in the current fiscal year budget.
4. Departments shall communicate purchase requirements to the City Administrator and plan sufficiently in advance so that orders can be placed in economical quantities. Delegate, in writing, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3). In the absence of a written delegation to the contrary, and in the absence of the City Administrator, the signature authority described in the above subsection (2) and the purchasing powers described in the above subsection (3) are delegated in order as follows:
- a. The named City Administrator Pro Tem; and if the City Administrator Pro Tem is unavailable,
 - b. Mayor; and if the Mayor is unavailable,
 - c. The Finance Director.
5. Adopt forms, procedures, computer software, and administrative rules for all City purchases regardless of the amount.
- a. When adopting the forms, procedures, computer software, and/or administrative rules, the City Administrator shall establish practices and policies that:
 - i. Do not encourage favoritism or substantially diminish competition; and
 - ii. Allow the City to take advantage of the cost-saving benefits of alternative contracting methods and practices;
 - b. The City shall use these forms, procedures, computer software and administrative rules unless they conflict with the ordinance.
6. City Administrator may classify specific types of services as personal services based upon the criteria set forth in Section VII A herein.

- E. Favorable Terms.** All efforts will be made to ensure contracts and purchases are negotiated on the most favorable terms in accordance with this ordinance, other adopted ordinances, state and federal laws, policies and procedures.
- F. Unauthorized Contracts or Purchases.** Public contracts entered into or purchases made shall be as authorized herein. In the event not so authorized:
1. The contract shall be voidable at the sole discretion of the City.
 2. The City may take appropriate action in response to execution of contracts or purchases made contrary to this provision.
 3. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such contracts or purchases.
- G. Purchasing from City Employees or Employees' Immediate Family Prohibited.** No contract shall be entered into with or purchase made from any City employee or employee's immediate family member, or any business with which the employee is associated, unless:
1. The contract or purchase is expressly authorized and approved by the City Council; or
 2. The need for the contract or purchase occurs during a state of emergency, and the City Administrator finds, in writing, that the acquisition from the employee, employee's immediate family member or business with which the employee is associated is the most expeditious means to eliminate the threat to public health, safety and welfare.
- H. Specific Required Provisions.** Unless otherwise approved by the General Manager or his/her designee, all personal services contracts shall require the following provisions:
1. The Independent Contractor shall defend, indemnify and hold harmless the City of Oakridge, its officers, agents and employees from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with performance of this contract by the Independent Contractor except, pursuant to ORS 30.140. for losses, claims or actions resulting from the sole negligence of the City of Oakridge.
 2. The Independent Contract shall waive contractor's right to ORS 30.285 and ORS 30.287, Indemnification and Defense.
 3. The Independent Contract shall obtain and maintain liability insurance coverage in at least the amount of the City of Oakridge's Tort Liability Limits under the Oregon Governmental Tort Claims Act, ORS 30.260 et seq., naming

City of Oakridge, its officers, agents and employees as an additional named insured during the term of the contract and where appropriate additional insurance provisions; including, but not limited to errors and omissions coverage.

4. The Independent Contractor to certify its status as an “Independent Contractor” as that term is used under the laws of the State of Oregon, and that all performance of any labor or services required to be performed by Independent Contractor under the terms of the contract shall be performed in accordance with the standards set forth in ORS 670.600.
 5. The Independent Contractor to maintain all contract provisions mandated by State Law; including, but not limited to, Worker’s Compensation coverage, compliance with Bureau of Labor or Industries requirements regarding prevailing wage rates, and all other state contracting requirements which may be incorporated in the personal services contract by reference to state law.
 6. The Independent Contractor represents and certifies that the contractor has complied with the tax laws of this state or a political subdivision therefore including, but not limited to, ORS 305.620 and ORS Chapters 316, 317 and 318. The Independent Contractor shall also covenant to continue to comply with the tax laws of this state or a political subdivision thereof during the term of the contract and that contractor’s failure to comply with such laws prior to execution of the contract or during the term thereof is a default for which the City of Oakridge may terminate the public contract and seek damages and other relief available under the terms of this public contract or under applicable law.
 7. The Independent contractor agrees that the Circuit Court for the County of Lane, State of Oregon, or the Federal District Court of the State of Oregon (Eugene) is the sole and proper forum for resolving any disputes involving this Agreement, any breach of this Agreement, or relating to its subject matter. Independent Contractor agrees to submit themselves to the jurisdiction of such courts without challenge to the jurisdiction of these courts.
- I. **Waiver.** The selection procedures described in this section may be waived by the General Manager at his/her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
 - J. **Electronic Publication.** Notice of requests for proposals, requests for bids, and intent to award may be published electronically in lieu or in addition to other publication or notice where the Contracting Agency finds that such publication is likely to be cost effective.

IV. Preferences.

- A. **Discretionary Local Preference.** If the solicitation is in writing, the City Administrator may provide a specified percentage preference of not more than ten percent (10%) for goods fabricated or processed entirely in Oregon or services performed entirely in Oregon.
1. When a preference is provided under this subsection, and more than one offeror qualifies for the preference, the City Administrator may give further preference to a qualifying offeror that resides in or is headquartered in Oregon.
 2. The City Administrator may establish a preference percentage of ten percent (10%) or higher if the City Administrator makes a written determination that good cause exists to establish the higher percentage, explains the reasons, and provides evidence of good cause. Evidence of good cause may include prevailing economic stimulus including, but not limited to, enhancement of prevailing wages and employment for businesses and sited in Oakridge.
 3. The preference described in this subsection cannot be applied to a contract for emergency work, minor alterations, and ordinary repairs or maintenance of public improvements.
- A. **Mandatory Tie Breaker Preference.** If offers are identical in price, fitness, availability and the quality is identical, and the City desires to award the contract, the preferences provided in ORS 279A.120 shall be applied prior to the contract award.
- B. **Reciprocal Preference.** Reciprocal preferences must be given when evaluating bids, if applicable under ORS 279A.120.
- C. **Preference for Recycled Materials and Supplies.** Preferences for recycled goods shall be given when comparing goods, if applicable under ORS 279A.125. The City Administrator shall adopt standards to determine if goods are manufactured from recycled materials.

V. General Provisions.

- A. **Public Notice.** Unless otherwise specifically provided by this ordinance, any notice required to be published by this ordinance may be published using any method the City Administrator deems appropriate, including but not limited to, mailing notice to persons that have requested notice in writing, placing notice on the City's website, publishing in local publications or statewide trade or local publications.
- B. **Procedure for Competitive Verbal Quotes and Proposals.** Where allowed by this ordinance, solicitations by competitive verbal quotes and proposals shall be based on a description of the type and quantity of goods or services to be provided, and may be solicited and received by phone, or facsimile or email if authorized by the City Administrator.

1. A good faith effort shall be made to contact at least three (3) potential providers.
2. If three (3) potential providers are not reasonably available, fewer will suffice, provided the reasons three potential providers are not reasonably available is documented as part of the procurement file.

C. Procedure for Informal Written Solicitation. Where allowed by this ordinance, informal written solicitations shall be made by a solicitation document sent to not less than three (3) prospective providers.

1. The solicitation document shall request competitive price quotes or competitive proposals, and include:
 - a. The date, time and place that price quotes or proposals are due;
 - b. A description of the type and quantity of the good or service required;
 - c. Any statement of period for which price quotes or proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposed format.
2. Price quotes or proposals shall be received by the City Administrator at the date, time and place established in the solicitation document.
 - a. The City Administrator shall keep a written record of the sources of the quotes or proposals.
 - b. If three (3) quotes or proposals are not reasonably available, fewer shall suffice, but the City Administrator shall make a written record of the effort made to obtain quotes or proposals as part of the procurement file.

D. Procurement Methods for Architectural, engineering, land surveying, photogrammetric mapping, transportation planning service required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. or related services, or any combination of these services, provided by a consultant and the Model Rules when procuring architectural, engineering and land surveying services, related services, and public improvements and processing protests thereof.

1. The procurement of consultants to provide Architectural, engineering, land surveying, photogrammetric, transportation planning service required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. or related services, or any combination of these services, provided by a consultant will be accomplished through the Public Contracting Code

procedures in ORS 279C.100 and the Model Rules OAR Chapter 137 Division 48, as amended and modified by House Bill 2769, 2019 Oregon Legislatures effective September 29, 2019.

2. The procurement of Consultants to provide Related Services as defined in Section II NN of this document will be accomplished through the Public Contracting Code procedures in ORS 279C.120 and the Model Rule, OAR Chapter 137-048-0100 et seq as modified by House Bill 2769 Oregon Legislative 2019 effective September 29, 2019.

E. Retroactive Approval. Retroactive approval of a contract means the award or execution of a contract where work was commenced without final award or execution. The City Administrator may make a retroactive approval of a contract only if the responsible employee submits a copy of the proposed contract to the City Administrator, along with a written request for contract retroactive approval, that contains:

1. An explanation of the reason work was commenced before the contract was finally awarded or executed;
2. A description of steps being taken to prevent similar occurrences in the future;
3. Evidence that, but for the failure to finally award or execute the contract, the employee complied with all other steps required to properly select a contractor and negotiate the contract; and
4. A proposed form and terms of contract.

VI. Source Selection Methods for Goods or Services, Other Than Personal Services.

A. Small Procurements. Contracts for or purchases of goods or services with a contract price of \$10,000 or less are small procurements.

1. Purchases less than \$7,500. The City Administrator may use any procurement method the City Administrator deems practical or convenient, including direct negotiation or award, for small procurements of goods or services with a contract price of less than \$7,500.
2. Purchases of \$7,500 to less than or equal to \$10,000. The City Administrator may use competitive verbal quotes or proposals and informal written solicitations for small procurements of goods or services with a contract price from \$7,500 up to \$10,000.
3. Negotiations. The City Administrator may negotiate with an offeror to clarify competitive verbal quotes or proposals or informal written proposals, or to make modifications that will make the quote or proposal acceptable or more advantageous to the City.

4. Award. If a contract is awarded, the award shall be made to the offeror whose verbal quote or proposal the City Administrator determines will best serve the interests of the City, taking into account price as well as any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery, and contractor responsibility.
5. Amendments. Small procurement contracts may be amended if the cumulative amendments do not increase the total contract price to more than twenty-five percent (25%) of the original contract price. If the cumulative amendments exceed 25%, City Council approval is required.
6. Public notice. No public notice of small procurements is required.

B. Intermediate Procurements. Contracts for goods or services with a contract price greater than \$10,000 and less than or equal to \$150,000 are intermediate procurements.

1. Intermediate procurements shall be by informal written solicitation.
2. Negotiations. The City Administrator may negotiate with an offeror to clarify an informal written solicitation, or to make modifications that will make the quote, proposal or solicitation acceptable or more advantageous to the City.
3. Award. If a contract is awarded, the award shall be made to the offeror whose competitive verbal quote or proposal or informal written solicitation the City Administrator determines will best serve the interests of the City, taking into account price or any other relevant considerations, including but not limited to, experience, expertise, product functionality, suitability for a particular purpose, delivery and contractor responsibility.
4. Amendments. Intermediate procurement contracts may be amended if the cumulative amendments do not increase the total contract price by more than twenty-five percent (25%) of the original contract price. If the cumulative amendments exceed twenty-five percent (25%), City Council approval is required.
5. Public Notice. Public notice is required for intermediate procurements with a contract price equal to or exceeding \$50,000.

C. Large Procurements. Contracts for goods or services with a contract price greater than \$150,000 are large procurements.

1. The City Administrator may use competitive sealed bidding as set forth in ORS 279B.055, or competitive sealed proposals as set forth in ORS 279B.060.
2. When using either competitive sealed bidding or competitive sealed proposals, the City Administrator shall follow the applicable procedures set out in the Model Rules.

3. The City shall apply the applicable procedure set out in the Model Rules for processing protests of large procurements.
- D. All Public Contracts equal to or in excess of \$50,000 will be reviewed and awarded by the Council regardless of the type of source selection process, including, but not limited to, informal quotes, requests for proposals, competitive bidding and those which qualify for exemptions from the competitive bidding process. A public contract shall be reviewed and awarded by the Council based on Competitive Bidding (ORS 279B.055) or Competitive Proposals (ORS 279B.060) in accordance with applicable requirements of the Oregon Public Contracting Code, exceptions thereto or the Model Rules or the Council's Public Contracting Rules as set forth in these Policies. The Council may make exceptions to this requirement. Contracts shall not be artificially divided or fragmented to avoid these requirements. The requirements of this section must be read in concert with III D "Authority of City Administrator".

VII. Personal Services Contracts.

- A. **Classification of Services as Personal Services.** In addition to the classes of personal services contracts identified in the definition of personal services contracts, the City Administrator may classify additional specific types of services as personal services. In determining whether a service is a personal service, the City Administrator shall consider: See II AA
1. Whether the work requires specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment;
 2. Whether the City intends to rely on the contractor's specialized skills, knowledge and expertise to accomplish the work; and
 3. Whether selecting a contractor primarily on the basis of qualifications, rather than price, would most likely meet the City's needs and result in obtaining satisfactory contract performance and optimal value.
 4. A service shall not be classified as personal services for the purposes of this ordinance if:
 - a. The work has traditionally been performed by contractors selected primarily on the basis of price; or
 - b. The services do not require specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.
- B. **Requests for Qualifications.** At the City Administrator's discretion, a request for qualifications may be used to determine whether competition exists to perform the needed personal services or to establish a non-binding list of qualified

contractors for individual negotiation, informal written solicitations or requests for proposals.

1. A request for qualifications shall describe the particular type of personal services that will be sought, the qualifications the contractor must have to be considered, and the evaluation factors and their relative importance.
2. A request for qualifications may require information including, but not limited to:
 - a. The contractor's particular capability to perform the required personal services;
 - b. The number of experienced personnel available to perform the required personal services;
 - c. The specific qualifications and experience of personnel;
 - d. A list of similar personal services the contractor has completed;
 - e. References concerning past performance; and
 - f. Any other information necessary to evaluate the contractor's qualifications.
3. A voluntary or mandatory qualifications pre-submission meeting may be held for all interested contractors to discuss the proposed personal services. The request for qualifications shall include the date, time and location of the meeting.
4. Unless the responses to a request for qualifications establish that competition does not exist, the request for qualifications is canceled, or all responses to the request for qualifications are rejected, all respondents who meet the qualifications set forth in the request for qualifications shall receive notice of any required personal services and have an opportunity to submit a proposal in response to request for proposals.

C. Direct Negotiations. Personal services may be procured through direct negotiations if:

1. The contract price does not exceed \$50,000 and the work is within a budgetary appropriation or approved by the City Council; or
2. The confidential personal services, including special counsel, or professional or expert witnesses or consultants, are necessary to assist with pending or threatened litigation or other legal matters in which the City may have an interest; or
3. The nature of the personal service is not project-driven but requires an ongoing, long-term relationship of knowledge and trust.
4. Amendments. Personal services contracts procured by direct negotiation pursuant to this section may be amended, provided the amendment is

within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work. If the cumulative amount of the amendments exceeds 25%, City Council Approval is required.

5. Public Notice. No public notice of personal services contracts procured by direct negotiations is required.

D. Informal Written Solicitations. An informal written solicitation process may be used for personal services when the contract price is less than \$125,000.

1. An informal written solicitation shall solicit proposals from at least three (3) qualified providers. If the City Administrator determines three (3) qualified providers are not reasonably available, fewer shall suffice if the reasons three (3) providers are not reasonably available are documented in the procurement file.
2. The solicitation document shall include:
 - a. The date, time and place that proposals are due;
 - b. A description of personal services sought, or the project to be undertaken;
 - c. Any statement of the time period for which proposals must remain firm, irrevocable, valid and binding on the offeror. If no time is stated in the solicitation document, the period shall be thirty (30) days;
 - d. Any required contract terms or conditions; and
 - e. Any required bid form or proposal format.
3. Selection and ranking of proposals may be based on the following criteria:
 - a. Particular capability to perform the personal services required;
 - b. Experienced staff available to perform the personal services required, including the proposer's recent, current and projected workloads;
 - c. Performance history;
 - d. Approach and philosophy used in providing personal services;
 - e. Fees or costs;
 - f. Geographic proximity to the project or the area where the services are to be performed; and

- g. Such other factors deemed appropriate, including a desire to ensure an equitable distribution of work among highly qualified contractors.
- 4. The City Administrator shall maintain written documentation of the solicitation, including solicitation attempts, responses, and provider names and addresses in the procurement file.
- 5. Amendments. Personal services contracts procured by informal written solicitations pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work. If the amount if the Amendment exceeds 25%, City Council approval is required.
- 6. Public Notice. No public notice of personal services contracts procured by informal written solicitations pursuant to this section is required.

E. Requests for Proposals. A request for proposals shall be used to procure personal services when the contract price is \$125,000 or more or the complexity of the project requires the use of a formal competitive process to determine whether a particular proposal is most advantageous to the City.

- 1. Request for Proposal. The request for proposal shall include:
 - a. Notice of any pre-offer conference, including:
 - i. The time, date and location;
 - ii. Whether attendance at the pre-offer conference is mandatory or voluntary; and
 - iii. A provision that statements made by representatives of the City at the pre-offer conference are not binding unless confirmed by written addendum.
 - b. The form and instructions for submission of proposals, including the location where proposals must be submitted, the date and time by which proposals must be received and any other special information, e.g., whether proposals may be submitted by electronic means;
 - c. The name and title of the person designated for the receipt of proposals and the person designated as the contact person for the procurement, if different;
 - d. A date, time and place that pre-qualification applications, if any, must be filed and the classes of work, if any, for which proposers must be pre-qualified;

- e. A statement that the City may cancel the procurement or reject any or all proposals;
 - f. The date, time and place of opening;
 - g. The office where the request for proposals may be reviewed;
 - h. A description of the personal services to be procured;
 - i. The evaluation criteria;
 - j. The anticipated schedule, deadlines, evaluation process and protest process;
 - k. The form and amount of any proposal security deemed reasonable and prudent by the City Administrator to protect the City's interests;
 - l. A description of the manner in which proposals will be evaluated, including the relative importance of price and other evaluation factors used to rate the proposals;
 - m. If more than one tier of competitive evaluation will be used, a description of the process under which the proposals will be evaluated in the subsequent tiers;
 - n. If contracts will be awarded to more than one personal services contractor, an identification of the manner in which the City will determine the number of contracts to be awarded, or that the manner will be left to the City's discretion at time of award;
 - o. If contracts will be awarded to more than one personal services contractor, the criteria to be used to choose from the multiple contracts when acquiring personal services shall be identified;
 - p. All required contract terms and conditions, including the statutorily required provisions in ORS 279B.220, 279B.230 and 279B.235; and
 - q. Any terms and conditions authorized for negotiation.
2. Public Notice. The City Administrator shall provide public notice of a request for proposals for personal services.
- a. Public notice shall be given not less than twenty-one (21) days prior to closing for the request for proposals, unless the City Administrator determines that a shorter interval is in the public's interest, or a shorter interval will not substantially affect competition.
 - b. The City Administrator shall document the specific reasons for the shorter public notice period in the procurement file.

3. Amendments. Personal services contracts procured by requests for proposals pursuant to this section may be amended, provided the amendment is within the scope of the original contract and the cumulative amount of the amendments does not increase the total contract price by more than twenty-five percent (25%) over the original contract price; or the amendment is necessary to complete the work being performed and it would be unreasonable or impracticable to seek another provider within the time frames needed to complete the work. If the cumulative amendment exceeds 25%, Oakridge City Council approval is required.

VIII. Alternative Source Selection Methods for Goods or Services & Personal Services.

A. Sole-Source Procurements. A contract may be awarded as a sole-source procurement without competition pursuant to this section.

1. Determination of Sole Source. Before a sole-source contract may be awarded, the City Administrator shall make written findings that the goods or services, personal services or professional services are available from only one source, based on one or more of the following criteria:
 - a. The efficient use of existing goods or services, personal services or professional services requires the acquisition of compatible goods or services, personal services or professional services that are available from only one source;
 - b. The goods or services, personal services or professional services are available from only one source and required for the exchange of software or data with other public or private agencies;
 - c. The goods or services, personal services or professional services are available from only one source, and are needed for use in a pilot or an experimental project; or
 - d. Other facts or circumstances exist that support the conclusion that the goods or services, personal services or professional services are available from only one source.
2. Negotiations. To the extent reasonably practical, contract terms advantageous to the City shall be negotiated with the sole source provider.
3. Notice. The City Administrator shall post notice of any determination that the sole source selection method will be used on the City's website not less than ten (10) days prior to the date a sole source contract will be awarded. The notice shall describe the goods or services, personal services or professional services to be procured, identify the prospective contractor and include the date and time when, and place where, protests of the use of a sole source selection method must be filed.

B. Special Procurements. Procurements of goods and services as set forth in ORS 279B.085 or public improvements as set forth in ORS 279C.335. In its capacity as contract review board for the City, the City 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.

1. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:
 - a. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
 - b. The estimated contract price or cost of the project, if relevant;
 - c. Findings to support the substantial cost savings, enhancement in quality or performance, or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
 - d. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
 - e. A description of the proposed alternative contracting methods to be employed; and
 - f. The estimated date by which it would be necessary to let the contract(s).
2. In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
3. Hearing. The City shall approve the special solicitation or exemption after a public hearing before the City Council.
 - a. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
 - b. The City Council shall consider the findings and may approve the exemption as proposed or as modified by the City Council after providing an opportunity for public comment.

C. Contracts. Subject to award at the City Administrator's discretion. The following classes of contracts may be awarded in any manner that the City

Administrator deems appropriate to the City's needs, including by direct appointment or purchase. Except where otherwise provided, the City Administrator shall make a record of the method of award.

1. Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with the ordinance.
2. 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.
3. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
4. Government-Regulated Items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
5. Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City.
6. Specialty Goods for Resale. Contracts for the purchase of specialty goods by the City for resale to consumers.
7. Sponsorship Agreements. Sponsorship agreements, under which the City receives a gift or donation in exchange for recognition of the donor.
8. Structures. Contracts for the disposal of structures located on City-owned property.
9. 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.
10. Temporary Extensions or Renewals. Contracts for a single period of one (1) 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.
11. Temporary Use of City-Owned Property. The 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 if:
 - a. The contract results from an unsolicited proposal to the City based on the unique attributes of the property or the unique needs of the proposer;
 - b. The proposed use of the property is consistent with the City's use of the property and the public interest; and

- c. The City reserves the right to terminate the contract without penalty, in the event that the City determines that the contract is no longer consistent with the City's present or planned use of the property or the public interest.
 - 12. **Used Property.** The City Administrator may contract for the purchase of used property by negotiation if such property is suitable for the City's needs and can be purchased for a lower cost than substantially similar new property.
 - a. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City.
 - b. The City Administrator shall record the findings that support the purchase.
 - 13. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
 - 14. **Conference/Meeting Room Contracts.** Contracts entered into for meeting room rental, hotel rooms, food and beverage, and incidental costs related to conferences and City-sponsored workshops and trainings.
- D. Emergency Procurements.** When the City Administrator determines that immediate execution of a contract within the City Administrator's authority is necessary to prevent substantial damage or injury to persons or property, the City Administrator may execute the contract without competitive selection and award or City Council approval, but, where time permits, competitive quotes should be sought from at least three (3) providers.
- 1. When the City Administrator enters into an emergency contract, the City Administrator shall, as soon as possible in light of the emergency circumstances, document the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the City and the public.
 - 2. The City Administrator shall also notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.
- E. Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Public Contracting Code. ORS 279A.200 through [or et seq] ORS 279A.220.
- F. Qualified Nonprofit Agency For Individuals With Disabilities.** Purchase of goods or services from a qualified nonprofit agency for individuals with disabilities, which provides employment opportunities for disabled individuals pursuant to ORS 279.835 et seq. This Program is administered by the Oregon Department of Administrative Services. Qualified Product Lists as established pursuant to ORS 279B.115

- G. **Price Agreements.** Purchases made in accordance with the price agreement as established pursuant to ORS 279B.140.

IX. Surplus Property.

- A. **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination of the City Council after recommendation from 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.
 1. Governments. Without competition, by transfer or sale to another government department or public agency.
 2. Auction. By publicly advertised auction to the highest bidder.
 3. Bids. By publicly advertised invitation to bid.
 4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with this ordinance for the award of personal services contracts.
 5. 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.
 6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 7. Donation. By donation to any organization operating within or providing a service to residents of the City of Oakridge or the state of Oregon, 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. The employee making the disposal shall make a record of the value of the item and the manner of disposal.
- C. **Personal-Use Items.** An item (or indivisible set) of specialized and personal use with a current value of less than \$100 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.
- D. **Restriction on Sale to City Employees.** City employees and their immediate family shall not compete, as members of the public, for the purchase of publicly sold surplus property.

E. Conveyance to Purchaser. Upon the consummation of a sale of surplus personal property, the City shall make, execute and deliver a bill of sale or similar instrument signed on behalf of the City, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

X. Protest and Appeal Procedures.

A. Appeal of Debarment or Prequalification Decision.

1. **Right to Hearing.** Any person who has been debarred from competing for the City's contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this section.
2. **Filing of Appeal.** The person shall file a written notice of appeal with the City Administrator within five (5) business days after the prospective contractor's receipt of notice of the determination of debarment or denial of prequalification.
3. **Notification of City Council.** Immediately upon receipt of such notice of appeal, the City Administrator shall notify the City 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 date, time and place of the hearing;
 - b. The City Council shall conduct the hearing and decide the appeal within thirty (30) days after receiving notice of the appeal from the City Administrator; and
 - c. At the hearing, the City Council shall reconsider, without regard to the underlying decision giving rise to the appeal, 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.
5. **Decision.** The City Council shall set forth in writing the reasons for the decision.
6. **Costs.** The City Council may allocate its costs for the hearing between the appellant and the City.
 - a. The allocation shall be based upon facts found by the City Council and stated in the City Council's decision that, in the City Council's opinion, warrant such allocation of costs.

- b. If the City Council does not allocate costs, the costs shall be paid by the appellant if the decision is upheld, or by the City if the decision is overturned.
- c. Judicial Review. The decision of the City Council may be reviewed only upon a petition in the circuit court of Lane County filed within fifteen (15) days after the date of the City Council's decision. The appeal must be filed in accordance with all applicable state laws and trial court procedures.
- d. An affected person may not seek judicial review of a failure to debar or non-denial of prequalification.
- e. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.405.

B. Protests and Judicial Review of Special Procurements. An affected person may protest the request for approval of a special procurement as provided in this section.

- 1. Delivery; Late Protests. An affected person shall deliver a written protest to the City Administrator within seven (7) days after the first date of public notice of a proposed special procurement, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the City Administrator to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
- 2. Content of Protest. The written protest shall include:
 - a. Identification of the requested Special Procurement;
 - b. A detailed statement of the legal and factual grounds for the protest;
 - c. Evidence or documentation supporting the grounds on which the protest is based;
 - d. A description of the resulting harm to the affected person; and
 - e. The relief requested.
- 3. Additional Information. The City Administrator may allow any person to respond to the protest in any manner the City Administrator deems appropriate, by giving such persons written notice of the time and manner whereby any response shall be delivered.

4. City Response. The City Administrator shall issue a written disposition of the protest in a timely manner.
 - a. If the City Administrator upholds the protest, in whole or in part, the City Administrator may, in the City Administrator's sole discretion, implement the protest in the approval of the special procurement, deny the request for approval of the special procurement, or revoke any approval of the special procurement.
 - b. If the City Administrator upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
5. Judicial Review. An affected person may not seek judicial review of a denial of a request for a special procurement.
 - a. Before seeking judicial review of the approval of a special procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with ORS 279B.400.

C. Protests and Judicial Review of Sole-Source Procurements. An affected person may protest the determination that goods or services or a class of goods or services are available from only one source as provided in this section.

1. Delivery; Late Protests. An affected person shall deliver a written protest to the City Administrator within seven (7) days after the first date of public notice of a proposed sole source procurement is placed on the City's website, unless a different period is provided in the public notice.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the City Administrator to cover the costs of processing the protest.
 - b. A protest submitted after the timeframe established under this subsection is untimely and shall not be considered.
2. Content of Protest. The written protest shall include:
 - a. A detailed statement of the legal and factual grounds for the protest;
 - b. Evidence or documentation supporting the grounds on which the protest is based;
 - c. A description of the resulting harm to the affected person; and
 - d. The relief requested.
3. Additional Information. The City Administrator may allow any person to respond to the protest in any manner the City Administrator deems

appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.

4. City Administrator Response. The City Administrator shall issue a written disposition of the protest in a timely manner.
 - a. If the City Administrator upholds the protest, in whole or in part, the proposed sole-source contract shall not be awarded.
 - b. If the City Administrator upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
5. Judicial Review. An affected person may not seek judicial review of an election not to make a sole-source procurement.
 - a. Before seeking judicial review of the approval of a sole-source procurement, an affected person shall exhaust all administrative remedies.
 - b. Judicial review shall be in accordance with ORS 279B.400.

D. Protests and Judicial Review of Personal Services Procurements. An affected person may protest the procurement of a personal services contract as provided in this section.

1. Delivery. Unless otherwise specified in the solicitation document, the protest shall be in writing and delivered to the City Administrator.
 - a. The written protest shall include a fee in an amount established in a schedule adopted by the City Administrator to cover the costs of processing the protest.
 - b. Protests of the procurement of a specific contract as a personal services contract shall be made prior to closing.
 - c. Protests to the award or an intent to award a personal services contract shall be made within seven (7) days after issuance of the intent to award, or if no notice of intent to award is given, within forty-eight (48) hours after award.
 - d. Protests submitted after the timeframe established under this subsection are untimely and shall not be considered.
2. Contents of Protest. The written protest shall:
 - a. Specify all legal or factual grounds for the protest as follows:
 - i. A person may protest the solicitation on the grounds that the contract is not a personal services contract or was otherwise in violation of this ordinance or applicable law. The protest shall identify the specific provision of this ordinance or applicable law that was violated.

- ii. A person may protest award or intent to award for the reason that:
 - All proposals ranked higher than the affected persons are nonresponsive;
 - The City failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation document;
 - The City abused its discretion in rejecting the affected person’s proposal as nonresponsive; or
 - The evaluation of proposals or the subsequent determination of award is otherwise in violation of this ordinance or applicable law.
 - iii. The protest shall identify the specific provision of this ordinance or applicable law that was violated by the City’s evaluation or award;
 - b. Include evidence or supporting documentation that supports the grounds on which the protest is based;
 - c. A description of the resulting harm to the affected person; and
 - d. The relief requested.
3. Additional Information. The City Administrator may allow any person to respond to the protest in any manner the City Administrator deems appropriate by giving such person written notice of the time and manner whereby any response shall be delivered.
 4. City Administrator Response. The City Administrator shall issue a written disposition of the protest in a timely manner.
 - a. If the City Administrator upholds the protest, in whole or in part, the proposed personal services contract procurement shall be cancelled, or the contract shall not be awarded, as the case may be.
 - b. If the City Administrator upholds the protest, in whole or in part, the City shall refund the fee required to be delivered with the protest.
 5. Judicial Review. Before seeking judicial review, an affected person shall exhaust all administrative remedies. Judicial review shall be in accordance with ORS 279B.420.

E. Protests of Cooperative Procurements. Protests of the cooperative procurement process, contents of a solicitation document, or award may be filed with the City only if the City is the administering agency and under the applicable procedure described herein.

F. Requests for Change / Protest Procedure / Request for Proposals: Bids and requests for Proposals.

1. Procedure. Bidders and proposers requesting a change in the Bid Solicitation or Requests for Proposal and Proposer's protesting the award of such a procurement shall follow the procedures described herein. Requests or Protests that do not follow these procedures shall not be considered. This procedure constitutes the sole administrative remedy available to Proposers and Bidder under a procurement.
2. Request for Change. If it should appear to a Bidder or Proposer that the work to be done is not sufficiently described or explained in the Contract Documents, or that the Contract Documents are not definite and clear, the Bidder/Proposer shall make written inquiry regarding same to the individual shown, in the manner instructed and within the timeframe indicated in the Invitation to Bid/Request for Proposal. Questions received will be evaluated and if, in the judgment of City, the response does not alter or amend the requirements or scope of the Invitation to Bid/Proposal, but merely clarifies exiting information, the response will be posted on City's website at ci.oakridge.or.us. If, in the judgment of City, additional information or interpretation is necessary, such information shall be supplied in the form of an Addendum to all individuals, firms, and corporation listed on the Plan Holders List and those individuals that attended the Pre-Bid meeting if any and provided contact information on the sign-in sheet. Such addenda shall have the same binding effect as though contained in the main body of the Contract Documents. City is not responsible for any explanation, clarification, interpretation or approval made or given in any manner except by written addenda issued by City.
3. Solicitations Specifications. Time for Submission of Request for Change or Protest. Request for change or protest of solicitation specifications shall be presented to City, in writing, no later than four (4) days prior to closing. Such requests for change or protest shall include the reason for the request or protest, and any proposed changes to specifications or provisions. No request for change or protest of the content of solicitation of specifications or contractor provisions shall be considered after the deadline established for submitting such request or proposal.
4. Extension of Closing Date. If any request or change or protest is received in accordance with Sections (1) or (2) above, the proposal closing date may be extended if City determines an extension is necessary to allow

consideration of the request or protest an issuance of any addenda to the solicitation documents.

5. Notice of Award/Protest. City's written notice of Intent to Award shall constitute a final decision of City to award the contract or proceed with the purchase if no written protest of the contractor selection or contract is filed with City within four (4) calendar days following issuance of the Intent to Award. Only protests stipulating an issuance of fact concerning a matter of bias, discrimination or conflict of interest, or non-compliance with procedures described in the procurement document or City policy shall be considered. Protest not based on procedural matters will not be considered. All protests must be in writing and signed by the party or an authorized agent of the bidder. The protest must state all facts and arguments on which the protesting party is relying. This will include:
 - a. A detailed description of the legal and factual grounds for the protest;
 - b. A description of the resulting prejudice; and
 - c. A statement of the form of relief requested.
6. All protests shall be addressed to City Administrator, PO Box 1410 Oakridge, Oregon. If a protest of contractor selection or contract award is timely filed by an actual aggrieved proposer, the award documents shall constitute a final decision by City only upon issuance to the protesting proposer of a written decision denying the protest and affirming the selection of award.

H. Americans With Disabilities Act Compliance. If any respondent to a Request for Proposal or a Bid Solicitation requires special assistance or auxiliary aids during the proposal, evaluation or award process, please contact City Administrator at least two (2) business days prior to the required assistance. TTY users dial Oregon Relay Services at 711.